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## PHABULO<sub>μ</sub>S

*Pilot-line providing highly advanced & robust manufacturing technology for optical free-form  $\mu$ -structures*

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### = Deliverable D1.5 = PHABULOUS contracts and legal documents

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PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	



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## Executive Summary

Deliverable D1.5 (“*PHABULOuS contracts and legal documents*”) summarizes the legal and contractual activities required to put the PHABULOuS pilot line into operation and collects the necessary set of legal documents including:

1. the **bylaws of the PHABULOuS Pilot Line Association**
2. the **multipartite agreement for the services and production delivery**
3. the **model pilot line service contract (quotation template)**
4. the **Contractual Terms and Conditions** for both *Service delivery – Research & Development* and *Production deliveries*
5. the **mutual Non-Disclosure Agreement (NDA) among the members** of the PHABULOuS Pilot Line, as well as the **model NDA between the PHABULOuS pilot line and its customers**

With the fulfilment of this deliverable **the PHABULOuS Pilot Line is fully operational** and ready to offer its services to customers.

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## 1. Introduction

Deliverable D1.5 (“*PHABULOuS contracts and legal documents*”) completes task T1.4 (“*Legal framework of the PHABULOuS pilot line*”), which focused on the legal and contractual activities required to put the PHABULOuS Pilot Line into operation. The boundary conditions for the activities were pre-negotiated among the founding members of the PHABULOuS Pilot Line Association and included in the MoU annexed to the project proposal and Grant Agreement.

The activities related to task T1.4 and deliverable D1.5 included the definition of

- the legal conditions that apply for the (founding) members of the PHABULOuS Pilot Line Association and are included in the bylaws of the Association, as independent legal entity represented by Pilot Line Front Office (PLFO)
- the contractual framework for the execution of the PHABULOuS Pilot Line services by its members
- the legal relationship to the customers, including liability and warranty criteria

The following legal documents were set up and are annexed to this deliverable:

6. The **bylaws of the PHABULOuS Pilot Line Association**, which includes the membership and collaboration agreement to govern the relationship between the Association and its members
7. The **multipartite agreement for the services (research & development) and production delivery**, which sets a code of practice for the members in order to ensure professional collaboration within the Pilot Line, as well as high quality in the delivery of services to the customers.
8. The **model pilot line service contract (quotation template)** for executing manufacturing services for customers, which enables common and standard contracting practices within the pilot line and facilitates the contracting of often recurring manufacturing services.
9. The **Contractual Terms and Conditions** for both ***Service delivery – Research & Development*** and ***Production deliveries***, which establish the legal relationship between the PHABULOuS Pilot Line and its customers, while minimizing liability risks.
10. A **mutual Non-Disclosure Agreement (NDA) among the members** of the PHABULOuS Pilot Line, including a **model NDA between the PHABULOuS pilot line and its customers** that ensures confidential treatment of customer data but also secures the right of information exchange among the members.

Concerning the model data-privacy statement mentioned in the Grant Agreement and aiming at securing the right of storing and processing customer and material data within the PHABULOuS PLFO, note that the PHABULOuS data protection policy was thoroughly defined in deliverable D1.2 (“*PHABULOuS internal process guidelines*”) due at M12.

## 2. Bylaws of the PHABULOuS Pilot Line Association

The bylaws of the PHABULOuS Pilot Association signed by the thirteen (13) founding members were already annexed to deliverable D1.3 (*“PHABULOuS Pilot Line Front Office (PLFO) created as single-entry point for customers”*) due at M12.

**Annex 1** contains for reference the **bylaws signed by the President of the Association and one of the Executive Board members**, which were submitted for the registration of the Association at the Commercial Register in Neuchâtel (Switzerland) in M12.

**FHG joined the PHABULOuS Pilot Line Association as the 14<sup>th</sup> (regular) member in M19.**

**Annex 2** contains **the membership application and the acceptance form of FHG** in the PHABULOuS Pilot Line Association.

## 3. Multipartite agreement for the services and production delivery

A **multipartite agreement for the services (research & development) and production delivery** was signed in M22, which describes the rights and obligations of the members of the Association for the services (research & development) and production delivery. With this legal document the members agree that

- the terms and conditions reported in Section 5 will be applicable to all contractual relationships among the customers, the Association and the members within the framework of the activities of the PHABULOuS Line Association.
- the Association will lead the interactions with customers, acting as the single-entry point for them. The Association will set the methods for tendering to enable efficient customer-driven decision making. All methods will be documented in a customer relation management (CRM) tool in order to enable timely follow-up and to develop insights into the most promising lead types (market intelligence) as well as to identify any barriers (service improvement). For the sake of clarity, any database generated within this CRM will be considered as a Joint Result as per the Consortium Agreement during the PHABULOuS project and it will remain property of the Association after the PHABULOuS project.
- when a customer wishes to access the services of the Association, respectively the products and services of its Members, the Association acts as an executing broker.
- according to the *article XVI. of the Association Bylaws (“Front Office”)*, the PLFO will manage the day to day business and contacts with customers through the Managing Director assisted by the staff hired and/or the external service providers contracted to assist in fulfilling the mission of the Association. As specified in the *article 6. of the NDA (“Non-Disclosure Agreement between the Association and potential customers”*: see Section 6), this includes the execution, on behalf of all Members, of a non-disclosure agreement with each potential customer requesting the services of the Association in the field of free-form micro-optics.
- the PLFO will be responsible of qualifying all potential leads and of addressing the corresponding requests of services to the Association Executive Board, which, according to the *article XV. of the Association bylaws (“Powers of the Executive Board”)*, will issue a final decision on the request for services, designating the prime contractor.
- the prime contractor, with the support of the PLFO, will choose the secondary contractors for each request for services according to the Association’s organisational rules. The prime contractor and the secondary contractors together with the PLFO will establish the quotation that will be submitted to the customer. The quotation (see template in Section 4) will be signed both by one Executive Board member and the Managing Director, on behalf of the Association as a broker, and by at least one representative of the prime contractor.

- the services detailed in the quotation will be paid by the customer to the prime contractor, who is responsible for paying the secondary contractors, including the fees due to the PLFO. The brokerage fees range between 1% and 10% of the services detailed in the quotation, according to the Association's annual program (business plan) and annual budget.
- the prime contractor is responsible for the execution of the order according to the contractual terms and conditions detailed in the quotation (including but not limited to obeying with any applicable taxation implications). The Grant Agreement and Consortium Agreement are applicable between the members. In addition to such documents, bilateral sub-contracting agreements between the prime contractor and the secondary contractors will be established in order to detail the services offered by each secondary contractor and its obligations towards the prime contractor.
- the members will have the rights to refuse to contribute to be the prime contractor and/or to be secondary contractors and/or to establish any quotation.

The *Multipartite agreement for the services (research & development) and production delivery* was submitted for signature to all thirteen (13) founding members. All signed (with CEA adding a few clarifications and disclaimers on its signature page) except for VTT, which confirmed at the Extraordinary General Assembly of the PHABULOuS Pilot Line Association held on September 30<sup>th</sup>, 2021, that for the moment it is not ready to sign the documents as there are concerns with several clauses and in general with the proposed business structure and related procedures. In order neither to delay further the finalization and submission of this fundamental deliverable nor to block the operations of the Association in offering its services to customers, it was proposed to proceed without the signature of VTT. In addition, since without the acceptance of the contractual documents for the delivery of services, it would be impossible for VTT to offer its services through the Association, which is the main scope of this latter, it was proposed to temporarily suspend VTT membership in the Association. It was highlighted that:

- Such a suspension would have no consequences on the project and on VTT partnership in it, since VTT will continue to be a part of the project consortium and the associated tasks as defined in the Grant Agreement of the PHABULOuS project
- This is only a temporary suspension till either VTT signature of the documents as accepted by the absolute majority of the founding members (with the possibility of clarifications and disclaimers as accepted e.g. for CEA and FHG) or the revision of the business model and the legal framework of the pilot line, included the related legal documents, planned after the pilot case phase (see deliverables D8.4 (*"Finalized business plan for the PHABULOuS pilot line"*) and D8.7 (*"PHABULOuS final exploitation and operational plans"*)).
- The main consequence of this suspension will be the limitation of the possibility of VTT to offer its services to customers and pilot cases through the Association.

As regular member, FHG was requested to sign the accession form annexed to the contractual documents for the delivery of services as approved by the absolute majority of the founding members. FHG confirmed its acceptance of the document and signed adding a few clarifications and disclaimers on its signature page.

**Annex 3** contains the **multipartite agreement for the services (research & development) and production delivery** signed by twelve (12) of the thirteen (13) founding members in M22

**Annex 4** contains the **FHG accession document to the multipartite agreement for the services (research & development) and production delivery** signed in M22.

**Annex 5** contains the **Minutes of the Extraordinary Association General Assembly** held on September 30<sup>th</sup>, 2021.

## 4. Model pilot line service contract (quotation template)

A **model pilot line service contract** or **quotation template** was prepared for offering manufacturing services to customers. This document was approved by the members signing the *Multipartite agreement for the services (research & development) and production delivery*, to which it was annexed. The model service contract or quotation template will enable common and standard contracting practices within the pilot line and will facilitate the contracting of often recurring manufacturing services.

**Annex 6** contains the **model pilot line service contract** or **quotation template**.

## 5. Contractual Terms and Conditions

**Contractual Terms and Conditions** for both *Service delivery – Research & Development* and *Production deliveries* were prepared for offering manufacturing services to customers. These documents were approved by the members signing the *Multipartite agreement for the services (research & development) and production delivery*, to which they were annexed. The Contractual Terms and Conditions establish the legal relationship between the PHABULOuS Pilot Line and its customers, while minimizing liability risks for the Association.

**Annex 7** contains the **Contractual Terms and Conditions** for both *Service delivery – Research & Development* and *Production deliveries*.

## 6. Mutual Non-Disclosure Agreement (NDA)

A **mutual Non-Disclosure Agreement (NDA)** among the members of the PHABULOuS Pilot Line was signed in M15 including a **model NDA between the PHABULOuS pilot line and its customers** that ensures confidential treatment of customer data but also secures the right of information exchange among the members. With this legal document the members agree that

- the mutual NDA will be applicable to all meetings, communications and other collaborations between the members, including by their employees and/or representatives of the members in connection with the planning and evaluation of possible services of the PHABULOuS Pilot Line in the field of free-form micro-optics
- if any member discloses confidential information to one or more of its associated companies, such member will procure that its associated companies will adhere to the terms and conditions of the mutual NDA. The term “Associated Company” is defined to mean any corporation, company, or other legal entity which: (i) is listed in Annex 2 of the mutual NDA, (ii) is controlled by a member; (iii) controls a member; or (iii) is under common control with a member. The term “Control” (or “Controlled”) means the possession of the power to direct or cause the direction of the activities, management or policies of such corporation, company, or other legal entity, and will be deemed to exist when more than fifty percent (50%) of the controlled entity’s shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered to be an Associated Company as long as such ownership or control exists.

The *mutual NDA* was signed by all thirteen (13) founding members in M15.

As regular member, FHG signed the accession form annexed to the mutual NDA in M21.

**Annex 8** contains the **mutual NDA** signed by thirteen (13) founding members in M15.

**Annex 9** contains the **FHG accession document to mutual NDA** signed in M21.

**Annex 10** contains the **model NDA between the PHABULOuS pilot line and its customers**.



## 7. Model data-privacy statement

Concerning the model data-privacy statement mentioned in the Grant Agreement and aiming at securing the right of storing and processing customer and material data within the PHABULOuS PLFO, note that the PHABULOuS data protection policy was thoroughly defined in deliverable D1.2 (*“PHABULOuS internal process guidelines”*). In particular it was defined that the PHABULOuS Pilot Line will comply with the European General Data Protection Regulation (GDPR) 2016/679 and the Swiss Data Protection Law. In order to do so, the PHABULOuS Pilot Line will:

- Publish the Data Privacy Policy on the webpage of the Pilot Line.
- Keep an updated record of the data processing activities.
- Define mechanisms to handle subject access requests.
- Report in a timely fashion any potential data breach.

Finally, the PHABULOuS Pilot Line Association will not regulate the isolated transfer of personal data between its members beyond the regulations covered in the Consortium Agreement and the mutual NDA between the members of the Pilot Line and the PHABULOuS Pilot Line Association (see Section 6).

## 8. Conclusion

With the completion of deliverable D1.5 (*“PHABULOuS contracts and legal documents”*) and the related task T1.4 (*“Legal framework of the PHABULOuS pilot line”*) all legal and contractual documents are set to enable the operation of the PHABULOuS Pilot Line, in particular the possibility of offering its services to customers.

## 9. Degree of progress

The **Deliverable D1.5** *“PHABULOuS contracts and legal documents”* is fulfilled at 100%.

The degrees of progress of the activities related to the corresponding tasks are set as follows:

**Task T1.4** *“Legal framework of the PHABULOuS pilot line”* = **100%**

The related **Milestone MS1** (*“PHABULOuS pilot line is ready to offer manufacturing service jobs”*) is fulfilled.

## 10. Dissemination level

The **Deliverable D1.5** *“PHABULOuS contracts and legal documents”* is public and will therefore be available to download on the pilot line’s website on demand.

## **11. Appendixes**

### **11.1. *Annex 1* – Bylaws signed by the President and one of the Executive Board members**

## **Articles of Association**

### **PHABULOU S Pilot Line Association**

#### **I. NAME AND DOMICILE**

Under the name of “**PHABULOU S Pilot Line Association**” exists a non-profit making association in the meaning of articles 60 to 79 of the Swiss Civil Code. This Association is an independent legal entity with legal capacity. It is governed by Swiss law. Its duration is unlimited.

The Association is domiciled in Neuchâtel, Switzerland where it will be entered in the Commercial Register as soon as these articles of association have been adopted.

The official language of the Association is English.

#### **II. ASSOCIATION PURPOSE**

The Association is established within the framework of the H2020 European research project entitled “Pilot-Line Providing Highly Advanced & Robust Manufacturing Technology for Optical Free-Form Micro-Structures” funded by the European Commission (“**PHABULOU S Project**”).

The purpose of PHABULOU S Pilot-Line Association is to:

- implement the PHABULOU S Project in accordance with the Grant Agreement n°871710;
- unify European research and technology organisations and industrial partners into a pilot-line for the design and manufacturing of free-form microoptics solutions;
- test the efficiency of the pilot line concept through the validation of requests for piloting services within the implementation of the PHABULOU S Project;
- promote advanced photonics technologies and solutions and offer a single-entry point (one-stop shop) in order to facilitate access to comprehensive problem-solving competency for the complete production chain, which is intended to continue after the PHABULOU S Project;
- represent the interests of the PHABULOU S Pilot Line community on a national and international basis.

To achieve this aim, the PHABULOU S Pilot Line Association may run a management office (The “**Front Office**”) under the supervision of the Executive Board to deal with all administrative and organizational duties and to actively manage marketing and relationships with end users and further build up the ecosystem.

The Association may engage in all activities and take all actions necessary and appropriate to carry out the above objectives.

### **III. MEMBERSHIP**

- a) All legal entities active in the field of manufacturing and integrating free-form microoptics solutions at any position of the value chain and willing to support the aims of the Association and to stick to these articles of association can become member of PHABULOU S Pilot Line Association.
- b) The founding members as per the Association's deed of incorporation are the initial members of the Association.
- c) Members have all rights and obligations that are mentioned in these articles of association and the applicable law.
- d) Every member assigns a person as a representative for the Association General Assembly.

### **IV. MEMBERSHIP FEES**

Each member will pay a reasonable membership fee that will be fixed annually by the Association General Assembly. The membership fee shall not be excessive.

Membership fees will be due on demand for payment and shall be paid within 30 days.

Founding members are exempted from paying the annual membership fee during the term of the PHABULOU S Project.

### **V. BEGINNING AND END OF MEMBERSHIP**

The founding members are the initial members of the Association. Otherwise, an application to become a member of the Association may be submitted at any time in writing to the Front Office with a statement identifying and describing the applicant organisation and its interest in participating in the Association. Such application must contain a signed acceptance to the pre-established terms and conditions of membership. The Association General Assembly decides on the acceptance of new members.

Membership ceases:

- a) Members may resign from the Association without giving reasons by notifying the Executive Board in writing. The resignation shall become effective when four (4) months have passed from dispatching the notification. After the resignation, the resigned member shall have no obligations and/or liabilities whatsoever towards the Association or any of its members, unless otherwise explicitly agreed by the resigning member. For the avoidance of any doubt, resignation shall not relieve the members of their obligations under the PHABULOU S Project grant agreement and consortium agreement and/or separate agreements concluded for running piloting projects and /or services within the PHABULOU S Pilot Line Association. The membership fee to be paid by the resigning member will be reduced proportionally by the number of remaining months until the end of the calendar year after the resignation became effective;
- b) By exclusion ordered by the Association General Assembly;
- c) For non-payment of dues for more than one year.

Unless otherwise provided above, the membership fee for the current year remains due. Members who have resigned or who are excluded have no rights against the assets of the Association.

## **VI. RESOURCES**

The Association derives its resources from:

- a) public subsidies;
- b) broker fees from piloting & manufacturing services;
- c) membership fees, contributions and donation provided by the members or third parties;
- d) income from events and other activities;
- e) any other resources authorized by the law.

The funds shall be used in accordance with the Association's purpose (II).

## **VII. LIABILITY**

The Association's assets are solely liable for any obligations and commitments contracted in its name. The members of the Association shall not be liable for the obligations or debts of the Association. Any personal liability of the members of the Executive Board and of the Front Office staff for the debts and liabilities of the Association is excluded.

## **VIII. PHABULOuS Pilot Line Association CORPORATE BODIES**

The corporate bodies of the Association are:

- a) the Association General Assembly;
- b) the Executive Board;
- c) The Front Office;
- d) the Auditors.

### **The Association General Assembly**

## **IX. CONSTITUTION OF THE ASSOCIATION GENERAL ASSEMBLY**

The Association General Assembly consists of one authorized representative of every members of the Association. The Managing Director (XVII) and, during the PHABULOuS Project, the Project Technical Director shall have the right to be present, without vote, at all meetings of the Association General Assembly. Guests may also be invited to the Association General Assembly meeting.

## **X. POWERS OF THE ASSOCIATION GENERAL ASSEMBLY**

The Association General Assembly shall have the following powers:

- a) to adopt and amend the articles of association;
- b) to decide the Association dissolution and liquidation;
- c) to create and dissolve technical committees and other bodies;
- d) to elect and dismiss the members of the Executive Board from amongst its members;
- e) to elect and dismiss the President and Vice-President from amongst the Executive Board members;
- f) to decide on admission of new members and exclusion of members;
- g) to approve budget and annual membership fees for the coming business year;
- h) to approve the engagement of the audit firm by the Executive Board pursuant to Article XV clause (d);
- i) to approve the annual report issued by the audit firm pursuant to Article XVIII para. (4) and the accounts of the Association;
- j) to adopt, after approval of the annual report issued by the audit firm, resolutions discharging the members of the Executive Board from all liabilities;
- k) to pass resolutions on matters which are by law or by these articles of association reserved to the Association General Assembly or validly submitted to it by the Executive Board.

## **XI. MEETINGS OF THE ASSOCIATION GENERAL ASSEMBLY**

The ordinary Association General Assembly meeting is held annually, before the end of the second quarter, upon invitation by the President of the Association. Extraordinary Association General Assembly may be called by Executive Board decision, or by the request of at least 20 % of the members.

The notice shall state the place and time of the meeting, the items of the agenda as well as the motions for consideration, if any. Meetings must be called at least 20 (twenty) days in advance. Members may attend meetings in person or by telephone conference call. A quorum for meetings of the Association General Assembly shall be established by the participation in the meeting of at least the absolute majority of all members.

No later than twenty days prior to the day of the ordinary General Assembly, the Executive Board's annual report and the auditors' report shall be made available to the members for inspection at the registered office of the Association. Each member may request a copy of such documents to be sent to him or her without delay. Reference thereto is to be made in the notice calling the General Assembly.

If no objection is raised, the members may hold an Association General Assembly without observing the prescribed formalities of calling the meeting. As long as the absolute majority of all members is present in person or by telephone conference call, all items within the powers of the Association General Assembly may validly be discussed and decided upon at such a meeting.

The Association General Assembly will be chaired by the President or, in the case of his inability, the Vice-President or another Executive Board member in case of inability of both the President and the Vice-President.

## **XII. VOTING RIGHTS OF THE GENERAL ASSEMBLY**

Each member has one vote at the General Assembly.

Votes are transferable to another member: members may, by written power of attorney, authorize the representative of another member to act as their proxy at the Association General Assembly Meeting. The same proxy-holder may represent no more than one other member.

## **XIII. RESOLUTIONS OF THE GENERAL ASSEMBLY**

Unless provided otherwise by mandatory provisions of the law or by the articles of association, resolutions shall be passed, and elections shall be made, by the absolute majority of the votes cast by members either present or represented at the Association General Assembly meeting. Decisions on admission or expulsion of members, dissolution of the Association or amendments of its articles of association are made by a 2/3 (two/third) majority of the votes cast by members either present or represented.

A member is not entitled to vote a resolution proposing its own expulsion.

The chairperson of the meeting will have the casting vote in the event of a tie.

### **Executive Board**

## **XIV. ELECTION TERM OF THE EXECUTIVE BOARD**

The Executive Board will be composed at least of 6 (six) members who must be representatives of members of the Association. The Association General Assembly shall elect the Executive Board members among the representatives of the members and designate the President and the Vice-President of the Association among the Executive Board members.

Except for the initial term which shall last until the end of the PHABULOuS Project (expected on or about end of 2023), each member of the Executive Board shall serve for a two-year term following his/her election, such term ending on the day of the respective ordinary General Assembly.

Members of the Executive Board may be re-elected.

The Association is legally bound by the joint signatures of two members of the Executive Board or by the joint signatures of one Executive Board member and the Managing Director.

Notwithstanding the foregoing, the Founding members have approved the composition of the initial Executive Board exclusively for the whole term of the PHABULOuS Project as follows:

- one representative from each of the 3 UV imprint companies' founding members (namely SUSS MicroOptics SA, Morphotonics B.V. and Nanocomp Oy Ltd.) and
- the PHABULOuS Project Technical Coordinator, designated by CSEM Centre Suisse d'Electronique et de Microtechnique SA ("CSEM") and

- one representative from Joanneum Research Forschungsgesellschaft mbH and
- one representative from any of the other members.
- the President shall be a representative of one of the UV imprint private companies.

## **XV. POWERS OF THE EXECUTIVE BOARD**

The Executive Board shall take the appropriate measures to achieve the goals of the Association; it shall perform, inter alia, the following functions:

- a. Prepare an annual program and budget for the consideration of the General Assembly;
- b. Day to Day management decisions, not directly handled by the Managing Director. The Executive Board shall, in particular, assess the requests for services transmitted via the Front Office and issue a final decision on the request for services, designating the prime contractor. The prime contractor, with the support of the Front Office, will choose the secondary contractors for each request for services according to the Association's organisational rules;
- c. Establishment and amendment of the Association's organisational rules to be defined according to the Grant Agreement n°871710 before month 24 of the PHABULOuS Project;
- d. Subject to the approval of the General Assembly, the Executive Board shall, for each financial year, engage an audit firm.

The Executive Board shall convene as often as the Association's affairs require. All its members may request the convocation of a meeting, stating grounds for this request.

Executive Board meetings may also be held by way of telephone and / or video conferences. Resolutions may be passed in writing (including email).

The Executive Board has a quorum if the majority (>50%) of its members are present at a meeting. All decisions are taken by simple majority of the members present at the meeting, unless otherwise provided in the articles of association or the law. The President or, in his/her absence, the Vice-President, will have the casting vote in the event of a tie.

The members of the Executive Board shall principally perform their duties on a voluntary basis. They are entitled to the reimbursement of their actual expenses.

## **XVI. FRONT OFFICE**

The Front Office, managed by the Managing Director, executes the decisions of the Association General Assembly and the Executive Board.

The Managing Director, in consultation with the Executive Board, manages the budget of the Association and may hire staff or external service providers to assist in fulfilling the mission of the Association. The Managing Director shall be designated and seconded by CSEM as Project Coordinator exclusively for the duration of the PHABULOuS Project. After the end of the PHABULOuS Project, the Managing Director will be designated by the Executive Board. He/she



will be compensated for his/her work and reimbursed for any out-of-pocket expenses reasonably incurred.

The Managing Director shall administer the affairs of the Association and represent the Association vis-à-vis third parties in accordance with organizational rules and policies established in consultation with the Executive Board.

The Managing Director shall have the right to be present, without vote, at all meetings of the Association General Assembly and Executive Board, and he/she shall have the authority to sign on behalf of the Association (by the joint signatures of one Executive Board member and the Managing Director).

## **XVII. ADMINISTRATIVE PROCEDURES**

The Executive Board shall prepare an annual report on its activities and those of the Association.

The members of the Executive Board may adopt procedures to implement internal administrative functions of the Association.

### **Auditors**

## **XVIII. ELECTION, TERM OF OFFICE**

The auditors shall be elected by in accordance with Article X clause (h) and Article XV clause (d) of the articles of association for a term of office of one year. After expiry of their term they may be re-elected.

Auditors may only be professional auditing firms.

The auditors shall audit the accounts and examine the books of the Association in accordance with pertaining Swiss law. They are entitled to require such evidence as they deem appropriate.

One annual audit is to take place within two calendar months from the close of each financial year (Article XIX). The auditors' report shall be submitted by the Executive Board to the Association General Assembly meeting for approval.

## **XIX. FINANCIAL YEAR**

The accounts of the Association will be established on December 31 each year, and for the first time on 31 December 2021.

## **XX. DISSOLUTION AND LIQUIDATION**

The Association will be dissolved

- a) when it has fulfilled its purposes;



- b) by vote of the members according to Article XIII;
- c) in the circumstances provided for by the law.

In case of liquidation, the remaining assets must be assigned to a public utility entity pursuing similar objectives to those of the Association.

## XXI. Governing Law - Disputes

These articles of association and all regulations promulgated thereunder shall be governed by the laws of Switzerland.

These articles of association shall be drafted in two versions, in French and English. If any question of interpretation arises, only the French version shall prevail. All disputes arising in connection with these articles of association or regulations based on these articles of association shall be settled in accordance with the Rules of the International Chamber of Commerce by one arbitrator, unless otherwise agreed. The place of arbitration shall be Geneva. The arbitral procedure shall be conducted in English.

## XXII. ENTRY INTO FORCE

These bylaws have been amended and approved by the Association General Assembly on October 19, 2020 and enter into force with immediate effect.

Signed by

The President

Signature

Name: Toralf Scharf

Date 12.11.2020

Executive Board Member

Signature

Name: Oscar Fernandez

Date 27.10.2020

## **11.2. *Annex 2* - Membership application and acceptance form of FHG**

Fraunhofer FEP | Winterbergstrasse 28 | 01277 Dresden

President of the PHABULOuS Pilot Line Association  
Toralf Scharf  
SUSS MicroOptics SA  
Rouges Terres 61  
Hauterive 2068  
Switzerland

Fraunhofer-Institute for  
Organic Electronics, Electron Beam and  
Plasma Technology FEP

Director  
Prof. Dr. Volker Kirchhoff

Winterbergstrasse 28  
01277 Dresden  
Germany

Dr. Nicolas Schiller  
Phone +49 351 2586 131  
Fax +49 351 258655 131  
nicolas.schiller@fep.fraunhofer.de  
www.fep.fraunhofer.de

Dresden, 21/06/2021

## Application for Membership in the PHABULOuS Pilot Line Association

Dear Mr. Scharf,

The Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V. represented by the Fraunhofer-Institut für Organische Elektronik, Elektronenstrahl- und Plasmatechnik FEP hereby applies for the membership in the PHABULOuS Pilot Line Association.

Fraunhofer FEP thereby commits to contribute to the PHABULOuS pilot line:

- optical characterization and quality control services
- optical thin film coatings (reflective, anti-reflection, optical filter stacks)

to all three pillars of the pilot line (wafer-scale, roll-to-plate and roll-to-roll).

In relation to § XV-b of the statutes, we hereby notify that Fraunhofer is legally not allowed to assume the prime contractor role in any pilot line project. Therefore, Fraunhofer must not be selected by the Executive Board as prime contractor in any activity. Please confirm in a short written notice that this deviation from the statutes is accepted.

We look forward to a continuous and prosperous collaboration.

Yours sincerely,



Dr. Nicolas Schiller  
Deputy Director



Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., München  
Executive Board  
Prof. Dr.-Ing. habil. Prof. E.h. Dr.-Ing. E.h. mult. Dr. h.c. Reimund Neugebauer, President  
Prof. Dr. rer. publ. ass. iur. Alexander Kurz  
Dipl.-Kfm. Andreas Meuer

Cheques and transfers payable to  
Deutsche Bank, München  
Account 752193300 BLZ 700 700 10  
IBAN DE86 7007 0010 0752 1933 00  
BIC (SWIFT-Code) DEUTDEMM  
V.A.T.-Ident-No. DE129515865  
Tax-Number 143/215/20392

**Vollmacht**  
durch

**Power of Attorney**  
by

**Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.,**

die weltweit führende Organisation für anwendungsorientierte Forschung mit Geschäftsanschrift Hansastr. 27c, 80686 München, Deutschland (nachfolgend der „**Vollmachtgeber**“).

the world's leading applied research organization, having its registered office at Hansastr. 27c, 80686 Munich, Germany (hereinafter the "**Principal**").

Der Vollmachtgeber bevollmächtigt hiermit

The Principal hereby authorizes

**Dr. Nicolas Schiller**  
Stellvertretender Institutsleiter  
Fraunhofer-Institut für Organische Elektronik, Elektronenstrahl- und Plasmatechnik FEP  
Winterbergstraße 28  
01277 Dresden, Deutschland

(nachfolgend der „**Bevollmächtigte**“)

(hereinafter the "**Attorney**")

den Vollmachtgeber bei folgendem Rechtsgeschäft zu vertreten und sämtliche im Zusammenhang damit stehenden erforderlichen oder zweckmäßigen Erklärungen abzugeben und Handlungen vorzunehmen:

to represent the Principal in the following legal transaction and to make all necessary or expedient declarations and perform all acts in connection therewith:

***Bevollmächtigung zur Vertretung der Fraunhofer-Gesellschaft im Verein „PHABULO $\mu$ S Pilot Line“ mit Sitz in Neuchâtel, Schweiz und zur Abgabe und Entgegennahme aller Erklärungen, die zum Erwerb, zur Wahrnehmung und zur Beendigung der mitgliedschaftlichen Rechte in dem Verein erforderlich sind.***

***Authorization to represent the Fraunhofer-Gesellschaft in the association „PHABULO $\mu$ S Pilot Line“ with registered office in Neuchâtel, Switzerland and to execute and to accept all declarations required for the acquisition, exercise and termination of membership rights in the association.***

Der Bevollmächtigte ist nicht von den Beschränkungen des § 181 BGB befreit. Der Bevollmächtigte ist ermächtigt, Untervollmacht zu erteilen. Diese Vollmacht ist jederzeit durch Erklärung gegenüber dem Bevollmächtigten widerrufenlich.

The Attorney is not exempt from the restrictions of section 181 German Civil Code BGB. The Attorney is authorized to grant sub-authorization. This Power of Attorney may be revoked at any time by declaration to the Attorney.


Diese Vollmacht sowie ihre Auslegung unterliegen dem materiellen Recht der Bundesrepublik Deutschland unter Ausschluss des Internationalen Privatrechts. Gerichtsstand ist München, Deutschland. Maßgebend ist ausschließlich die deutsche Fassung dieser Vollmacht

This Power of Attorney and its interpretation shall be governed by the substantive laws of the Federal Republic of Germany, excluding the German conflict of law rules. Place of jurisdiction shall be Munich, Germany. The German version of this Power of Attorney shall prevail.

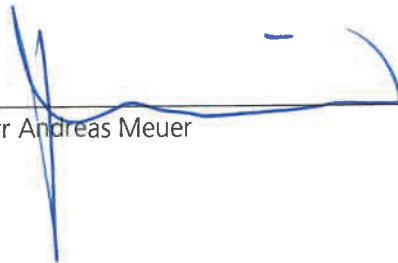
**Diese Vollmacht erlischt am 31. Dezember 2022.** Im Übrigen erlischt diese Vollmacht mit Beendigung des Arbeitsverhältnisses zwischen dem Vollmachtgeber und dem Bevollmächtigten sowie mit Austritt des Vollmachtgebers aus dem Verein.

**This Power of Attorney terminates on 31 December, 2022.** This Power of Attorney otherwise expires upon termination of the employment relationship between the Principal and the Attorney as well as upon withdrawal of the Principal from the association.

München, den 10.6.'21  
(Ort / Place) (Datum / Date)

  
\_\_\_\_\_  
Professor Dr. Alexander Kurz

München, den 10.6.'21  
(Ort / Place) (Datum / Date)

  
\_\_\_\_\_  
Herr Andreas Meuer

## PHABULO $\mu$ S Pilot Line Association Membership Acceptance Form

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., represented by the Fraunhofer-Institute for Organic Electronics, Electron Beam and Plasma Technology FEP, established in Winterbergstrasse 28, 01277 Dresden, hereinafter referred to as "**Applicant**", applied for membership in the PHABULO $\mu$ S Pilot Line Association established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland (the "**Association**").

The Applicant hereby commits to:

- Support the objectives of the Association,
- Actively participate in the Association activities,
- Abide by all terms and conditions specified in the Association's Articles of Associations.

The Applicant agrees:

- To accede to the non-disclosure agreement signed between the Association and its members upon signature of the accession document,
- To accede to the multipartite agreement for the execution of services signed between the Association and its members upon signature of the accession document,

By signing this form, the Applicant hereby consents to become a Member to the Association starting on 01.09.2021.

By signing this form and in accordance with the decision of its General Assembly on 24.06.2021, the PHABULO $\mu$ S Pilot Line Association hereby accepts the Applicant as a new member of the Association starting on 01.09.2021 with the conditions mentioned in the Applicant's letter to the Association dated 21.06.2021.

July 9<sup>th</sup>, 2021, Dresden]

Dr. Nicolas Schiller

Division Director at Fraunhofer FEP

Neuchâtel, 02.07.2021

PHABULO $\mu$ S Pilot Line Association Signature(s)

Name(s) Rolando FERRINI

Title(s) Managing Director

Digitally signed  
by Rolando

Ferrini

Date:

2021.07.12

13:12:02 +02'00'

Name(s) Tora SCHARF

Title(s) President

Enclosures:

- Articles of Association
- Applicant letter dated 21.06.2021



### **11.3. *Annex 3* – Multipartite agreement for the services and production delivery**

## **Multipartite agreement for the services (research & development ) and production delivery**

### **BETWEEN**

**PHABULOU S Pilot Line Association**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland (hereinafter referred to as the **Association**) on the one hand,

### **AND**

The following members of the association on the other,

**CSEM Centre Suisse d'Electronique et de Microtechnique SA**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland and

**JOANNEUM RESEARCH Forschungsgesellschaft mbH**, established in Leonhardstrasse 59, 8010 Graz, Austria, owned by the Province of Styria, the BABEG - Kärntner Betriebsansiedlungs- & Beteiligungsgesellschaft and the Landesholding Burgenland and registered in the Companies Register under no. FN 48282 d and

**Teknologian Tutkimuskeskus VTT Oy**, established in TEKNIIKANTIE 21, Espoo 02150, Finland, VAT number FI26473754 and

**Commissariat à l'Energie Atomique et aux Energies Alternatives**, a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment "Le Ponant D" – 75015 Paris, FRANCE, declared at the Paris Register of Commerce and Trade under the following registration number R.C.S. Paris B 775 685 019, acting for its "Laboratoire d'électronique et de technologie de l'information" (LETI), and

**SUSS MicroOptics SA**, established in Rouges-Terres 61, 2068 Hauterive, Switzerland and

**Morphotonics B.V.**, a Dutch company with its registered office at De Run 4281, 5503 LM, Netherlands and

**Nanocomp Oy Ltd.**, validly organised and existing under the laws of Finland having its offices at Ensolantie 6, FI-80170 Lehmo, FINLAND. Trade registration number FI10836004 and

**WIELANDTS Ultra Precision Machining Technologies S.A.**, a corporation established under the laws of Belgium, having its registered office at Rue Bois Saint-Jean 15, 4102 Seraing, Belgium and

**Laser Engineering Applications SA**, a Belgian company established in Rue Louis Plescia, n°31, 4102 Seraing, Belgium and

**PowerPhotonic Ltd**, a Scottish company with a registered office at 5A St David's Drive, St David's Business Park, Dalgety Bay, Fife KY11 9PF, Scotland and,

**Limbak 4PI SL**, a company duly organized and existing under the laws of Spain, having its principal place of business at Calle Villa de Marin 37 8ºA, 28029 Madrid, and which is registered with the Commercial Registry of Madrid under the number M-568897 and

**European Photonics Industry Consortium**, established in 17, Rue Hamelin, 75016 PARIS, FRANCE and

**Amires s.r.o.**, established in Stavitzka 1099/6, 160 00, Prague 6, the Czech Republic,

(hereinafter referred to as **Member** individually and **Members** collectively),

All together, the Association and the Members (including the Associated Companies listed in Annex 2), hereinafter referred to as **Party** individually and **Parties** collectively, as the context may require.

**WHEREAS**

The PHABULOuS Pilot Line Association promotes advanced photonics technologies and solutions and offers a single entry point in order to facilitate access to the services of its Members in the field of freeform micro-optics (hereinafter referred as FFMO);

The Association was established within the framework of the European Commission-funded Horizon 2020 research project "Pilot-Line Providing Highly Advanced & Robust Manufacturing Technology for Optical Free-Form Micro-Structures" hereinafter referred as the "PHABULOuS Project";

The Members are companies as well as research and technology organization (RTOs) active in the field of research, development, manufacturing and/or integration of FFMO solutions;

The Members intend to cooperate within the PHABULOuS Pilot Line Association with the aim of offering FFMO services and solutions and otherwise meet the aims of the Association;

The Members are the members of the Association, including Associated companies as listed in Annex 2;

The Association and its Members are also partners of the "PHABULOuS Project" and have signed the Grant Agreement and the Consortium Agreement of the PHABULOuS Project;

The Members have already signed a Mutual Non-Disclosure Agreement (hereinafter referred to as "NDA");

The Members wish to benefit from the Association services, i.e brokerage services, including representation, promotion, offering and customer management, eco-system building through the digital marketplace, training, and any other service established within the Association business model;

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:****1. PURPOSE OF THE CONTRACT AND SCOPE OF THIS AGREEMENT**

- 1.1. The Association and all its Members benefit from their mutual commitment to join the Association in the context of their development in this field.
- 1.2. The present agreement is a multipartite agreement describing the rights and obligations of the Members of the Association for the services (research & development ) and production delivery (hereinafter referred to as the "Agreement").
- 1.3. The Parties hereby agree that the following terms and conditions (hereinafter referred to as "Agreement") shall be applicable to all contractual relationships among the customers, the Association and the Members within the framework of the activities of the PHABULOuS Line Association.
- 1.4. The Association will lead the interactions with customers, acting as the single-entry point for them. The Association will set the methods for tendering to enable efficient customer-driven decision making. All methods will be documented in a customer relation management (CRM) tool in order to enable timely follow-up and to develop insights into the most promising lead types (market intelligence) as well as to identify any barriers (service improvement). For the sake of clarity, any database generated within this CRM will be considered as a Joint Result as per the Consortium Agreement during the PHABULOuS project and it will remain property of the Association after the PHABULOuS project.

- 1.5. When a customer wishes to access the services of the Association, respectively the products and services of its Members, the Association acts as an executing broker (but not an agent). According to the article XVI. of the Association Bylaws ("Front Office"), the Front Office will manage the day to day business and contacts with customers through the Managing Director assisted by the staff hired and/or the external service providers contracted to assist in fulfilling the mission of the Association. As specified in the article 6. of the NDA ("Non-Disclosure Agreement between the Association and potential customers"), this includes the execution, on behalf of all Members, of a non-disclosure agreement with each potential customer requesting the services of the Association in the field of FFMO. The Front Office will be responsible of qualifying all potential leads and of addressing the corresponding requests of services to the Association Executive Board, which, according to the article XV. of the Association bylaws ("Powers of the Executive Board"), will issue a final decision on the request for services, designating the prime contractor ("prime contractor"). The prime contractor, with the support of the Front Office, will choose the secondary contractors for each request for services according to the Association's organisational rules. The prime contractor and the secondary contractors together with the Front Office will establish the quotation that will be submitted to the customer. The quotation, substantially in the form of Annex 3 (Quotation Template), will be signed both by one Executive Board member and the Managing Director, on behalf of the Association as a broker, and by at least one representative of the prime contractor. The services detailed in the quotation will be paid by the customer to the prime contractor, who is responsible for paying the secondary contractors, including the fees due to the Front Office. The brokerage fees range between 1% and 10% of the services detailed in the quotation, according to the Association's annual program (business plan) and annual budget. The prime contractor is responsible for the execution of the order according to the contractual terms and conditions detailed in the quotation (including but not limited to obeying with any applicable taxation implications). The Grant Agreement and Consortium Agreement are applicable between the Parties. In addition to such documents, bilateral sub-contracting agreements between the prime contractor and the secondary contractors may be established in order to detail the services offered by each secondary contractor and its obligations towards the prime contractor.

- 1.6. The Parties shall have the rights to refuse to contribute to be the prime contractor and/or to be secondary contractors and/or to establish any quotation.

## 2. **MAIN OBLIGATIONS OF THE ASSOCIATION IN THE EXECUTION OF SERVICES**

- 2.1. The Association is essentially responsible for managing the services, in particular for provision of information and coordination among prime and secondary contractors according to the Association's organisational rules as well as for assisting the members through the Front Office (brokering services, technical advice to customers, eco-system creation and promotion, business development, representation etc.).
- 2.2. The Association's liability shall be limited for managing the services as mentioned in the preceding paragraph. The Association shall exclude any further liability with respect to the execution of services for the customers. The Association and/or any member has no right to conclude any legal obligations and/or commitments on behalf of any other member.
- 2.3. The Association shall not be entitled to act or to make legally binding declarations on behalf of any other Party, unless explicitly stated otherwise in between the Parties. The Association shall not enlarge its role beyond the tasks specified in the present Agreement. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

## 3. **MAIN OBLIGATIONS OF THE MEMBERS IN THE EXECUTION OF SERVICES**

- 3.1. The obligation to cooperate diligently and in good faith with the other members for the execution of services
- (a) In order to guarantee good cooperation in the execution of services, the members commit to maintain diligent cooperation and to behave in good faith as prescribed by Belgian law with the other members according to the contractual relationship among the prime contractor and the secondary contractors as established by the quotation signed by Association and the prime contractor (and eventually accepted by the customer), as well as by specific bilateral sub-contracting agreements between the prime and the secondary contractors.

- (b) The members having accepted to act as as prime or secondary contractor for a specific quotation commit to process the tasks necessary for the execution of services according to the quotation signed by the Association and the prime contractor (and eventually accepted by the customer), as well as according to the Grant Agreement and the Consortium Agreement as well as the specific bilateral sub-contracting agreements between the prime and the secondary contractors, as a matter of priority and within the terms and conditions as well as the deadlines set in the quotation and any additional bilateral sub-contracting agreement. Nothing in this Agreement may be construed as compelling a member to act as prime or secondary contractor.
- (c) Repeated failures in complying with the above obligation may result in the exclusion from the Association upon decision of the Association General Assembly, according to article X. of the Association bylaws ("Powers of the Association General Assembly").

### 3.2. The obligation to guarantee the proper execution of the Association's services

- (a) It is in the interest of all members of the Association that each member performs and fulfils in a timely manner all of its obligations as may be reasonably required from it in order to guarantee the quality of the services provided by the Association, as well as the quality of the products and services provided to the customers.
- (b) The members undertake to train their staff and to ensure a professional standard of quality in the work they carry out and in their relations with the Association and the other members.
- (c) Repeated failures in complying with the above obligation may result in the exclusion from the Association upon decision of the Association General Assembly, according to article X. of the Association bylaws ("Powers of the Association General Assembly").

### 3.3. The obligation to maintain confidentiality and to respect intellectual property rights

- (a) The members undertake to respect the intellectual property rights attached to the products and services provided by the members of the Association.
- (b) The members undertake to maintain confidentiality about information exchanged with other members, as well as about the products and services provided. The members undertake to comply with the signed NDA and with provisions of the Grant Agreement and the Consortium Agreement.
- (c) Repeated failures in complying with the above obligation may result in the exclusion from the Association upon decision of the Association General Assembly, according to article X. of the Association bylaws ("Powers of the Association General Assembly").

### 3.4. Limitation on liability

- (a) Each member shall act as an independent contractor and be solely liable for its respective allocated scope of services in the offer and/or in the bilateral sub-contracting agreement.
- (b) The members shall not be liable for indirect damage or consequential losses. This limitation of liability does not apply to damage caused intentionally, with gross negligence or by breaches of confidentiality.

### 3.5. The obligation to promote the services of the Association

- (a) Each member have the right (but no obligation) to direct any generic bilateral request for services in the field of FFMO to the Association or to choose at its discretion to handle alone any generic request for services in the field of FFMO addressed directly and exclusively to such member, when the request has no link with any previous and/or similar service provided through the Association.
- (b) The members undertake not to contact independently a customer of the Association to offer the same services provided through the Association.

- (c) If contacted by a customer in the 3 (three) years after the delivery of a service through the Association with a request that has link with any previous and/or similar service provided through the Association, the members undertake to inform the Front Office and to address the customer to the Association.
- (d) Repeated failures in complying with the above obligation may result in the exclusion from the Association upon decision of the Association General Assembly, according to article X. of the Association bylaws ("Powers of the Association General Assembly").

#### 4. **TERM**

- 4.1. Term: this Agreement enters into force on October 1st, 2021. This Agreement is linked to the PHABULOU S Project, as per consequence, this Agreement shall automatically terminate at the termination of the European PHABULOU S Project. The parties hereby undertake to negotiate in good faith the renewal of this Agreement prior to its expiry.
- 4.2. Either Party may terminate the present Agreement upon the sending to the Parties of a 30 (thirty) days written notice. The termination of this Agreement by a member may result in its exclusion from the Association upon decision of the Association General Assembly, according to article X. of the Association bylaws ("Powers of the Association General Assembly").
- 4.3. This Agreement shall automatically terminate without any further demand upon dissolution of the Association.
- 4.4. This Agreement shall automatically terminate with respect to a party when the membership of such party with the Association ceases.
- 4.5. Upon prior approval of the Association's general assembly, a third party may join the Association as new member. In that case, the third party willing to become a member shall sign the form attached in Annex 1 and shall be bound by the rights and obligations of this Agreement. It is intended that
  - (a) if the new party is also a partner of the PHABULOU S project, it will be automatically submitted to the provisions of the Grant Agreement and the Consortium Agreement
  - (b) if the new party is not a partner of the PHABULOU S project, a specific agreement will have to be established with all the other members that are partners of the PHABULOU S project, which shall respect the provisions of the Grant Agreement and the Consortium Agreement.

#### 5. **APPLICABLE LAW / FORUM**

- 5.1. This Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.
- 5.2. Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, the courts of Brussels shall have exclusive jurisdiction. Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

#### 6. **MISCELLANEOUS**

- 6.1. This Agreement may not be amended or modified except by a separate written agreement to be signed by all Parties.
- 6.2. In case the terms of this Agreement are in conflict with the terms of the Consortium or the Grant Agreement, the terms of the latter shall prevail. Should any provision of this Agreement become invalid, illegal or inenforceable, it shall not affect the validity of the remaining provisions of this

Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated that fulfils the purpose of the original provision.

- 6.3. A waiver of any term or condition in one instance shall not be deemed to be a waiver of such term or condition in any other instance. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing.
- 6.4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
- 6.5. The signature of the authorized representative of a Party received by facsimile transmission or by electronic image transmission (such as portable document format) will constitute an original signature. Each Party receives a fully executed copy of the Agreement. Delivery of the fully executed copy by facsimile transmission or by electronic image transmission shall have the same force and effect as delivery of the original Agreement.

#### **IN WITNESS**

Whereof this Agreement has been duly signed by the undersigned authorized representatives:

[signatures on the following page]



CSEM Centre Suisse d'Electronique et de Microtechnique SA Recherche et Développement

Signature

Name: Philippe STEIERT

Title: Vice-President

Date



Digitally signed  
by Philippe

STEIERT

Date: 2021.09.28

09:24:22 +02'00'

Signature

Name: Rolando FERRINI

Title: Sector Head

Date



Digitally signed  
by Rolando

Ferrini

Date: 2021.09.28

11:24:46 +02'00'

JOANNEUM RESEARCH Forschungsgesellschaft mbH

Signature

Name: DI Dr. Heinz Mayer

Title: CEO

Date 28. SEP. 2021



Amires s.r.o.,

Signature:

Name: Rudolf Fryček, PhD.

Title: CEO

Date

**Rudolf  
Fryček**

Digitally signed by  
Rudolf Fryček  
Date: 2021.09.30  
14:24:16 +02'00'

SUSS MicroOptics SA

Signature 

Name: Reinhard Völkel

Title: CEO

Date 01.10.2021

Signature 

Name: Martin Eisner

Title: CTO

Date 30.09.2021

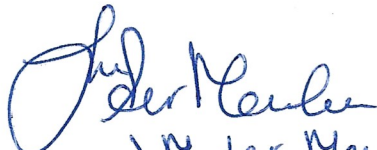
Morphotonics B.V.

Signature

Name: ~~Onno Lint~~

Title: Co-director

Date

  
J.M. ter Meulen  
Co-director.  
29<sup>th</sup> Sept. 2021.

  
Irma vd Kaay  
CFO  
Sep 29<sup>th</sup> 2021

**Morphotonics BV**

De Run 4281 | 5503 LM Veldhoven  
The Netherlands

Phone: +31 (0)40 4011 963

E-mail: [info@morphotonics.com](mailto:info@morphotonics.com)

VAT Reg nr: NL854057407B01

Chamber of Commerce nr.: 60781241

Nanocomp Oy Ltd


Signature

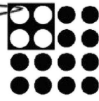
Name: Veli-Pekka Leppänen

Title: CEO

Date 24<sup>th</sup> September, 2021

WIELANDTS UPMT s.a.

Signature 



**Wielandts UPMT s.a.**  
Rue Bois Saint-Jean 15/1  
B-4102 Seraing  
Belgium  
VAT: BE0537.956.555

Name: Marc Wielandts

Title: CEO

Date [September 28th, 2021](#)

Laser Engineering Applications SA

Signature

A stylized handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Name: Axel KUPISIEWICZ

Title: CEO

Date

29 September 2021

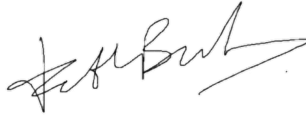


Limbak 4PI SL

Signature

Name Pablo Benítez

Title CTO

A handwritten signature in black ink, appearing to read 'Pablo Benítez', with a stylized flourish at the end.

Date September 24, 2021

PowerPhotonic Ltd

Signature

Name: Richard Clarke

Title: Financial Director

Date 28 September 2021

European Photonics Industry Consortium

Signature 

Name: Carlos Lee

Title: CEO

Date 29 September 2021

Teknologian Tutkimuskeskus VTT Oy

Signature

Jussi PAAKKARI

Vice President, Sensing and integration

Date

The CEA – Commissariat à l'Energie Atomique et aux Energies Alternatives

*CEA's signature to the present Agreement is subject to :*

*(1) the following clarification of clause 3.5 : during the present Agreement duration, each member undertakes not to contact independently a customer of the Association (i.e a customer who has already ordered services or products through the Association) to offer the same services as the one this member provides through the Association and which are described within the Proposal in appendix of the Grant Agreement. For CEA such services are the single freeform optical element origination and its optical assembly ; and*

*(2) the signature of an add-on to the present agreement to clarify all the unclear clauses of the agreement.*

Signature

Name: Sébastien DAUVE

Title: Head of CEA-LETI

Date

SÉBASTIEN  
DAUVE ID

Signature numérique  
de SÉBASTIEN DAUVE  
ID  
Date : 2021.10.05  
18:19:33 +02'00'

**Annex 1****ACCESSION DOCUMENT FOR NEW PARTIES**

Accession of a new Party to

***Multipartite agreement for the services (research & development ) and production delivery***  
**dated 01.10.2021**

**[OFFICIAL NAME AND BUSINESS ID/ADDRESS OF THE NEW PARTY]**

hereby consents to become a Party to the Multipartite Agreement for the Execution of Services identified above and accepts all the rights and obligations of a Party starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

PHABULOUS PILOT LINE ASSOCIATION

Signature(s)

Name(s)

Title(s)

**Annex 2**  
**LIST OF ASSOCIATED COMPANIES**

**For Amires:**

AMIRES, The Business Innovation Management Institute, z.ú. (Czech Republic)

Stavitzelská 1099/6

160 00, Praha 6, Czech Republic

The Institute was registered at Městský soud v Praze, the Czech Republic – ID: 08466068

**Annex 3**

**Quotation template including Contractual Terms & Conditions according to Art. 1.5**





Company

Mrs/Mr Firstname Lastname

Address

Country Code - PLZ-City

.....  
.....  
.....

Town, Month Day, Year

**Project title**

Dear Ms/Mr Name,

With reference to your request / our discussion dated xxx, the **PHABULOU S Pilot Line Association (PPLA)** and .....(the prime) are pleased to submit to you the following:

**1. Quotation**

PPLA reference Nr: xxx-yyy.zzzz revx

Validity: xxx months

Contact person(s) at PPLA: xxx

Contact person(s) at the prime: xxx

Contact person(s) at the client: xxx

## 2. Project description

### 2.1. Introduction

### 2.2. Tasks (Work Packages)

## 3. Project duration

### 3.1. Start

### 3.2. Planning

### 3.3. Completion

## 4. Deliverables

## 5. Pricing

### 5.1. Price

Prices for the various Work Packages:

- ...: YYY EUR xxx
- ...: ZZZ EUR xxx

Total EUR xxx

Ex works Town, VAT not included.

### 5.2. Payment plan

- At receipt of the order EUR xxx payable immediately on receipt of invoice
- At end of ... EUR xxx payable at 30 days net
- At end of ... EUR xxx payable at 30 days net

## 6. Commercial conditions

The enclosed **PHABULOuS Pilot Line Association** Contractual Terms and Conditions apply.

We hope that our quotation meets with your requirements and remain at your disposal for any further information you may need.

Looking forward to your reply.

Yours sincerely,

Name1

Name2

Title1

Title2

Enclosure(s): as mentioned



## **Contractual Terms and Conditions**

### ***Services delivery, Research & Development***

#### **1 SCOPE**

1.1 These contractual terms and conditions, unless modified or supplemented by a written agreement, apply in full to all contracts resulting from an order given by a customer of the **PHABULOuS Pilot Line Association** ("**Association**") or resulting from the acceptance by the customer of a quotation of the **PHABULOuS Pilot Line Association** (acting as executing broker) **and one of his members as Prime contractor** ("**Prime**") regarding services delivery and/or research & development project (including pre-study, feasibility study or a development project) ("**Project**").

#### **2 OFFER AND QUOTATION**

2.1 Unless otherwise stated therein, an offer is valid for ..... from the date of the quotation.

2.2 The offers or quotations made by the Association and the Prime are confidential and only persons actually entrusted with the matter may have access to them.

2.3 The Association and the Prime, who make the offer, reserve its copyright and ownership on all documents furnished in whatever form including, but not limited to, reports, schemes, plans, drawings and layouts. The customer shall not make them available to third parties or copy them without prior written permission of the Association and the Prime. Such documents must be returned to the Association or to the Prime on their request.

#### **3 PROJECT ORGANIZATION AND EXCHANGE OF INFORMATION**

3.1 Each party shall appoint its project manager, who will be responsible for the liaison between the parties. The project managers will organize regular meetings and keep throughout the progress of the Project a complete file of documents such as discussion notes, minutes of meetings etc. The customer will be deemed to have accepted the minutes unless he informs the Association and the Prime of its non-acceptance in writing within 10 days of receipt.

#### **4 DEADLINES**

4.1 Respect of deadlines implies that the customer on his part punctually fulfils its obligations, especially as regards communicating specifications, results of tests etc. A delay is justified upon the occurrence of unforeseen circumstances or causes beyond the control of the Association or the Prime. In case of a delay in execution, the customer will be immediately informed.

## **5 MODIFICATIONS**

5.1 Any modification that alters the statement of work, milestones, costs or the deliverables, is subject to written agreement between the parties prior to the modification becoming effective. Any such modification agreed in writing by the parties shall be inserted as an amendment to the Project.

## **6 PRICES AND TERMS OF PAYMENT**

6.1 Unless otherwise specified, prices are stated in Euros (EUR). Customs taxes or VAT, if applicable, are at the expense of the customer.

6.2 Invoices are to be settled net within thirty (30) days of receipt.

6.3 Provision regarding costs and risks of moving goods to destination are specified in the quotation.

## **7 ACCEPTANCE AND REJECTION**

7.1 Upon receipt of each deliverable as defined in the Project, the customer shall verify it and give written acceptance or rejection of the deliverable within thirty (30) days unless otherwise stated in the Project. If no written rejection is received within the acceptance period, the relevant deliverable will be considered accepted.

7.2 If a deliverable is rejected, the customer shall give notice of the rejection within the acceptance period mentioned in article 7.1, with a description of the alleged defect(s). If the defect is attributable to the Prime and/or its subcontractors, the customer will allow the latter a reasonable period of time to remedy the defect free of charge.

7.3 If after remedy the customer is still not able accept the deliverable, he may terminate the contract. In such case the customer shall have no obligation to pay for the relevant deliverable except for his obligation to pay the charges due for previously completed and accepted deliverables.

## **8 WARRANTY AND LIABILITY**

8.1 The Prime together with its subcontractors will perform its obligations under the contract to the best of its ability with its customary diligence and on the basis of the latest scientific and technological developments known to it.

8.2 The Prime together with its subcontractors will be liable for any direct damages resulting from wilful fault or gross negligence on the part of their employees. To the extent permitted by law, they accept no further responsibility, in particular for consequential damages such as but not limited to financial or commercial losses, loss of profit, increase of general costs, loss of customers or market share.

## **9 CONFIDENTIALITY**

9.1 All information of whatever nature and in whatever form that has been disclosed by one party to the other in connection with, or in pursuance of the Project, especially know-how and all information or results obtained within the Project (hereafter: "Confidential Information") shall be handled in a

confidential manner provided that such written information is clearly and conspicuously marked as proprietary or confidential and that such oral or visual information is designated as proprietary or confidential upon disclosure. Each party undertakes not to communicate and not to divulge to third parties Confidential Information received from the other party nor to use such Confidential Information for any purpose other than the execution of the contract.

9.2 Furthermore, each party agrees that it will restrict the access to Confidential Information received from the other party to those of its employees, who need to be informed for the execution of the Project. Each party shall take all necessary and useful measures in order to protect the Confidential Information received from the other party with the same degree of care as it uses for the protection of its own proprietary and confidential information, but at least with a reasonable degree of care. Each party undertakes not to duplicate or otherwise reproduce Confidential Information except for such copies as the receiving party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information. Each party undertakes not to reverse-compile, reverse-assemble or reverse-engineer Confidential Information or any part thereof.

9.3 The foregoing obligations shall not apply to any Confidential Information, which the receiving party can prove (a) was known to it prior to disclosure by the disclosing party, (b) was rightfully received from a third party without any obligation of confidentiality, (c) is already available to the public or becomes available to the public through no breach of the Agreement by the Receiving Party or (d) is the result of independent developments undertaken by the Receiving Party's personnel who had no access to such information.

9.4 Nothing in this paragraph shall be construed as granting any license or right to either party with respect to any Confidential Information of the other party.

9.5 These obligations relating to confidentiality will remain effective during the term of the Project and for a period of three (3) years after termination or expiry of the contract.

9.6 After termination of the contract, any and all Confidential Information related to the Project shall be returned to the disclosing party.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 All intellectual and industrial property rights existing as of the coming into force of the contract or created either during the course of the work performed or outside of the framework of the contract shall remain with the originating party.

10.2 The customer may dispose freely of the results of the Project.

10.3 Inventions, findings and creations made within the framework of the Project by either party shall be the property of the originating party, which shall be entitled to apply for patent protection and hold title to any patent issued thereon in its own right.

10.4 If, in the course of carrying out work on the Project, the parties to the contract jointly make an invention, finding or creation, the arrangement for applying for a patent shall be agreed between the parties on a case-by-case basis. Unless otherwise agreed, the parties will be joint owners of the said patent. In this case, as long as any such patent is in force, each party shall be entitled to use the patent without restraint.

## **11 FORCE MAJEURE**

11.1 The Association and the Prime (together with its subcontractors) shall not be liable for any failure of or delay in the performance of its obligations under the contract if such failure or delay is caused by reason of Force Majeure.

11.2 Force Majeure shall be understood to mean and include failure or delay caused by unforeseen circumstances or to causes beyond the reasonable control of the Association or the Prime (including its subcontractors), including but not limited to total or partial suspension of activity of their suppliers, mobilization, war, riots, fire, import or export blocking or a considerable raise in customs taxes.

## **12 TERM**

12.1 The contract shall become effective upon receipt of the customer's order Prime and shall be valid until each and every obligation of the contract is performed completely and until the definitive settlement of any account and/or litigation between the parties.

## **13 GOVERNING LAW AND JURISDICTION**

13.1 This contract shall be governed by and construed in accordance with the substantive laws of Belgium.

13.2 The parties agree to first endeavor to settle amicably any dispute arising from the execution or interpretation of this contract. In the absence of an amicable agreement, the ordinary courts shall resolve such dispute. The place of jurisdiction shall be the place of the defending party's registered offices.



## **Contractual Terms and Conditions**

### ***Production deliveries***

#### **1 SCOPE**

1.1 These contractual terms and conditions, unless modified or supplemented by a written agreement, apply in full to all contracts resulting from an order given by a customer of the **PHABULOuS Pilot Line Association** ("**Association**") or resulting from the acceptance by the customer of a quotation of the **PHABULOuS Pilot Line Association** (acting as executing broker) **and one of his members as Prime contractor** ("**Prime**") regarding production deliveries.

#### **2 OFFER AND QUOTATION**

2.1 Unless otherwise stated therein, an offer is valid for ..... from the date of the quotation.

2.2 The offers or quotations made by the Association and the Prime are confidential and only persons actually entrusted with the matter may have access to them.

2.3 The Association and the Prime, who make the offer, reserve its copyright and ownership on all documents furnished in whatever form including, but not limited to, reports, schemes, plans, drawings and layouts. The customer shall not make them available to third parties or copy them without prior written permission of the Association and the Prime. Such documents must be returned to the Association or to the Prime on their request.

#### **3. PRICES AND TERMS OF PAYMENT**

3.1 Unless provided otherwise, the prices are stated in Euros (EUR). Costs for handling, packing, insurance and transport, including shipment risks, customs taxes or VAT, if applicable, are at the expense of the customer. In the event of an increase in prices, in fiscal and customs taxes, or of an important monetary change, the Association and the Prime reserve their right to adapt their prices.

3.2 In the absence of contrary provisions indicated in the quotation, invoices are to be settled net, without any deduction, within 30 days of receipt.

3.3 The Association and the Prime reserve their right of property on all production deliveries until receipt of full payment of the purchase price.

#### **4. DELIVERY AND DEADLINES**

4.1 The Prime together with its subcontractors always endeavours to respect the indicated delivery dates, even in case of unexpected difficulties. However, the Prime together with its subcontractors assumes no guarantee in this respect. In the event of a delay in delivery, the customer is entitled neither to cancel the order nor to claim the payment of damages. This particularly applies in cases of force majeure and strikes.

4.2. Respect of the delivery dates also implies that the customer, as far as he is concerned, punctually fulfils his obligations, especially as regards production of specifications, etc.

#### **5 CLAIMS**

5.1 Any defect apparent on delivery must be reported to us without delay; the same applies to possible hidden defects which only appear later. Otherwise the delivery is considered to be accepted. Shipments damaged during transport must be accepted without guarantee and immediately reported to the shipping agent in order to establish a certified report and to protect all rights.

#### **6. ASSEMBLING AND INSTALLATION**

6.1 When equipment must be installed by the Prime or its subcontractors, it is the customer's duty to attend to the execution of the necessary preparatory work to enable assembling to be carried out without hindrance. The customer will also provide, at his expense, the auxiliary personnel needed for the assembly work.

#### **7 WARRANTY AND LIABILITY**

7.1 The warranty given by the Prime begins on the day of delivery or on termination of assembly, and during the specified time, shall extend to all defects which shall have been shown to result from bad quality material or faulty fabrication. It is, however, limited to replacement or repair of the defective parts or products, or also to refunding of the invoice price of non-replaced parts and products.

7.2 The Prime accepts no further responsibility, in particular for resulting damages. Defective parts and products must be returned to our address, free of charge. Travelling expenses of personnel, if necessary, must be borne by the customer.

7.3 The Prime can assume no responsibility for modifications or repairs which have not been carried out by its personnel or by specialists appointed by itself.

#### **8. EXPORT, RE-EXPORT**

8.1 The deliveries are intended to be used in the country indicated by the customer. Any export or re-export thereof is prohibited without our written authorization. This more particularly applies to products whose export is prohibited by the country of the Prime or to equipment comprising material whose export or re-export is prohibited by the country of origin.



## **9 FORCE MAJEURE**

9.1 The Association and the Prime (together with its subcontractors) shall not be liable for any failure of or delay in the performance of its obligations under the contract if such failure or delay is caused by reason of Force Majeure.

9.2 Force Majeure shall be understood to mean and include failure or delay caused by unforeseen circumstances or to causes beyond the reasonable control of the Association or the Prime (including its subcontractors), including but not limited to total or partial suspension of activity of their suppliers, mobilization, war, riots, fire, import or export blocking or a considerable raise in customs taxes.

## **10 GOVERNING LAW AND JURISDICTION**

10.1 This contract shall be governed by and construed in accordance with the substantive laws of Belgium.

10.2 The parties agree to first endeavor to settle amicably any dispute arising from the execution or interpretation of this contract. In the absence of an amicable agreement, the ordinary courts shall resolve such dispute. The place of jurisdiction shall be the place of the defending party's registered offices.

#### **11.4. *Annex 4* – FHG accession document to the multipartite agreement for the services**

**Annex 1****ACCESSION DOCUMENT FOR NEW PARTIES**

Accession of a new Party to

***Multipartite agreement for the services (research & development ) and production delivery dated 01.10.2021***

**Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., Hansastraße 27c, 80686 München, acting as legal entity für its Fraunhofer-Institut für Organische Elektronik, Elektronenstrahl- und Plasmatechnik FEP**

hereby consents to become a Party to the Multipartite Agreement for the Execution of Services identified above and accepts all the rights and obligations of a Party starting 04.10.2021, provided that,

- in lit. 3.4 the liability of Fraunhofer-Gesellschaft is limited to the individual contract price (contract between Prime and Fraunhofer);
- the obligations described by lit. 3.5 b) and c) only apply to the Fraunhofer-Institut für Organische Elektronik, Elektronenstrahl- und Plasmatechnik FEP, Bereich Plasmatechnik.

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.


Munich, 04.10.2021

**Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.**

Signature(s)	<b>Ruediger Dorner</b> <small>Digital unterschrieben von Ruediger Dorner DN: c=DE, o=Fraunhofer, ou=ZV, ou=People, cn=Ruediger Dorner Datum: 2021.10.05 14:32:12 +02'00'</small>	<b>Lars-Friedrich Krone</b> <small>Digital unterschrieben von Lars-Friedrich Krone DN: c=DE, o=Fraunhofer, ou=ZV, ou=People, cn=Lars-Friedrich Krone Datum: 2021.10.04 16:46:53 +02'00'</small>
Name(s)	Rüdiger Dorner	Lars-Friedrich Krone
Title(s)	Head of Department Public and EU Projects	Legal Counsel

[Date and Place]

PHABULOUS PILOT LINE ASSOCIATION

Signature(s)	
Name(s)	<b>TORALF SCHARF</b>
Title(s)	

Digitally signed  
by Rolando  
Ferrini  
Date: 2021.10.07  
04:52:05 +02'00'

## **11.5. *Annex 5* – Minutes of the Extraordinary Association General Assembly**



H2020-ICT-2018-20/H2020-ICT-2019-2

*Pilot-line providing highly advanced & robust manufacturing technology for optical free-form  $\mu$ -structures*

## PHABULO $\mu$ S

Starting date of the project: 01/01/2020  
Duration: 48 months

**= MINUTES =**

### **Association General Assembly Meeting, 30/09/2021**

Dissemination level		
PU	Public	
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the Association General Assembly	x



*This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 871710, project PHABULO $\mu$ S"*

**AUTHOR**

Author	Institution	Contact (e-mail)
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**DOCUMENT CONTROL**

Document version	Date	Change
Draft	30/09/2021	Initial version
V1	06/10/2021	Approved by the President of the Association as chairman of the AGA

**DOCUMENT DATA**

<b>Keywords</b>	Management, communication
<b>Point of Contact</b>	<p>Name: Toralf Scharf  Partner: SMO  Address: SUSS Microoptics SA  Rouges-Terres 61, 2068 Hauterive, Switzerland  Phone: +41 32 566 44 67  Email: <a href="mailto:toralf.scharf@suss.com">toralf.scharf@suss.com</a></p> <p>Name: Kristina Pandek  Partner: ABIMI  Address: Stavitzská 1099/6, 160 00, Praha 6, CZE  Phone: +420 226 214 422  E-mail: <a href="mailto:pandek@amires.eu">pandek@amires.eu</a></p>

**MEETING PARTICIPANTS WITH VOTING RIGHT**

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Rolando Ferrini	CSEM	<a href="mailto:rolando.ferrini@csem.ch">rolando.ferrini@csem.ch</a>
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Onno Lint	MPH	<a href="mailto:onno.lint@morphotonics.com">onno.lint@morphotonics.com</a>
Toralf Scharf	SMO	<a href="mailto:toralf.scharf@suss.com">toralf.scharf@suss.com</a>
Jonas Wielandts	UPMT	<a href="mailto:jonas.wielandts@upmt.be">jonas.wielandts@upmt.be</a>
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Sana Amairi-Pyka	EPIC	<a href="mailto:sana.pyka@epic-assoc.com">sana.pyka@epic-assoc.com</a>
Nicolas Schiller	FHG	<a href="mailto:nicolas.schiller@fep.fraunhofer.de">nicolas.schiller@fep.fraunhofer.de</a>

**DID NOT ATTEND**

Name	Institution	Contact (e-mail)
Richard Clarke	PPH	<a href="mailto:richard.clarke@powerphotonic.com">richard.clarke@powerphotonic.com</a>
Rudolf Frycek	ABIMI	<a href="mailto:frycek@amires.eu">frycek@amires.eu</a>

**DISTRIBUTION LIST**

Date	Issue	Recipients
06/10/2021	V1	Members of the Association General Assembly

## Glossary of acronyms

<b>AEB</b>	Association Executive Board
<b>AGA</b>	Association General Assembly
<b>ABIMI</b>	Amires
<b>CSEM</b>	Swiss Center for Electronics and Microtechnology
<b>EPIC</b>	The European Photonics Industry Consortium
<b>JR</b>	Joanneum Research
<b>LASEA</b>	Laser Engineering Applications
<b>MPH</b>	Morphotonics
<b>NC</b>	Nanocomp
<b>PHAB</b>	Phabulous Pilot Line Association
<b>PPH</b>	Powerphotonic Limited
<b>SMO</b>	SUSS Microoptics
<b>TC</b>	Technical Coordinator
<b>UPMT</b>	Wielandts Ultra Precision Machining Technologies
<b>VTT</b>	Teknologian tutkimuskeskus

## Table of contents

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## 1. Agenda

1. Amendment of the Association bylaws proposed by CSEM
2. Nomination of the new representative of CSEM in the Executive Board
3. Members not having signed the contractual documents for the delivery of services
4. Next AGA/EB for the presentation of the Business Model
5. AOB

## 2. Minutes

1. CSEM proposed to amend the article XIV ("Election terms of the Executive Board") of the bylaws by replacing the Technical Coordinator as representative of CSEM within the Association Executive Board with a generic representative of CSEM. There were no objections to this change, which was accepted with the unanimity of votes of the participants with voting right attending the meeting.
2. CSEM proposed Philippe Steiert as candidate to represent CSEM within the Association Executive Board. Philippe Steiert introduced himself. There were no objections to his nomination, which was accepted with the unanimity of votes of the participants with voting right attending the meeting.
3. Status of signature of the contractual documents for the delivery of services (see table below):

### Task 1.4: Progress made

Founding Members	Provided 1 <sup>st</sup> feed-back	Status	Accepted	Signed
CSEM	Received	Feedback taken into account	OK	
JR	Received	Answer to feedback sent: OK with second version	OK	
CEA	Received	Answer to feedback sent / Telco on 17.09	---	WHEN?
VTT	Received	Answer to feedback sent / Telco on 17.09	---	
LIMBAK	Received	Answer to feedback sent: OK with second version	OK	
PPH	Received	OK with first version	OK	
LASEA	Received	OK with first version	OK	
UPMT	Received	OK with first version	OK	
SMO	Received	Answer to feedback sent: OK with second version	OK	WHEN?
MPH	Received	OK with first version	OK	
NC	Received	OK with first version	OK	
EPIC	Received	OK with first version	OK	
AMIRES	Received	OK with first version	OK	WHEN?
Members				
FhG	Received	To be checked (RFI) / Signature accession form	NA	

- Out of the 13 founding members, CEA, VTT, LASEA, SMO and ABIMI had not yet signed the contractual documents for the delivery of services at the time of the meeting.
  - LASEA, SMO and ABIMI confirmed their acceptance of the documents and promised their signature by Tuesday, October 5<sup>th</sup> the latest.
  - CEA confirmed its acceptance of the documents pending a few clarifications & disclaimers that will be added on its signature page: i.e. clarification on the interpretation of clause 3.5, request of amending the documents in a second stage to clarify other clauses, etc. CEA promised its signature by Tuesday, 5 October the latest.

## PHABULOuS

- VTT confirmed that for the moment it will not sign the documents as there are concerns with several clauses and in general with the proposed business structure and related procedures.
- As regular member, FHG signing the accession form annexed to the contractual documents for the delivery of services as approved by the absolute majority of the founding members. FHG confirmed its acceptance of the documents pending a few clarifications & disclaimers that will be added on its signature page: i.e. limitation of clause 3.5 to FHG FEP, etc. The signature is promised by Tuesday, October 5<sup>th</sup>.

In order neither to delay the finalization and submission of deliverable D1.5 according to the Grant Agreement of the PHABULOuS project nor to block the operations of the Association in offering its services to customers, it was proposed to proceed without the signature of VTT. In addition, since without the acceptance of the contractual documents for the delivery of services, it would be impossible for VTT to offer its services through the Association, which is the main scope of this latter, it was proposed to temporarily suspend VTT membership in the Association. It was highlighted that:

- Such a suspension would have no consequences on the project and on VTT partnership in it, since VTT will continue to be a part of the project consortium and the associated tasks as defined in the Grant Agreement of the PHABULOuS project
- This is only a temporary suspension till either VTT signature of the documents as accepted by the absolute majority of the founding members (with the possibility of clarifications and disclaimers as accepted e.g. for CEA and FHG) or the revision of the business model and the legal framework of the pilot line, included the related legal documents, planned after the pilot case phase (see deliverables D8.4 and D8.7 in the Grant Agreement of the PHABULOuS project).
- The main consequence of this suspension will be the limitation of the possibility of VTT to offer its services to customers and pilot cases through the Association.

The proposed suspension of VTT was accepted by 10 of the 12 participants with voting right (i.e. with a majority larger than 2/3), while VTT voted against and JR abstained. According to article XIII of the bylaws ("Resolution of the General Assembly"), the suspension was approved.

4. The business model proposed for the Association as part of deliverable D8.3 in the Grant Agreement of the PHABULOuS project will be presented at the next combined Association General Assembly & Executive Board meeting in order to ensure that the members agree with the approach before its validation and submission within deliverable D8.3. Jessica will send out a doodle poll in order to select a date for this discussion.

## **11.6. *Annex 6* – Model pilot line service contract or quotation template**



Company

Mrs/Mr Firstname Lastname

Address

Country Code - PLZ-City

.....  
.....  
.....

Town, Month Day, Year

**Project title**

Dear Ms/Mr Name,

With reference to your request / our discussion dated xxx, the **PHABULOU S Pilot Line Association (PPLA)** and .....(the prime) are pleased to submit to you the following:

### 1. Quotation

PPLA reference Nr: xxx-yyy.zzzz revx

Validity: xxx months

Contact person(s) at PPLA: xxx

Contact person(s) at the prime: xxx

Contact person(s) at the client: xxx

## 2. Project description

### 2.1. Introduction

### 2.2. Tasks (Work Packages)

## 3. Project duration

### 3.1. Start

### 3.2. Planning

### 3.3. Completion

## 4. Deliverables

## 5. Pricing

### 5.1. Price

Prices for the various Work Packages:

- ...: YYY EUR xxx
- ...: ZZZ EUR xxx

Total EUR xxx

Ex works Town, VAT not included.

### 5.2. Payment plan

- At receipt of the order EUR xxx payable immediately on receipt of invoice
- At end of ... EUR xxx payable at 30 days net
- At end of ... EUR xxx payable at 30 days net

## 6. Commercial conditions

The enclosed **PHABULOuS Pilot Line Association** Contractual Terms and Conditions apply.

We hope that our quotation meets with your requirements and remain at your disposal for any further information you may need.

Looking forward to your reply.

Yours sincerely,

Name1

Name2

Title1

Title2

Enclosure(s): as mentioned

This document contains information, which is confidential and proprietary to the PHABULOuS Pilot Line Association and the prime. Neither this document nor the information contained herein shall be used, duplicated or communicated to any third party, in whole or in part, except with the prior written consent of the PHABULOuS Pilot Line Association and the prime.

## **11.7. *Annex 7* – Contractual Terms and Conditions**



## **Contractual Terms and Conditions**

### ***Services delivery, Research & Development***

#### **1 SCOPE**

1.1 These contractual terms and conditions, unless modified or supplemented by a written agreement, apply in full to all contracts resulting from an order given by a customer of the **PHABULOuS Pilot Line Association** ("**Association**") or resulting from the acceptance by the customer of a quotation of the **PHABULOuS Pilot Line Association** (acting as executing broker) **and one of his members as Prime contractor** ("**Prime**") regarding services delivery and/or research & development project (including pre-study, feasibility study or a development project) ("**Project**").

#### **2 OFFER AND QUOTATION**

2.1 Unless otherwise stated therein, an offer is valid for ..... from the date of the quotation.

2.2 The offers or quotations made by the Association and the Prime are confidential and only persons actually entrusted with the matter may have access to them.

2.3 The Association and the Prime, who make the offer, reserve its copyright and ownership on all documents furnished in whatever form including, but not limited to, reports, schemes, plans, drawings and layouts. The customer shall not make them available to third parties or copy them without prior written permission of the Association and the Prime. Such documents must be returned to the Association or to the Prime on their request.

#### **3 PROJECT ORGANIZATION AND EXCHANGE OF INFORMATION**

3.1 Each party shall appoint its project manager, who will be responsible for the liaison between the parties. The project managers will organize regular meetings and keep throughout the progress of the Project a complete file of documents such as discussion notes, minutes of meetings etc. The customer will be deemed to have accepted the minutes unless he informs the Association and the Prime of its non-acceptance in writing within 10 days of receipt.

#### **4 DEADLINES**

4.1 Respect of deadlines implies that the customer on his part punctually fulfils its obligations, especially as regards communicating specifications, results of tests etc. A delay is justified upon the occurrence of unforeseen circumstances or causes beyond the control of the Association or the Prime. In case of a delay in execution, the customer will be immediately informed.

## **5 MODIFICATIONS**

5.1 Any modification that alters the statement of work, milestones, costs or the deliverables, is subject to written agreement between the parties prior to the modification becoming effective. Any such modification agreed in writing by the parties shall be inserted as an amendment to the Project.

## **6 PRICES AND TERMS OF PAYMENT**

6.1 Unless otherwise specified, prices are stated in Euros (EUR). Customs taxes or VAT, if applicable, are at the expense of the customer.

6.2 Invoices are to be settled net within thirty (30) days of receipt.

6.3 Provision regarding costs and risks of moving goods to destination are specified in the quotation.

## **7 ACCEPTANCE AND REJECTION**

7.1 Upon receipt of each deliverable as defined in the Project, the customer shall verify it and give written acceptance or rejection of the deliverable within thirty (30) days unless otherwise stated in the Project. If no written rejection is received within the acceptance period, the relevant deliverable will be considered accepted.

7.2 If a deliverable is rejected, the customer shall give notice of the rejection within the acceptance period mentioned in article 7.1, with a description of the alleged defect(s). If the defect is attributable to the Prime and/or its subcontractors, the customer will allow the latter a reasonable period of time to remedy the defect free of charge.

7.3 If after remedy the customer is still not able accept the deliverable, he may terminate the contract. In such case the customer shall have no obligation to pay for the relevant deliverable except for his obligation to pay the charges due for previously completed and accepted deliverables.

## **8 WARRANTY AND LIABILITY**

8.1 The Prime together with its subcontractors will perform its obligations under the contract to the best of its ability with its customary diligence and on the basis of the latest scientific and technological developments known to it.

8.2 The Prime together with its subcontractors will be liable for any direct damages resulting from wilful fault or gross negligence on the part of their employees. To the extent permitted by law, they accept no further responsibility, in particular for consequential damages such as but not limited to financial or commercial losses, loss of profit, increase of general costs, loss of customers or market share.

## **9 CONFIDENTIALITY**

9.1 All information of whatever nature and in whatever form that has been disclosed by one party to the other in connection with, or in pursuance of the Project, especially know-how and all information or results obtained within the Project (hereafter: "Confidential Information") shall be handled in a



confidential manner provided that such written information is clearly and conspicuously marked as proprietary or confidential and that such oral or visual information is designated as proprietary or confidential upon disclosure. Each party undertakes not to communicate and not to divulge to third parties Confidential Information received from the other party nor to use such Confidential Information for any purpose other than the execution of the contract.

9.2 Furthermore, each party agrees that it will restrict the access to Confidential Information received from the other party to those of its employees, who need to be informed for the execution of the Project. Each party shall take all necessary and useful measures in order to protect the Confidential Information received from the other party with the same degree of care as it uses for the protection of its own proprietary and confidential information, but at least with a reasonable degree of care. Each party undertakes not to duplicate or otherwise reproduce Confidential Information except for such copies as the receiving party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information. Each party undertakes not to reverse-compile, reverse-assemble or reverse-engineer Confidential Information or any part thereof.

9.3 The foregoing obligations shall not apply to any Confidential Information, which the receiving party can prove (a) was known to it prior to disclosure by the disclosing party, (b) was rightfully received from a third party without any obligation of confidentiality, (c) is already available to the public or becomes available to the public through no breach of the Agreement by the Receiving Party or (d) is the result of independent developments undertaken by the Receiving Party's personnel who had no access to such information.

9.4 Nothing in this paragraph shall be construed as granting any license or right to either party with respect to any Confidential Information of the other party.

9.5 These obligations relating to confidentiality will remain effective during the term of the Project and for a period of three (3) years after termination or expiry of the contract.

9.6 After termination of the contract, any and all Confidential Information related to the Project shall be returned to the disclosing party.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 All intellectual and industrial property rights existing as of the coming into force of the contract or created either during the course of the work performed or outside of the framework of the contract shall remain with the originating party.

10.2 The customer may dispose freely of the results of the Project.

10.3 Inventions, findings and creations made within the framework of the Project by either party shall be the property of the originating party, which shall be entitled to apply for patent protection and hold title to any patent issued thereon in its own right.

10.4 If, in the course of carrying out work on the Project, the parties to the contract jointly make an invention, finding or creation, the arrangement for applying for a patent shall be agreed between the parties on a case-by-case basis. Unless otherwise agreed, the parties will be joint owners of the said patent. In this case, as long as any such patent is in force, each party shall be entitled to use the patent without restraint.

## **11 FORCE MAJEURE**

11.1 The Association and the Prime (together with its subcontractors) shall not be liable for any failure of or delay in the performance of its obligations under the contract if such failure or delay is caused by reason of Force Majeure.

11.2 Force Majeure shall be understood to mean and include failure or delay caused by unforeseen circumstances or to causes beyond the reasonable control of the Association or the Prime (including its subcontractors), including but not limited to total or partial suspension of activity of their suppliers, mobilization, war, riots, fire, import or export blocking or a considerable raise in customs taxes.

## **12 TERM**

12.1 The contract shall become effective upon receipt of the customer's order Prime and shall be valid until each and every obligation of the contract is performed completely and until the definitive settlement of any account and/or litigation between the parties.

## **13 GOVERNING LAW AND JURISDICTION**

13.1 This contract shall be governed by and construed in accordance with the substantive laws of Belgium.

13.2 The parties agree to first endeavor to settle amicably any dispute arising from the execution or interpretation of this contract. In the absence of an amicable agreement, the ordinary courts shall resolve such dispute. The place of jurisdiction shall be the place of the defending party's registered offices.



## **Contractual Terms and Conditions**

### ***Production deliveries***

#### **1 SCOPE**

1.1 These contractual terms and conditions, unless modified or supplemented by a written agreement, apply in full to all contracts resulting from an order given by a customer of the **PHABULOuS Pilot Line Association** ("**Association**") or resulting from the acceptance by the customer of a quotation of the **PHABULOuS Pilot Line Association** (acting as executing broker) **and one of his members as Prime contractor** ("**Prime**") regarding production deliveries.

#### **2 OFFER AND QUOTATION**

2.1 Unless otherwise stated therein, an offer is valid for ..... from the date of the quotation.

2.2 The offers or quotations made by the Association and the Prime are confidential and only persons actually entrusted with the matter may have access to them.

2.3 The Association and the Prime, who make the offer, reserve its copyright and ownership on all documents furnished in whatever form including, but not limited to, reports, schemes, plans, drawings and layouts. The customer shall not make them available to third parties or copy them without prior written permission of the Association and the Prime. Such documents must be returned to the Association or to the Prime on their request.

#### **3. PRICES AND TERMS OF PAYMENT**

3.1 Unless provided otherwise, the prices are stated in Euros (EUR). Costs for handling, packing, insurance and transport, including shipment risks, customs taxes or VAT, if applicable, are at the expense of the customer. In the event of an increase in prices, in fiscal and customs taxes, or of an important monetary change, the Association and the Prime reserve their right to adapt their prices.

3.2 In the absence of contrary provisions indicated in the quotation, invoices are to be settled net, without any deduction, within 30 days of receipt.

3.3 The Association and the Prime reserve their right of property on all production deliveries until receipt of full payment of the purchase price.

#### **4. DELIVERY AND DEADLINES**

4.1 The Prime together with its subcontractors always endeavours to respect the indicated delivery dates, even in case of unexpected difficulties. However, the Prime together with its subcontractors assumes no guarantee in this respect. In the event of a delay in delivery, the customer is entitled neither to cancel the order nor to claim the payment of damages. This particularly applies in cases of force majeure and strikes.

4.2. Respect of the delivery dates also implies that the customer, as far as he is concerned, punctually fulfils his obligations, especially as regards production of specifications, etc.

#### **5 CLAIMS**

5.1 Any defect apparent on delivery must be reported to us without delay; the same applies to possible hidden defects which only appear later. Otherwise the delivery is considered to be accepted. Shipments damaged during transport must be accepted without guarantee and immediately reported to the shipping agent in order to establish a certified report and to protect all rights.

#### **6. ASSEMBLING AND INSTALLATION**

6.1 When equipment must be installed by the Prime or its subcontractors, it is the customer's duty to attend to the execution of the necessary preparatory work to enable assembling to be carried out without hindrance. The customer will also provide, at his expense, the auxiliary personnel needed for the assembly work.

#### **7 WARRANTY AND LIABILITY**

7.1 The warranty given by the Prime begins on the day of delivery or on termination of assembly, and during the specified time, shall extend to all defects which shall have been shown to result from bad quality material or faulty fabrication. It is, however, limited to replacement or repair of the defective parts or products, or also to refunding of the invoice price of non-replaced parts and products.

7.2 The Prime accepts no further responsibility, in particular for resulting damages. Defective parts and products must be returned to our address, free of charge. Travelling expenses of personnel, if necessary, must be borne by the customer.

7.3 The Prime can assume no responsibility for modifications or repairs which have not been carried out by its personnel or by specialists appointed by itself.

#### **8. EXPORT, RE-EXPORT**

8.1 The deliveries are intended to be used in the country indicated by the customer. Any export or re-export thereof is prohibited without our written authorization. This more particularly applies to products whose export is prohibited by the country of the Prime or to equipment comprising material whose export or re-export is prohibited by the country of origin.

## **9 FORCE MAJEURE**

9.1 The Association and the Prime (together with its subcontractors) shall not be liable for any failure of or delay in the performance of its obligations under the contract if such failure or delay is caused by reason of Force Majeure.

9.2 Force Majeure shall be understood to mean and include failure or delay caused by unforeseen circumstances or to causes beyond the reasonable control of the Association or the Prime (including its subcontractors), including but not limited to total or partial suspension of activity of their suppliers, mobilization, war, riots, fire, import or export blocking or a considerable raise in customs taxes.

## **10 GOVERNING LAW AND JURISDICTION**

10.1 This contract shall be governed by and construed in accordance with the substantive laws of Belgium.

10.2 The parties agree to first endeavor to settle amicably any dispute arising from the execution or interpretation of this contract. In the absence of an amicable agreement, the ordinary courts shall resolve such dispute. The place of jurisdiction shall be the place of the defending party's registered offices.

## **11.8. *Annex 8* – Mutual NDA**

## Mutual Non-Disclosure Agreement

between

**Phabulous Pilot Line Association**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland (hereinafter referred to as the **Association**) and

**CSEM Centre Suisse d'Electronique et de Microtechnique SA**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland and

**JOANNEUM RESEARCH Forschungsgesellschaft mbH**, established in Leonhardstrasse 59, 8010 Graz, Austria, owned by the Province of Styria, the BABEG - Kärntner Betriebsansiedlungs- & Beteiligungsgesellschaft and the Landesholding Burgenland and registered in the Companies Register under no. FN 48282 d and

**Teknologian Tutkimuskeskus VTT Oy**, established in TEKNIKANTIE 21, Espoo 02150, Finland, VAT number FI26473754 and

**Commissariat à l'Energie Atomique et aux Energies Alternatives**, a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment "Le Ponant D" – 75015 Paris, FRANCE, declared at the Paris Register of Commerce and Trade under the following registration number R.C.S. Paris B 775 685 019, acting for its "Laboratoire d'électronique et de technologie de l'information" (LETI), and

**SUSS MicroOptics SA**, established in Rouges-Terres 61, 2068 Hauterive, Switzerland and

**Morphotonics B.V.**, a Dutch company with its registered office at De Run 4281, 5503 LM, Netherlands and

**Nanocomp Oy Ltd.**, validly organised and existing under the laws of Finland having its offices at Ensolantie 6, FI-80170 Lehmo, FINLAND. Trade registration number FI10836004 and

**WIELANDTS Ultra Precision Machining Technologies S.A.**, a corporation established under the laws of Belgium, having its registered office at Rue Bois Saint-Jean 15, 4102 Seraing, Belgium and

**Laser Engineering Applications SA**, a Belgian company established in Rue Louis Plescia, n°31, 4102 Seraing, Belgium and

**PowerPhotonic Ltd**, a Scottish company with a registered office at 5A St David's Drive, St David's Business Park, Dalgety Bay, Fife KY11 9PF, Scotland and,

**Limbak 4PI SL**, a company duly organized and existing under the laws of Spain, having its principal place of business at Calle Villa de Marin 37 8ºA, 28029 Madrid, and which is registered with the Commercial Registry of Madrid under the number M-568897 and

**European Photonics Industry Consortium**, established in 17, Rue Hamelin, 75016 PARIS, FRANCE and

**Amires s.r.o.**, established in Stavitzelska 1099/6, 160 00, Prague 6, the Czech Republic,

(hereinafter referred to as **Member** individually and **Members** collectively),

All together, the Association and the Members, hereinafter referred to as **Party** individually and **Parties** collectively, as the context may require.



## WHEREAS

The Association promotes advanced photonics technologies and solutions and offers a single entry point in order to facilitate access to its Members' services in the field of freeform micro-optics (FFMO);

The Parties intend to cooperate within the Phabulous Pilot Line for offering FFMO services and solutions and otherwise meet the aims of the Association;

In the context of such cooperation, the Parties may exchange information which is not publicly available. This may notably include, but is not limited to, business and/or technical information disclosed by a lead or an existing customer to any of the Association representatives or to any of its Members in the context of the Association's activities;

The Parties wish to restrict circulation of such confidential or proprietary information; and

The Parties wish to set forth in writing their respective rights and obligations, including without limitation, the terms and conditions of their obligation to keep this information confidential.

## NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

### 1. SCOPE OF THIS AGREEMENT

- 1.1. The Parties hereby agree that the following terms and conditions (hereinafter referred to as "**Agreement**") shall be applicable to all meetings, communications and other collaborations between the Parties, including by their employees and/or representatives of the Parties in connection with the planning and evaluation of possible services of the Phabulous Pilot Line in the field of freeform micro-optics ("**Authorized Purpose**").
- 1.2. If any Party discloses Confidential Information (as defined in Section 2.1 below) to one or more of its Associated Companies, such Party shall procure that their Associated Companies shall adhere to the terms and conditions of this Agreement. The term "**Associated Company**" is defined to mean any corporation, company, or other legal entity which: (i) is listed in Annex 2 hereto, (ii) is Controlled by a Party hereto; (iii) Controls a Party hereto; or (iii) is under common Control with a Party hereto. The term "**Control**" (or "**Controlled**") shall mean the possession of the power to direct or cause the direction of the activities, management or policies of such corporation, company, or other legal entity, and shall be deemed to exist when more than fifty percent (50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered to be an Associated Company as long as such ownership or control exists.

### 2. CONFIDENTIAL INFORMATION

- 2.1. The term "**Confidential Information**" is defined to mean any and all information (including but not limited to technical, business and/or financial records, samples, specifications, photographs, presentations, drawings, data, know-how, prototypes or other documents, in whatever form) controlled by one of the Parties and which has been disclosed to, or obtained by, a Party(ies) ("**Receiving Party**") from another Party ("**Disclosing Party**") either by means of:
  - (a) a document (including any writing, sketch, drawing, recording in machine readable or tangible form), provided that the Disclosing Party marks the document in a manner to indicate clearly and conspicuously its confidential nature, e.g. as "Confidential"; or
  - (b) intangible disclosures, such as oral, visual or disclosures by means of demonstration if it is confirmed as Confidential Information by the Disclosing Party in writing within thirty (30) days of its disclosure, stated that during this period the information thus received shall be considered as Confidential Information by the Receiving Party.

- 2.2. Nothing in this Agreement may be construed as compelling the Disclosing Party to disclose any Confidential Information to the Receiving Party, or to enter into any further contractual relationships. The Parties do not intend that any agency or partnership relationship be created between them by this Agreement.

### 3. **OWNERSHIP OF CONFIDENTIAL INFORMATION**

- 3.1. All Confidential Information disclosed by a Disclosing Party to one or more Receiving Parties shall remain the property of the Disclosing Party. Nothing herein contained shall be construed as a grant, by implication or otherwise, of a license of any kind by any Party to one or more of the other Parties on the matters, inventions or discoveries to which such Confidentiality pertains, including without limitation to make, have made, use, offer for sale, import, sell, lend, lease, transfer, or otherwise distribute any product using the Confidential Information or as a license under any patent, patent application, utility model, copyright, mask work right, trademark, trade secret rights, or any other intellectual property right.
- 3.2. The Disclosing Party will provide all Confidential Information on an "as is" basis, without any warranty whatsoever, whether express, implied or otherwise, regarding its accuracy, completeness or otherwise, and no Party hereto shall be liable for any direct, special, incidental, consequential or other damages as a result of the Confidential Information it has provided.
- 3.3. The Receiving Party will return all Confidential Information and any copies thereof without undue delay to the Disclosing Party upon the Disclosing Party's first written request, and without derogating from the foregoing, in any event no later than thirty (30) days of the Disclosing Party's first written request. This shall not apply to any copies of the Confidential Information that are stored electronically on the Receiving Party's servers as part of its routinely security backup precaution and which are not, in the ordinary course of business, accessible from employee workstations. Any Confidential Information, or copy or portion thereof that is retained pursuant to this Section 3.3 shall be maintained in accordance with the confidentiality obligations of this Agreement and will not be accessed by any person except information technology systems administrators or used for any purpose except necessary data storage systems maintenance.

### 4. **OBLIGATION TO KEEP CONFIDENTIAL**

- 4.1. The Parties agree that, unless the Disclosing Party gives its prior written authorisation, they shall, during the term of this Agreement and for a period of five (5) years from the termination or expiration of this Agreement (the "**Protection Period**"):
- (a) not disclose the Confidential Information to third parties, other than its Associated Companies and to the Parties to this Agreement that have a need to know according to the Association's Executive Board;
  - (b) not use the Confidential Information disclosed by a Party for any other purpose than for the Authorised Purpose;
  - (c) protect the other Parties' Confidential Information against unauthorized disclosure, at least in the same manner and with the same degree of care, with which it protects Confidential Information of its own, but not less than a reasonable degree of care;
  - (d) upon discovery of any unauthorized disclosure or misuse of the Confidential Information in its possession, notify the Disclosing Party in writing of the same;
  - (e) limit circulation of the Confidential Information disclosed by the Disclosing Party to such of its own employees and representatives and employees and representatives of its Associated Companies that have a need to know in connection with the Authorised

Purpose, and the Receiving Party shall ensure that all persons to whom Confidential Information is made available are aware of the confidential nature of such Confidential Information and comply with the terms and conditions of this Agreement relating to protection and use of Confidential Information. In case of any breach of this Agreement by any of a Party's own employees and/or representatives and/or employees and/or representatives of its Associated Companies, such Party will be responsible and liable for such breach;

- (f) not to duplicate or otherwise reproduce Confidential Information except for such copies as the Receiving Party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information;
  - (g) not analyse, (de)compile, modify, edit, format, improve, reproduce, derive from, reverse engineer, transfer, distribute, market and/or sell, in whole or in part, the Confidential Information or any tangible object containing such Confidential Information, and shall not permit any third party to engage in any of the foregoing; and
  - (h) not claim or register any intellectual property right, nor exercise any intellectual property right or any other right on Confidential Information received from the Disclosing Party under the Agreement.
- 4.2. The terms of confidentiality under this Agreement shall not be construed to limit either Party's right to independently develop or acquire products without use of the other Party's Confidential Information.

## 5. **PERMITTED DISCLOSURE**

- 5.1. The Parties agree that information disclosed by a Party pursuant to this Agreement that would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that the Receiving Party can prove that said information:
- (a) is part of the public domain without violation of this Agreement by the Receiving Party;
  - (b) is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
  - (c) is lawfully obtained by the Receiving Party from a third party who is not bound by similar confidentiality obligations;
  - (d) is developed by the Receiving Party completely independent of any such disclosure by the Disclosing Party;
  - (e) is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its reasonable efforts to maintain the confidentiality of the Confidential Information, and shall, immediately after getting knowledge or receiving notice of such action to the extent legally permissible under the circumstances, (i) notify the Disclosing Party thereof in order to allow the Disclosing Party the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence; (ii) shall limit the disclosure to the extent required to comply with the ruling, and (iii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the Confidential Information; Confidential Information which is disclosed in such way must be marked 'Confidential', or
  - (f) The Disclosing Party has informed the Receiving Party in writing that the Confidential Information is no longer confidential.
- 5.2. If only a part of the Confidential Information falls under the scope of Section 5.1, then only such part shall be excluded from the use and disclosure restrictions of this Agreement.

6. **NON-DISCLOSURE AGREEMENT BETWEEN THE ASSOCIATION AND POTENTIAL CUSTOMERS**

- 6.1. The Parties authorize the Association to execute, on behalf of all Parties, a non-disclosure agreement substantially in the form of Annex 3 with each potential customer requesting services of the Phabulous Pilot Line in the field of freeform micro-optics.

7. **FREE MOVEMENT OF PERSONNEL**

Nothing in this Agreement shall restrict the free movement of the Receiving Party's employees throughout its organisation. The Receiving Party shall in any event be able to assign its employees to different projects, tasks and activities. Nor shall anything in this Agreement prevent the Receiving Party from independently developing, without use of the Disclosing Party's Confidential Information, competing products or technologies, and from using, selling or otherwise supplying to third parties such products or technologies.

8. **PERSONAL DATA**

The Parties agree not to disclose to each other personal data (as defined in the European Regulation 2016/679 relating to the processing of personal data) without entering into a separate written agreement for such purpose, except for necessary personal data of persons participating in the preparation and conclusion of this Agreement, which the Parties warrant that they are legally entitled to disclose.

9. **ASSIGNMENT**

This Agreement may not be transferred or assigned, in whole or in part, by one Party to a third party without the prior written consent of the other Parties. Without limiting the generality of the foregoing, no Party may transfer or assign any or all of its rights and/or obligations or delegate the performance of any or all of its obligations under this Agreement, directly or indirectly, through acquisition, merger or otherwise, without the prior written consent of the other Parties. Notwithstanding the foregoing, no such consent is required in the event of a transfer, assignment or delegation to any Associated Company, provided such Associated Company enters into an accession agreement to this Agreement and thereby becoming bound by the terms and conditions hereof.

10. **TERM**

- 10.1. Disclosure period: this Agreement enters into force on March 1<sup>st</sup>, 2021. This Agreement shall expire 5 (five) years after the end of the PHABULOμS Project - Grant Agreement n°871710. The Parties hereby undertake to negotiate in good faith the renewal of this Agreement prior to its expiry.
- 10.2. This Agreement shall automatically terminate without any further demand upon dissolution of the Phabulous Pilot Line Association.
- 10.3. This Agreement shall automatically terminate with respect to a Party when the membership of such Party with the Phabulous Pilot Line Association ceases.
- 10.4. Upon prior approval of the Phabulous Pilot Line Association's general assembly, a third party may join the Association as new member. In that case, the third party willing to become a member shall sign the form attached in Annex 1 and shall be bound by the rights and obligations of this Agreement.

**11. SURVIVING OBLIGATION**

Parties acknowledge and agree that they are obligated to respect the Protection Period specified in Section 4.1 notwithstanding the termination or expiry of this Agreement pursuant to Section 10 of this Agreement.

**12. APPLICABLE LAW / FORUM**

- 12.1. This Agreement is subject to Belgian law and any disputes or differences arising in connection with this Agreement, which cannot be settled amicably within the sixty (60) days following its occurrence, shall be subject to the jurisdiction of the competent court in Brussels, Belgium.
- 12.2. The foregoing shall be without prejudice to the right of any Party to seek injunctive relief or other equitable compensation before any court in any place where any unauthorized use of its intellectual property rights or confidential information occurs or threatens to occur.

**13. MISCELLANEOUS**

- 13.1. This Agreement contains and constitutes the entire understanding and agreement between the Parties concerning the Authorized Purpose with regard to the exchange and protection of the Confidential Information. This Agreement may not be amended or modified except by a subsequent agreement in writing by duly authorized officers or representatives of the Parties. This written form requirement cannot be waived except by a written instrument signed by all Parties.
- 13.2. Should a provision of this Agreement be or become invalid or void, the validity of the remainder of this Agreement is not affected. The Parties shall replace the invalid or void provision and amend this Agreement with a provision that comes as close as possible to the invalid provision in a way that is permitted by law.
- 13.3. A waiver of any term or condition in one instance shall not be deemed to be a waiver of such term or condition in any other instance. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing.
- 13.4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
- 13.5. The signature of the authorized representative of a Party received by facsimile transmission or by electronic image transmission (such as portable document format) will constitute an original signature. Each Party receives a fully executed copy of the Agreement. Delivery of the fully executed copy by facsimile transmission or by electronic image transmission shall have the same force and effect as delivery of the original Agreement.

**IN WITNESS**

Whereof this Agreement has been duly signed by the undersigned authorized representatives:

[signatures on the following page]

CSEM Centre Suisse d'Electronique et de Microtechnique SA Recherche et Développement

Signature

Name: Philippe STEIERT

Title: Vice-President

Date



Digitally signed by

Philippe STEIERT

Date: 2021.03.09

07:38:22 +01'00'

Signature

Name: Rolando FERRINI

Title: Sector Head

Date



Digitally signed

by Rolando

Ferrini

Date: 2021.03.09

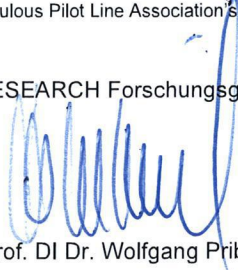
10:46:46 +01'00'

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

JOANNEUM RESEARCH Forschungsgesellschaft mbH

Signature



Name: Univ.-Prof. DI Dr. Wolfgang Pribyl, MBA

Title: CEO

Date 08. März 2021



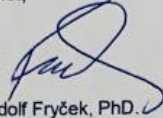
Leonhardstraße 59, 8010 Graz, Austria  
Tel. +43 316 876-1190, Fax +43 316 8769-1190

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

Amires s.r.o.,

Signature:

A handwritten signature in blue ink, appearing to be 'Rudolf Fryček', written over the 'Signature:' label.

Name: Rudolf Fryček, PhD.

Title: CEO

Date 9/3/2021



SUSS MicroOptics SA

Signature



Name: Reinhard Völkel

Title: CEO

Date

17.03.2021

Signature



Name: Martin Eisner

Title: CTO

Date

17.03.2021

Morphotonics B.V.

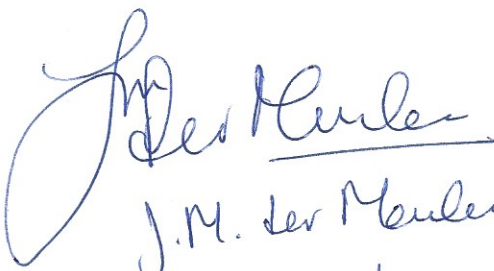
Signature

Name: Onno Lint

Title: Co-director

Date 08-03-2021

**Morphotonics BV**  
De Run 4281 | 5503 LM Veldhoven  
The Netherlands  
Phone: +31 (0)40 4011 963  
E-mail: [info@morphotonics.com](mailto:info@morphotonics.com)  
VAT Reg nr: NL854057407B01  
Chamber of Commerce nr.: 60781246

  
J.M. der Meulen  
Co-director  
8/3 - 2021.

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

Nanocomp Oy Ltd

Signature

Name: Veli-Pekka Leppänen

Title: CEO

8<sup>th</sup> March, 2021

Date

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

WIELANDTS UPMT s.a.

*Wielandts*

Signature



Wielandts UPMT s.a.  
Rue Bois Saint-Jean 15/1  
B-4102 Seraing  
Belgium  
VAT: BE0537.956.555

Name: Marc Wielandts

Title: CEO

Date

08/03/2021

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

Laser Engineering Applications SA

Signature

A handwritten signature in black ink, appearing to be 'Axel Kupisiewicz', written over a horizontal line.

Name: Axel KUPISIEWICZ

Title: CEO

Date 11/03/2021

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

Limbak 4PI SL

Signature 

Name Pablo Benítez

Title CTO

Date March 8, 2021

NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

PowerPhotonic Ltd

Signature

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Name: Richard Clarke

Title: Financial Director

Date

15 March 2021

European Photonics Industry Consortium

Signature 

Name: Carlos Lee

Title: CEO

Date 10 March 2021



NDA between Phabulous Pilot Line Association's and its members.

Print on 26-Feb-21

Teknologian Tutkimuskeskus VTT Oy

Signature

Jussi PAAKKARI

Vice President, Sensing and integration

Jussi Paakkari

JUSSI PAAKKARI

Date

10.3.2021

The CEA – Commissariat à l'Energie Atomique et aux Energies Alternatives

Signature **EMMANUEL  
SABONNADIÈRE ID**  Signature numérique de  
EMMANUEL SABONNADIÈRE ID  
Date : 2021.03.16 11:25:53  
+01'00'

Name: Emmanuel SABONNADIÈRE

Title: Head of CEA-LETI

Date

**Annex 1**

**ACCESSION DOCUMENT FOR NEW PARTIES**

Accession of a new Party to

**MULTIPARTITE NON DISCLOSURE AGREEMENT FOR THE PHABULOUS PILOT LINE**  
dated **[DD:MM:YYYY]**

**[OFFICIAL NAME AND BUSINESS ID/ADDRESS OF THE NEW PARTY]**

hereby consents to become a Party to the Multipartite Non Disclosure Agreement identified above and accepts all the rights and obligations of a Party starting **[date]**.

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

PHABULOUS PILOT LINE ASSOCIATION

Signature(s)

Name(s)

Title(s)

## **Annex 2**

### **LIST OF ASSOCIATED COMPANIES**

#### **For Amires:**

AMIRES, The Business Innovation Management Institute, z.ú. (Czech Republic)

Stavitelská 1099/6

160 00, Praha 6, Czech Republic

The Institute was registered at Městský soud v Praze, the Czech Republic – ID: 08466068

**Annex 3**

**NDA with potential customers according to Art. 6.1**

**Annex 3****NDA with potential customers according to Art. 6.1****Mutual Non-Disclosure Agreement**

Between

Phabulous Pilot Line Association, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland, duly represented by ..... and ....., (hereinafter referred to as the “**Association**”), acting in its own name and on behalf of its members listed in Annex 1 (hereinafter referred to as “**Members**”)

and

....., having its registered offices at ....., duly represented by ....., hereinafter called “**XXX**”

(hereinafter referred to as **Party** individually or **Parties** collectively, as the context may require)

**WHEREAS**

The Association promotes advanced photonics technologies and solutions and offers a single entry point in order to facilitate access to its Members’ services in the field of freeform micro-optics (FFMO);

The Association and its Members cooperate within the Phabulous Pilot Line for offering FFMO services and solutions;

The Association and its Members have entered into a mutual non disclosure agreement covering the exchange of confidential information among themselves in connection with the offering of services of the Phabulous Pilot Line in the field of freeform micro-optics;

The Parties are interested to discuss possibilities of entering into a commercial relationship with respect to [xxxxxxx].

In order to promote free and open discussions, the Parties desire that any confidential information disclosed during or pertinent to those discussions, be retained in confidence by the Party(ies) receiving the information.

Now therefore, the Parties hereby agree to the following terms and conditions governing the exchange of such information:

**1. SCOPE OF THIS AGREEMENT**

- 1.1. The Parties hereby agree that the following terms and conditions (hereinafter referred to as “**Agreement**”) shall be applicable to all meetings, communications and other collaborations between the Parties, including by their employees and/or representatives of the Parties in connection with the services of the Phabulous Pilot Line in the field of xxxxxxx (“**Authorized Purpose**”).
- 1.2. If any Party discloses Confidential Information (as defined in Section 2.1 below) to one or more of its Associated Companies, such Party shall procure that their Associated Companies shall adhere to the terms and conditions of this Agreement. The term “**Associated Company**” is defined to

mean any corporation, company, or other legal entity which: (i) is listed in Annex 2 hereto, (ii) is Controlled by a Party hereto; (iii) Controls a Party hereto; or (iii) is under common Control with a Party hereto. The term “**Control**” (or “**Controlled**”) shall mean the possession of the power to direct or cause the direction of the activities, management or policies of such corporation, company, or other legal entity, and shall be deemed to exist when more than fifty percent (50%) of the controlled entity’s shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered to be an Associated Company so long as such ownership or control exists.

## 2. **CONFIDENTIAL INFORMATION**

- 2.1. The term “**Confidential Information**” is defined to mean any and all information (including but not limited to technical, business and/or financial records, samples, specifications, photographs, presentations, drawings, data, know-how, prototypes or other documents, in whatever form) controlled by one of the Parties and which has been disclosed to, or obtained by, a Party(ies) (“**Receiving Party**”) from another Party (“**Disclosing Party**”) either by means of:
- (a) a document (including any writing, sketch, drawing, recording in machine readable or tangible form), provided that the Disclosing Party marks the document in a manner to indicate clearly and conspicuously its confidential nature, e.g. as “Confidential”; or
  - (b) intangible disclosures, such as oral, visual or disclosures by means of demonstration if it is confirmed as Confidential Information by the Disclosing Party in writing within thirty (30) days of its disclosure, stated that during this period the information thus received shall be considered as Confidential Information by the Receiving Party.
- 2.2. Nothing in this Agreement may be construed as compelling the Disclosing Party to disclose any Confidential Information to the Receiving Party, or to enter into any further contractual relationships. The Parties do not intend that any agency or partnership relationship be created between them by this Agreement.

## 3. **OWNERSHIP OF CONFIDENTIAL INFORMATION**

- 3.1. All Confidential Information disclosed by a Disclosing Party to one or more Receiving Parties shall remain the property of the Disclosing Party. Nothing herein contained shall be construed as a grant, by implication or otherwise, of a license of any kind by any Party to one or more of the other Parties on the matters, inventions or discoveries to which such Confidentiality pertains, including without limitation to make, have made, use, offer for sale, import, sell, lend, lease, transfer, or otherwise distribute any product using the Confidential Information or as a license under any patent, patent application, utility model, copyright, mask work right, trademark, trade secret rights, or any other intellectual property right.
- 3.2. The Disclosing Party will provide all Confidential Information on an “as is” basis, without any warranty whatsoever, whether express, implied or otherwise, regarding its accuracy, completeness or otherwise, and no Party hereto shall be liable for any direct, special, incidental, consequential or other damages as a result of the Confidential Information it has provided.
- 3.3. The Receiving Party will return all Confidential Information and any copies thereof without undue delay to the Disclosing Party upon the Disclosing Party’s first written request, and without derogating from the foregoing, in any event no later than thirty (30) days of the Disclosing Party’s first written request. This shall not apply to any copies of the Confidential Information that are stored electronically on the Receiving Party’s servers as part of its routinely security backup precaution and which are not, in the ordinary course of business, accessible from employee workstations. Any Confidential Information, or copy or portion thereof that is retained pursuant to this Section 3.3 shall be maintained in accordance with the confidentiality obligations of this

Agreement and will not be accessed by any person except information technology systems administrators or used for any purpose except necessary data storage systems maintenance.

#### 4. **OBLIGATION TO KEEP CONFIDENTIAL**

4.1. The Parties agree that, unless the Disclosing Party gives its prior written authorisation, the Receiving Party shall, during the term of this Agreement and for a period of five (5) years from the termination or expiration of this Agreement (the “**Protection Period**”):

- (a) not disclose the Confidential Information to third parties, other than its Associated Companies and to the Members that have a need to know according to the Association's Executive Board;
- (b) not use the Confidential Information disclosed by a Party for any other purpose than for the Authorised Purpose;
- (c) protect the other Parties' Confidential Information against unauthorized disclosure, at least in the same manner and with the same degree of care, with which it protects Confidential Information of its own, but not less than a reasonable degree of care;
- (d) upon discovery of any unauthorized disclosure or misuse of the Confidential Information in its possession, notify the Disclosing Party in writing of the same;
- (e) limit circulation of the Confidential Information disclosed by the Disclosing Party to such of its own employees and representatives and employees and representatives of its Associated Companies that have a need to know in connection with the Authorised Purpose, and the Receiving Party shall ensure that all persons to whom Confidential Information is made available are aware of the confidential nature of such Confidential Information and comply with the terms and conditions of this Agreement relating to protection and use of Confidential Information. In case of any breach of this Agreement by any of a Party's own employees and/or representatives and/or employees and/or representatives of its Associated Companies, such Party will be responsible and liable for such breach;
- (f) not to duplicate or otherwise reproduce Confidential Information except for such copies as the Receiving Party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information;
- (g) not analyse, (de)compile, modify, edit, format, improve, reproduce, derive from, reverse engineer, transfer, distribute, market and/or sell, in whole or in part, the Confidential Information or any tangible object containing such Confidential Information, and shall not permit any third party to engage in any of the foregoing; and
- (h) not claim or register any intellectual property right, nor exercise any intellectual property right or any other right on Confidential Information received from the Disclosing Party under the Agreement.

4.2. The terms of confidentiality under this Agreement shall not be construed to limit either Party's right to independently develop or acquire products without use of the other Party's Confidential Information.

#### 5. **PERMITTED DISCLOSURE**

5.1. The Parties agree that information disclosed by a Party pursuant to this Agreement that would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that the Receiving Party can prove that said information:

- (a) is part of the public domain without violation of this Agreement by the Receiving Party;



- (b) is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
  - (c) is lawfully obtained by the Receiving Party from a third party who is not bound by similar confidentiality obligations;
  - (d) is developed by the Receiving Party completely independent of any such disclosure by the Disclosing Party;
  - (e) is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its reasonable efforts to maintain the confidentiality of the Confidential Information, and shall, immediately after getting knowledge or receiving notice of such action to the extent legally permissible under the circumstances, (i) notify the Disclosing Party thereof in order to allow the Disclosing Party the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence; (ii) shall limit the disclosure to the extent required to comply with the ruling, and (iii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the Confidential Information; Confidential Information which is disclosed in such way must be marked 'Confidential' ; or
  - (f) The Disclosing Party has informed the Receiving Party in writing that the Confidential Information is no longer confidential.
- 5.2. If only a part of the Confidential Information falls under the scope of Section 5.1, then only such part shall be excluded from the use and disclosure restrictions of this Agreement.
- 5.3. XXX acknowledges and agrees that the Association may share the existence of this Agreement and its field of discussion with its Members.

## 6. **FREE MOVEMENT OF PERSONNEL**

Nothing in this Agreement shall restrict the free movement of the Receiving Party's employees throughout its organisation. The Receiving Party shall in any event be able to assign its employees to different projects, tasks and activities. Nor shall anything in this Agreement prevent the Receiving Party from independently developing, without use of the Disclosing Party's Confidential Information, competing products or technologies, and from using, selling or otherwise supplying to third parties such products or technologies.

## 7. **PERSONAL DATA**

The Parties agree not to disclose to each other personal data (as defined in the European Regulation 2016/679 relating to the processing of personal data) without entering into a separate written agreement for such purpose, except for necessary personal data of persons participating in the preparation and conclusion of this Agreement, which the Parties warrant that they are legally entitled to disclose.

## 8. **ASSIGNMENT**

This Agreement may not be transferred or assigned, in whole or in part, by one Party to a third party without the prior written consent of the other Parties. Without limiting the generality of the foregoing, no Party may transfer or assign any or all of its rights and/or obligations or delegate the performance of any or all of its obligations under this Agreement, directly or indirectly, through acquisition, merger or otherwise, without the prior written consent of the other Parties. Notwithstanding the foregoing, no such consent is required in the event of a transfer, assignment or delegation to any Associated Company, provided such Associated Company enters into an accession agreement to this Agreement and thereby becoming bound by the terms and conditions hereof.

**9. TERM**

- 9.1. This Agreement shall come into effect on the date of last signature by the Parties ("**Effective Date**") and shall expire one (1) year after the Effective Date.
- 9.2. This Agreement shall automatically terminate with respect to a Member when the membership of such Member with the Phabulous Pilot Line Association ceases.

**10. SURVIVING OBLIGATION**

Parties acknowledge and agree that they are obligated to respect the Protection Period specified in Section 4.1 notwithstanding the termination or expiry of this Agreement pursuant to Section 9 of this Agreement.

**11. APPLICABLE LAW / FORUM**

- 11.1. This Agreement is subject to Belgian law and any disputes or differences arising in connection with this Agreement, which cannot be settled amicably within the sixty (60) days following its occurrence, shall be subject to the jurisdiction of the competent court in Brussels, Belgium.
- 11.2. The foregoing shall be without prejudice to the right of any Party to seek injunctive relief or other equitable compensation before any court in any place where any unauthorized use of its intellectual property rights or confidential information occurs or threatens to occur.

**12. MISCELLANEOUS**

- 12.1. This Agreement contains and constitutes the entire understanding and agreement between the Parties concerning the Authorized Purpose with regard to the exchange and protection of the Confidential Information. This Agreement may not be amended or modified except by a subsequent agreement in writing by duly authorized officers or representatives of the Parties. This written form requirement cannot be waived except by a written instrument signed by all Parties.
- 12.2. Should a provision of this Agreement be or become invalid or void, the validity of the remainder of this Agreement is not affected. The Parties shall replace the invalid or void provision and amend this Agreement with a provision that comes as close as possible to the invalid provision in a way that is permitted by law.
- 12.3. A waiver of any term or condition in one instance shall not be deemed to be a waiver of such term or condition in any other instance. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing.
- 12.4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
- 12.5. The signature of the authorized representative of a Party received by facsimile transmission or by electronic image transmission (such as portable document format) will constitute an original signature. Each Party receives a fully executed copy of the Agreement. Delivery of the fully executed copy by facsimile transmission or by electronic image transmission shall have the same force and effect as delivery of the original Agreement.

**IN WITNESS**

Whereof this Agreement has been duly signed by the undersigned authorized representatives:

[signatures on the following page]

**Phabulous Pilot Line Association, acting in its own name and on behalf and in the name of the Members as agreed in Art. 6.1 of the non-disclosure agreement dated [...]**

.....

By:

Title:

Date:

.....

By:

Title:

Date:

**XXX**

.....

By:

Title:

Date:

## Annex 1

### MEMBERS OF THE PHABULOUS PILOT LINE ASSOCIATION

(To be updated when a new Member joins the Association and signs the NDA for Members)

**JOANNEUM RESEARCH Forschungsgesellschaft mbH**, established in Leonhardstrasse 59, 8010 Graz, Austria, owned by the Province of Styria, the BABEG - Kärntner Betriebsansiedlungs- & Beteiligungsgesellschaft and the Landesholding Burgenland and registered in the Companies Register under no. FN 48282 d and

**Teknologian Tutkimuskeskus VTT Oy**, established in TEKNIKANTIE 21, Espoo 02150, Finland, VAT number FI26473754 and

**Commissariat à l'Energie Atomique et aux Energies Alternatives**, a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment "Le Ponant D" – 75015 Paris, FRANCE, declared at the Paris Register of Commerce and Trade under the following registration number R.C.S. Paris B 775 685 019, acting for its "Laboratoire d'électronique et de technologie de l'information" (LETI), and

**SUSS MicroOptics SA**, established in Rouges-Terres 61, 2068 Hauterive, Switzerland and

**Morphotonics B.V.**, a Dutch company with its registered office at De Run 4281, 5503 LM, Netherlands and

**Nanocomp Oy Ltd.**, validly organised and existing under the laws of Finland having its offices at Ensolantie 6, FI-80170 Lehmo, FINLAND. Trade registration number FI10836004 and

**WIELANDTS Ultra Precision Machining Technologies S.A.**, a corporation established under the laws of Belgium, having its registered office at Rue Bois Saint-Jean 15, 4102 Seraing, Belgium and

**Laser Engineering Applications SA**, a Belgian company established in Rue des Chasseurs Ardennais, n°10, 4031 Angleur, Belgium and

**PowerPhotonic Ltd**, a Scottish company with a registered office at 5A St David's Drive, St David's Business Park, Dalgety Bay, Fife KY11 9PF, Scotland and,

**Limbak 4PI SL**, a company duly organized and existing under the laws of Spain, having its principal place of business at Calle Villa de Marin 37 8ªA, 28029 Madrid, and which is registered with the Commercial Registry of Madrid under the number M-568897 and

**European Photonics Industry Consortium**, established in 17, Rue Hamelin, 75016 PARIS, FRANCE and

**Amires s.r.o.**, established in Stavitzka 1099/6, 160 00, Prague 6, the Czech Republic and

**CSEM Centre Suisse d'Electronique et de Microtechnique SA**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland

**Annex 2**  
**LIST OF ASSOCIATED COMPANIES**

**For Amires:**

AMIRES, The Business Innovation Management Institute, z.ú. (Czech Republic)

Stavitelská 1099/6

160 00, Praha 6, Czech Republic

The Institute was registered at Městský soud v Praze, the Czech Republic – ID: 08466068

### **11.9. *Annex 9* – FHG accession document to mutual NDA**

**Annex 1**

**ACCESSION DOCUMENT FOR NEW PARTIES**

Accession of a new Party to

**MULTIPARTITE NON DISCLOSURE AGREEMENT FOR THE PHABULOUS PILOT LINE  
dated 26.02.2021**

**Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V.**

**Hansastraße 27c, 80686 München**

**for its**

**Fraunhofer-Institut für Organische Elektronik, Elektronenstrahl- und Plasmatechnik FEP**

**Winterbergstraße 28, 01277 Dresden, Germany**

hereby consents to become a Party to the Multipartite Non Disclosure Agreement identified above and accepts all the rights and obligations of a Party starting 01.09.2021.

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

02.09.2021, Dresden

Fraunhofer-Gesellschaft

Signature(s)

Name(s)

Title(s)

Prof. Dr. Volker Kirchhoff

Director, Fraunhofer FEP

Dr. Nicolas Schiller

Division Director, Fraunhofer FEP

Neuchâtel, 3.09.2021

PHABULOUS PILOT LINE ASSOCIATION

Signature(s)

Name(s)

Title(s)

**Toralf SCHARF**  
President of PHABULOUS  
Pilot line association

Signature numérique

de Rolando Ferrini

Date : 2021.09.03

11:22:38 +02'00'

**Rolando Ferrini**  
Managing Director



## **11.10. *Annex 10* – Model NDA between the PHABULOuS pilot line and its customers**

**Annex 3****NDA with potential customers according to Art. 6.1****Mutual Non-Disclosure Agreement**

Between

Phabulous Pilot Line Association, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland, duly represented by ..... and ....., (hereinafter referred to as the “**Association**”), acting in its own name and on behalf of its members listed in Annex 1 (hereinafter referred to as “**Members**”)

and

....., having its registered offices at ....., duly represented by ....., hereinafter called “**XXX**”

(hereinafter referred to as **Party** individually or **Parties** collectively, as the context may require)

**WHEREAS**

The Association promotes advanced photonics technologies and solutions and offers a single entry point in order to facilitate access to its Members’ services in the field of freeform micro-optics (FFMO);

The Association and its Members cooperate within the Phabulous Pilot Line for offering FFMO services and solutions;

The Association and its Members have entered into a mutual non disclosure agreement covering the exchange of confidential information among themselves in connection with the offering of services of the Phabulous Pilot Line in the field of freeform micro-optics;

The Parties are interested to discuss possibilities of entering into a commercial relationship with respect to [xxxxxxx].

In order to promote free and open discussions, the Parties desire that any confidential information disclosed during or pertinent to those discussions, be retained in confidence by the Party(ies) receiving the information.

Now therefore, the Parties hereby agree to the following terms and conditions governing the exchange of such information:

**1. SCOPE OF THIS AGREEMENT**

- 1.1. The Parties hereby agree that the following terms and conditions (hereinafter referred to as “**Agreement**”) shall be applicable to all meetings, communications and other collaborations between the Parties, including by their employees and/or representatives of the Parties in connection with the services of the Phabulous Pilot Line in the field of xxxxxxx (“**Authorized Purpose**”).
- 1.2. If any Party discloses Confidential Information (as defined in Section 2.1 below) to one or more of its Associated Companies, such Party shall procure that their Associated Companies shall adhere to the terms and conditions of this Agreement. The term “**Associated Company**” is defined to

mean any corporation, company, or other legal entity which: (i) is listed in Annex 2 hereto, (ii) is Controlled by a Party hereto; (iii) Controls a Party hereto; or (iii) is under common Control with a Party hereto. The term “**Control**” (or “**Controlled**”) shall mean the possession of the power to direct or cause the direction of the activities, management or policies of such corporation, company, or other legal entity, and shall be deemed to exist when more than fifty percent (50%) of the controlled entity’s shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered to be an Associated Company so long as such ownership or control exists.

## 2. **CONFIDENTIAL INFORMATION**

- 2.1. The term “**Confidential Information**” is defined to mean any and all information (including but not limited to technical, business and/or financial records, samples, specifications, photographs, presentations, drawings, data, know-how, prototypes or other documents, in whatever form) controlled by one of the Parties and which has been disclosed to, or obtained by, a Party(ies) (“**Receiving Party**”) from another Party (“**Disclosing Party**”) either by means of:
- (a) a document (including any writing, sketch, drawing, recording in machine readable or tangible form), provided that the Disclosing Party marks the document in a manner to indicate clearly and conspicuously its confidential nature, e.g. as “Confidential”; or
  - (b) intangible disclosures, such as oral, visual or disclosures by means of demonstration if it is confirmed as Confidential Information by the Disclosing Party in writing within thirty (30) days of its disclosure, stated that during this period the information thus received shall be considered as Confidential Information by the Receiving Party.
- 2.2. Nothing in this Agreement may be construed as compelling the Disclosing Party to disclose any Confidential Information to the Receiving Party, or to enter into any further contractual relationships. The Parties do not intend that any agency or partnership relationship be created between them by this Agreement.

## 3. **OWNERSHIP OF CONFIDENTIAL INFORMATION**

- 3.1. All Confidential Information disclosed by a Disclosing Party to one or more Receiving Parties shall remain the property of the Disclosing Party. Nothing herein contained shall be construed as a grant, by implication or otherwise, of a license of any kind by any Party to one or more of the other Parties on the matters, inventions or discoveries to which such Confidentiality pertains, including without limitation to make, have made, use, offer for sale, import, sell, lend, lease, transfer, or otherwise distribute any product using the Confidential Information or as a license under any patent, patent application, utility model, copyright, mask work right, trademark, trade secret rights, or any other intellectual property right.
- 3.2. The Disclosing Party will provide all Confidential Information on an “as is” basis, without any warranty whatsoever, whether express, implied or otherwise, regarding its accuracy, completeness or otherwise, and no Party hereto shall be liable for any direct, special, incidental, consequential or other damages as a result of the Confidential Information it has provided.
- 3.3. The Receiving Party will return all Confidential Information and any copies thereof without undue delay to the Disclosing Party upon the Disclosing Party’s first written request, and without derogating from the foregoing, in any event no later than thirty (30) days of the Disclosing Party’s first written request. This shall not apply to any copies of the Confidential Information that are stored electronically on the Receiving Party’s servers as part of its routinely security backup precaution and which are not, in the ordinary course of business, accessible from employee workstations. Any Confidential Information, or copy or portion thereof that is retained pursuant to this Section 3.3 shall be maintained in accordance with the confidentiality obligations of this

Agreement and will not be accessed by any person except information technology systems administrators or used for any purpose except necessary data storage systems maintenance.

#### 4. **OBLIGATION TO KEEP CONFIDENTIAL**

4.1. The Parties agree that, unless the Disclosing Party gives its prior written authorisation, the Receiving Party shall, during the term of this Agreement and for a period of five (5) years from the termination or expiration of this Agreement (the “**Protection Period**”):

- (a) not disclose the Confidential Information to third parties, other than its Associated Companies and to the Members that have a need to know according to the Association's Executive Board;
- (b) not use the Confidential Information disclosed by a Party for any other purpose than for the Authorised Purpose;
- (c) protect the other Parties' Confidential Information against unauthorized disclosure, at least in the same manner and with the same degree of care, with which it protects Confidential Information of its own, but not less than a reasonable degree of care;
- (d) upon discovery of any unauthorized disclosure or misuse of the Confidential Information in its possession, notify the Disclosing Party in writing of the same;
- (e) limit circulation of the Confidential Information disclosed by the Disclosing Party to such of its own employees and representatives and employees and representatives of its Associated Companies that have a need to know in connection with the Authorised Purpose, and the Receiving Party shall ensure that all persons to whom Confidential Information is made available are aware of the confidential nature of such Confidential Information and comply with the terms and conditions of this Agreement relating to protection and use of Confidential Information. In case of any breach of this Agreement by any of a Party's own employees and/or representatives and/or employees and/or representatives of its Associated Companies, such Party will be responsible and liable for such breach;
- (f) not to duplicate or otherwise reproduce Confidential Information except for such copies as the Receiving Party may require for the Purpose as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information;
- (g) not analyse, (de)compile, modify, edit, format, improve, reproduce, derive from, reverse engineer, transfer, distribute, market and/or sell, in whole or in part, the Confidential Information or any tangible object containing such Confidential Information, and shall not permit any third party to engage in any of the foregoing; and
- (h) not claim or register any intellectual property right, nor exercise any intellectual property right or any other right on Confidential Information received from the Disclosing Party under the Agreement.

4.2. The terms of confidentiality under this Agreement shall not be construed to limit either Party's right to independently develop or acquire products without use of the other Party's Confidential Information.

#### 5. **PERMITTED DISCLOSURE**

5.1. The Parties agree that information disclosed by a Party pursuant to this Agreement that would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that the Receiving Party can prove that said information:

- (a) is part of the public domain without violation of this Agreement by the Receiving Party;

- (b) is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
  - (c) is lawfully obtained by the Receiving Party from a third party who is not bound by similar confidentiality obligations;
  - (d) is developed by the Receiving Party completely independent of any such disclosure by the Disclosing Party;
  - (e) is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its reasonable efforts to maintain the confidentiality of the Confidential Information, and shall, immediately after getting knowledge or receiving notice of such action to the extent legally permissible under the circumstances, (i) notify the Disclosing Party thereof in order to allow the Disclosing Party the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence; (ii) shall limit the disclosure to the extent required to comply with the ruling, and (iii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the Confidential Information; Confidential Information which is disclosed in such way must be marked 'Confidential' ; or
  - (f) The Disclosing Party has informed the Receiving Party in writing that the Confidential Information is no longer confidential.
- 5.2. If only a part of the Confidential Information falls under the scope of Section 5.1, then only such part shall be excluded from the use and disclosure restrictions of this Agreement.
- 5.3. XXX acknowledges and agrees that the Association may share the existence of this Agreement and its field of discussion with its Members.

## 6. **FREE MOVEMENT OF PERSONNEL**

Nothing in this Agreement shall restrict the free movement of the Receiving Party's employees throughout its organisation. The Receiving Party shall in any event be able to assign its employees to different projects, tasks and activities. Nor shall anything in this Agreement prevent the Receiving Party from independently developing, without use of the Disclosing Party's Confidential Information, competing products or technologies, and from using, selling or otherwise supplying to third parties such products or technologies.

## 7. **PERSONAL DATA**

The Parties agree not to disclose to each other personal data (as defined in the European Regulation 2016/679 relating to the processing of personal data) without entering into a separate written agreement for such purpose, except for necessary personal data of persons participating in the preparation and conclusion of this Agreement, which the Parties warrant that they are legally entitled to disclose.

## 8. **ASSIGNMENT**

This Agreement may not be transferred or assigned, in whole or in part, by one Party to a third party without the prior written consent of the other Parties. Without limiting the generality of the foregoing, no Party may transfer or assign any or all of its rights and/or obligations or delegate the performance of any or all of its obligations under this Agreement, directly or indirectly, through acquisition, merger or otherwise, without the prior written consent of the other Parties. Notwithstanding the foregoing, no such consent is required in the event of a transfer, assignment or delegation to any Associated Company, provided such Associated Company enters into an accession agreement to this Agreement and thereby becoming bound by the terms and conditions hereof.

**9. TERM**

- 9.1. This Agreement shall come into effect on the date of last signature by the Parties ("**Effective Date**") and shall expire one (1) year after the Effective Date.
- 9.2. This Agreement shall automatically terminate with respect to a Member when the membership of such Member with the Phabulous Pilot Line Association ceases.

**10. SURVIVING OBLIGATION**

Parties acknowledge and agree that they are obligated to respect the Protection Period specified in Section 4.1 notwithstanding the termination or expiry of this Agreement pursuant to Section 9 of this Agreement.

**11. APPLICABLE LAW / FORUM**

- 11.1. This Agreement is subject to Belgian law and any disputes or differences arising in connection with this Agreement, which cannot be settled amicably within the sixty (60) days following its occurrence, shall be subject to the jurisdiction of the competent court in Brussels, Belgium.
- 11.2. The foregoing shall be without prejudice to the right of any Party to seek injunctive relief or other equitable compensation before any court in any place where any unauthorized use of its intellectual property rights or confidential information occurs or threatens to occur.

**12. MISCELLANEOUS**

- 12.1. This Agreement contains and constitutes the entire understanding and agreement between the Parties concerning the Authorized Purpose with regard to the exchange and protection of the Confidential Information. This Agreement may not be amended or modified except by a subsequent agreement in writing by duly authorized officers or representatives of the Parties. This written form requirement cannot be waived except by a written instrument signed by all Parties.
- 12.2. Should a provision of this Agreement be or become invalid or void, the validity of the remainder of this Agreement is not affected. The Parties shall replace the invalid or void provision and amend this Agreement with a provision that comes as close as possible to the invalid provision in a way that is permitted by law.
- 12.3. A waiver of any term or condition in one instance shall not be deemed to be a waiver of such term or condition in any other instance. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing.
- 12.4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
- 12.5. The signature of the authorized representative of a Party received by facsimile transmission or by electronic image transmission (such as portable document format) will constitute an original signature. Each Party receives a fully executed copy of the Agreement. Delivery of the fully executed copy by facsimile transmission or by electronic image transmission shall have the same force and effect as delivery of the original Agreement.

**IN WITNESS**

Whereof this Agreement has been duly signed by the undersigned authorized representatives:

[signatures on the following page]

**Phabulous Pilot Line Association, acting in its own name and on behalf and in the name of the Members listed in Annex 1 and 2 of this non-disclosure agreement**

.....

By:  
Title:  
Date:

.....

By:  
Title:  
Date:

XXX

.....

By: Title:  
Date:

## Annex 1

### MEMBERS OF THE PHABULOUS PILOT LINE ASSOCIATION

**JOANNEUM RESEARCH Forschungsgesellschaft mbH**, established in Leonhardstrasse 59, 8010 Graz, Austria, owned by the Province of Styria, the BABEG - Kärntner Betriebsansiedlungs- & Beteiligungsgesellschaft and the Landesholding Burgenland and registered in the Companies Register under no. FN 48282 d and

**Teknologian Tutkimuskeskus VTT Oy**, established in TEKNIIKANTIE 21, Espoo 02150, Finland, VAT number FI26473754 and

**Commissariat à l'Energie Atomique et aux Energies Alternatives**, a French state-owned research entity with a scientific, technical or industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment "Le Ponant D" – 75015 Paris, FRANCE, declared at the Paris Register of Commerce and Trade under the following registration number R.C.S. Paris B 775 685 019, acting for its "Laboratoire d'électronique et de technologie de l'information" (LETI), and

**Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.**, represented by the Fraunhofer-Institute for Organic Electronics, Electron Beam and Plasma Technology FEP, established in Winterbergstrasse 28, 01277 Dresden

**SUSS MicroOptics SA**, established in Rouges-Terres 61, 2068 Hauterive, Switzerland and

**Morphotonics B.V.**, a Dutch company with its registered office at De Run 4281, 5503 LM, Netherlands and

**Nanocomp Oy Ltd.**, validly organised and existing under the laws of Finland having its offices at Ensolantie 6, FI-80170 Lehmo, FINLAND. Trade registration number FI10836004 and

**WIELANDTS Ultra Precision Machining Technologies S.A.**, a corporation established under the laws of Belgium, having its registered office at Rue Bois Saint-Jean 15, 4102 Seraing, Belgium and

**Laser Engineering Applications SA**, a Belgian company established in Rue des Chasseurs Ardennais, n°10, 4031 Angleur, Belgium and



**PowerPhotonic Ltd**, a Scottish company with a registered office at 5A St David's Drive, St David's Business Park, Dalgety Bay, Fife KY11 9PF, Scotland and,

**Limbak 4PI SL**, a company duly organized and existing under the laws of Spain, having its principal place of business at Calle Villa de Marin 37 8ªA, 28029 Madrid, and which is registered with the Commercial Registry of Madrid under the number M-568897 and

**European Photonics Industry Consortium**, established in 17, Rue Hamelin, 75016 PARIS, FRANCE and

**Amires s.r.o.**, established in Stavitel'ska 1099/6, 160 00, Prague 6, the Czech Republic and

**CSEM Centre Suisse d'Electronique et de Microtechnique SA**, established in Rue Jaquet-Droz 1, CH-2002 Neuchâtel, Switzerland

**Annex 2**  
**LIST OF ASSOCIATED COMPANIES**

**For Amires:**

AMIRES, The Business Innovation Management Institute, z.ú. (Czech Republic)

Stavitzelská 1099/6

160 00, Praha 6, Czech Republic

The Institute was registered at Městský soud v Praze, the Czech Republic – ID: 08466068