



## 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 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.

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 located at [aimphotonics.com/become-a-member](http://aimphotonics.com/become-a-member).
- 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-photonic design automation (“EPDA”) roadmap discussions and activities.	✓	
Working Groups/Projects	Ability to participate in technical working group, Strategic Advisory 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.



<b>Membership Type</b>		<b>Membership Fee</b>
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	No Membership Fee during the Cooperative Agreement
Observer Discovery Member	Industry (incl. Small Enterprise) Academic, non-US* Professional Societies, non-US*	\$3,000 per Membership Year
	Academic, U.S.-based Professional Societies, U.S.-based	\$0 per Membership Year

\*Non-US membership is subject to AIM Photonics’ Department of Defense policy on foreign participation in AIM Photonics

- 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 Notwithstanding the foregoing, if a Member operates by contract a National Lab, Federally Funded Research and Development Center or other U.S. Government owned contractor operated facility, and the U.S. Government has ownership, authority, control, audit and inspection rights over all activities conducted at such facility, the Member may share Confidential Information disclosed hereunder to U.S. government employees; provided however, than any such disclosure to U.S. government employees is further protected under 18 USC 1905.
- 4.7 To the extent applicable to a Member by U.S. federal law or regulation, the provisions of Section 4 are consistent with and do not supersede, conflict with, or otherwise alter the Member employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling only to the extent they are applicable.



- 4.8 Section 4 survives any termination or expiration of the Membership Agreement.
- 4.9 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 other authorization, 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 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 and/or other entity with legal immunities, 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 and/or other entity with legal immunities, 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, 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

EMAIL: [info@aimphotonics.com](mailto:info@aimphotonics.com)