

# Non-Disclosure Agreement

## NON-DISCLOSURE AGREEMENT

### BETWEEN

- Technische Universiteit Eindhoven
- Willow Photonics Ltd
- The Centre for Integrated Photonics Ltd
- Oclaro Technology Ltd
- Fraunhofer-Gesellschaft zur Foerderung der angewandten Forschung E.V., acting as legal entity for its institutes HHI and IZM
- Chalmers Tekniska Hoegskola
- Filarete s.r.l.
- Phoenix BV
- Gooch & Housego (Torquay) Ltd
- Photon Design Ltd
- Alcatel Thales III-V Lab
- The Chancellor, Masters and Scholars of the University of Cambridge
- Philips Electronics Nederland B.V.
- Linkra S.R.L.
- Politecnico di Milano

(hereinafter also referred to as “PARADIGM participants”)

2. **[insert organisation name]**  
(hereinafter also referred to as the “User”)  
represented by;  
**[insert name]**  
**[insert address]**

Hereinafter also referred to individually as “Party” or collectively as “Parties”.

### RECITALS

WHEREAS:

PARADIGM is the acronym of the European manufacturing platform for Photonic Advanced Research and Development for Integrated Generic Manufacturing , which is a project subsidized under the Seventh Framework Programme of the European Community (hereinafter referred to as

the “Project”),

WHEREAS

The PARADIGM participants have entered into a consortium agreement to govern matters arising pursuant to the Project

WHEREAS:

In the consortium agreement of the Project, the PARADIGM participants have agreed that the Coordinator’s signature to this NDA shall suffice to make it binding for each of them individually towards the User and for the User individually towards each of the PARADIGM participants,

WHEREAS:

Under the terms and conditions of this Agreement the User may carry out activities for the Project (“Assignments”), related to the Project objectives and in particular to the supply of photonic integrated circuit designs for manufacture (or assessment of potential for manufacture) and supply to Users by certain PARADIGM participants of prototype photonic integrated circuits based on such User designs (hereinafter referred to as the “Authorized Purpose”),

WHEREAS the Parties intend that Assignments shall include feedback on the outcomes thereof by Users to the applicable PARADIGM participants (“Feedback”)

WHEREAS:

Solely for the Authorized Purpose, Confidential Information (as defined in Article 1 of the present Agreement) of one or more PARADIGM participants, may be disclosed to the User or vice-versa,

WHEREAS:

This NDA shall be construed to be binding between each PARADIGM participant individually and the User. Among the PARADIGM participants, the confidentiality section of the PARADIGM Consortium Agreement shall remain solely applicable.

**NOW, THEREFORE, the Parties have agreed as follows:**

**Article 1: Definition of Confidential Information**

For the purposes of this non-disclosure agreement (the “Agreement”), “Confidential Information” shall mean any information, data or materials of a confidential nature, exchanged between a PARADIGM participant and a User within the context of the Project, Assignments and Feedback, including but not limited to proprietary, technical, developmental, marketing, sales, operating, performance, cost, know-how, business and process information, computer programming techniques, and all record-bearing media containing or disclosing such information and techniques which are disclosed pursuant to this Agreement. For the avoidance of doubt, any Confidential

Information disclosed by any disclosing Party is considered proprietary to the Party owning such Confidential Information. .

Confidential Information shall, if in written form, be marked "Confidential" or "Proprietary" or similar designation of confidential status by the disclosing party. All oral disclosures of Confidential Information shall be summarized, in writing, by the disclosing party and said summary will be furnished to the receiving party within fourteen (14) days of the subject oral disclosure.

### **Article 2: Use**

During the period specified in Article 6 of this Agreement:

(a) Confidential Information shall not be distributed, disclosed, or disseminated in any way or form by the receiving party to any third party, except to its own employees who have a reasonable need to know the Confidential Information for the Authorized Purpose. For the avoidance of doubt, all other Users involved in the Project are also considered third parties for purposes of this Agreement.

(b) Confidential Information shall be treated by the receiving party with the same degree of care to avoid disclosure to any third party as is used with respect to the receiving party's own confidential information, and at least with a reasonable degree of care.

(c) The receiving party is obliged to take such measures concerning all of its employees who in any way are or become informed of the Confidential Information or part thereof to act according to the covenants in this Agreement.

(d) Confidential Information shall be used by the receiving party for the Authorized Purpose only and shall be destroyed or returned to the disclosing party, upon the disclosing party's discretion, along with all copies thereof (i) within thirty (30) days following receipt by the receiving party of a written request from disclosing party setting forth the Confidential Information to be destroyed or returned or (ii) upon the termination of the Agreement. However, a party shall have the right to keep copies for archival purposes in order to comply with applicable national law. The right to use the Confidential Information, including but not limited to materials, does not include the right to reverse engineer, decompile, copy or otherwise determine structure of Confidential Information.

### **Article 3: Exceptions**

The obligations set forth by article 2 shall not apply to any information, which the receiving party can prove:

- (a) is or becomes part of the public domain, through no breach of this Agreement by the receiving party; or
- (b) was in receiving party's possession prior to receipt thereof from the disclosing party as evidenced by the party's documented records ; or
- (c) is received by the receiving party from a third party; or
- (d) is independently developed by receiving party, without the use of disclosing Party's Confidential Information; or
- (e) is approved for release by prior written authorization of the disclosing party; or
- (f) is required to be disclosed by operation of law or by final court or administrative order provided that the receiving party furnishes prior notice of such requirement to the disclosing

party and cooperates with the disclosing party in contesting disclosure or obtaining confidential treatment of such disclosure. Any such disclosure so made shall only be to the extent necessary.

**Article 4: Feedback**

The User herewith grants recipient PARADIGM participants the right to use any Feedback provided by User for the improvement of generic InP foundry technology, including the design toolkit software and the generic packaging technology, in accordance with the objectives of the Project.

**Article 5: Rights**

The receiving party shall have no obligation to enter into any further agreement with the disclosing party. It is understood that no patent, copyright, trademark or other proprietary right or license is granted by this Agreement. Save as provided in Article 4 the disclosure of Confidential Information shall not result in any obligation to grant the receiving party or any other party whatsoever any rights therein and/or in results from the Authorized Purpose.

Nothing in this Agreement shall construe, or be deemed to construe, a partnership or joint-venture between the Parties.

**Article 6: Warranty**

User understands that parts of the Confidential Information could be provided by PARADIGM participants as prototype technology for which the compatibility for certain purposes has not been completely investigated and further understands that such Confidential Information is therefore not released hereunder for purposes of commercial use. The disclosing party gives no warranties of any kind under this Agreement. Any Information exchanged under this Agreement, is provided "AS IS". The disclosing party shall not be liable for any use to which the receiving party puts the Confidential Information.

**Article 7: Term**

This Agreement shall be effective as of the **[insert date]** (the "Effective Date"). This Agreement shall automatically expire three (3) years from its Effective Date. However, the receiving party's confidentiality and restricted use obligations set forth by article 2 shall survive the expiration or termination of this Agreement for a period of five (5) years after expiration.

**Article 8: Governing Law and Dispute resolution**

All disputes between the Parties in connection to this Agreement shall first be discussed in good faith between the Parties in order to try to find an amicable solution. If no solution can be found to settle the dispute within 45 days after giving notice to the defaulting Party, then the dispute will be submitted to the courts of Belgium. This Agreement shall be governed by and construed in accordance with Belgian Law.

**Article 9: Miscellaneous**

The provisions of this Agreement may not be modified, amended, nor waived, except by a written

instrument duly executed by both Parties.

This Agreement may not be assigned by any Party, without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative:

- **For and on behalf of the PARADIGM Participants**

**Technische Universiteit Eindhoven**

Signature.....

Name: Drs. S. Udo, Managing Director Department of Electrical Engineering

Date.....

- **For and on behalf of [insert organisation name]**

Signature.....

Name: .....

Date.....