

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 for Phase I of AIM Photonics and Cooperative Agreement Number FA8650-21-2-1000, dated September 29, 2021 for Phase II of AIM Photonics (hereinafter collectively referred to as the “**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 Strategic Advisory Board (“SAB”) 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. Strategic Advisory Board. AIM Photonics will have a SAB, an advisory committee to provide advice and feedback to the Leadership Council. The SAB will create a charter that will be approved by the Leadership Council. The SAB will establish an internal capabilities roadmap committee, responsible to document the projected cumulative outcomes of proprietary internal development activities in the form of an internal proprietary capability roadmap.

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 SAB.

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 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 VII(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 above 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 Members 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 EAR), 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 Persons 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 internal 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**" and shall include relevant classification details in accordance with the applicable regulatory jurisdiction.
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.