

## Members Agreement

This Agreement is effective as from the 20<sup>th</sup> day of November, 2013 ("**Effective Date**") by and between

**Aixtron SE**, German corporation/legal entity, having its principal office in Herzogenrath, Germany, and

**Aledia SA**, a French corporation, having its principal office in Grenoble Cedex 9, France, and

**Consiglio Nazionale delle Ricerche**, an Italian public research body and legal entity, having its principal office in Rome, Italy, and

**Ericsson AB**, a Swedish corporation, having its principal office in Stockholm, Sweden, and

**Hamamatsu Photonics Europe GmbH**, a German corporation, having its principal office in Herrsching am Ammersee, Germany, and

**Jenoptik AG**, a German corporation, having its principal office in Jena, Germany, and

**LIMO Lissotschenko Mikrooptik GmbH**, a German corporation, having its principal office in Dortmund, Germany, and

**Nederlandse Organisatie voor Toegepast- Natuurwetenschappelijk Onderzoek (TNO)**, a Dutch research institute and legal entity with its place of registration in Delft, The Netherlands, having a place of business in Eindhoven, The Netherlands, and

**Oclaro Technology Ltd.**, an corporation under the laws of England and Wales, having its principal office in Caswell, Towcester, Northamptonshire, United Kingdom, and

**Philips Lighting B.V.**, a Dutch corporation, having its principal office in Eindhoven, The Netherlands, and

**Politechnika Warszawska**, a public state university and legal entity, having its principal office in Warsaw, Poland, and

**Tecan Trading AG** a Swiss corporation, having its principal office in Männedorf, Switzerland,

herein referred to separately as a "Party" and collectively as the "Parties";

WHEREAS the Parties currently are participating in a European Technology Platform as described in the Report EUR 21265 by the *Commission Inter-Service Group on Technology Platforms* of the European Commission ("**ETP**"), which was established on December 1, 2005 and carries the name "Photonics 21", hereinafter referred to as

**“Photonics 21”**, being an ETP to promote research, development and innovation in the field of photonics, in order to strengthen the competitiveness of the European industry in this field, and representing industry and other organisations active in this field;

WHEREAS, subject to Art. 19 of the Horizon 2020 Regulation (Brussels, 30.11.2011 COM(2011) 809 final ), for the implementation of Horizon 2020, a public private partnership may be established through entering into a contractual arrangement between the European Commission and a sufficient representation of all participants of Photonics 21, hereinafter the **“PPP Contract”**;

WHEREAS, In order to enter into such PPP Contract, all parties to such PPP Contract must be legal persons;

WHEREAS Photonics 21 in its current form does not have legal personality, which is why such legal person must be established;

WHEREAS Photonics 21 and the European Commission have commonly understood and acknowledged, that, under certain conditions, the establishment of an association, with a limited number of Photonics 21 participants as its members, will be sufficient to represent Photonics 21 as counter party to the European Commission in the PPP Contract;

WHEREAS it has been discussed and agreed between representatives of Photonics 21 that an association will be established under the laws of Belgium, hereinafter **“the Association”** and that the Parties signing this Agreement will be the founding parties of the Association as well as the first members thereof;

WHEREAS one of the main purposes of the Association is to represent the participants of Photonics 21 towards the European Commission, which must be reflected in a written document;

WHEREAS the members of the Association further wish to set out the main principles of the cooperation between them and of their relation with Photonics 21 and with the board of the Association;

Therefore the Parties have agreed as follows:

**1) Definitions:**

- 1.1** **“Agreement”** shall mean this Members Agreement and all Annexes attached hereto and initially by all Parties.
- 1.2** **“Articles of Association”** shall mean the articles of association of the Association.
- 1.3** **“Association”** shall mean the association under Belgian law, **“Photonics21 Association”**, as to be established in accordance with the Articles of Association and this Agreement.
- 1.4** **“Board”**: shall mean the board of the Association as further described in Article 4 hereof.

- 1.5 “**By-Laws**” shall mean the set of internal regulations of the Association, as to be adopted by the Parties as soon as the Association is established, substantially in the form of **Annex 2** hereto.
- 1.6 “**Effective Date**” shall be the first date written above.
- 1.7 “**General Assembly**” shall mean the general meeting of Members held in accordance with the Articles of Association.
- 1.8 “**Member**” shall mean each Party to this Agreement that fulfils the Party Criterion, and is a member of the Association.
- 1.9 “**Party**” or “**Parties**” shall mean the parties having signed this agreement as well as those parties who have acceded to this agreement through execution of a Deed of Accession, as described in Article 5.1.
- 1.10 “**Party Criterion**” shall have the meaning assigned to it in Article 3.1 of this Agreement.
- 1.11 “**Photonics 21**” has the meaning assigned to it in the first preamble.
- 1.12 “**Photonics21 B.o.S.**” shall mean the board of stakeholders of Photonics 21, which is formed, and the members of which are elected, in accordance with the Terms of Reference.
- 1.13 “**Photonics 21 Matters**” shall mean those subjects that are related to the SRIA and to the priority setting towards the Horizon 2020 PPP work programs, derived from the SRIA.
- 1.14 “**Photonics21 EB Member**” shall mean a member of the board of Photonics 21, as appointed in accordance with the Terms of Reference, therein called “Executive Board” or “EB”.
- 1.15 “**PPP Contract**” has the meaning assigned to it in the second preamble.
- 1.16 “**Representative**” shall have the meaning assigned to it in Article 3.3.
- 1.17 “**SIG**” shall mean a European cluster organisation of industry and/or other entity, active in the field of photonics, or a European special interest group, representing groups of consumers, organisations or other entities being stakeholders in development activities in the field of Photonics.
- 1.18 “**SRIA**” shall mean the Strategic Research and Innovation Agenda of Photonics 21, as determined and decided upon by the Photonics21 B.o.S. in accordance with the Terms of Reference, and outlining the research and development programme for the years 2014 up to and including 2020, of industry, R&D institutes, universities and other organisations and persons being a participant in Photonics 21, or being represented by such person, and indicating the commitment of these participants to executing activities to meet the objectives of the programme both in type of research and development activities as well as in the size and amount of personal, financial and other recourses required to be made available to that purpose.
- 1.19 “**Terms of Reference**” means the document formally adopted by Photonics 21, outlining the mission of Photonics 21 and arranging its internal governance, decision making process, membership criteria and internal way of working. A copy of the terms of Reference, effective at the Effective Date, is attached to this Agreement as **Annex 3**, however the Terms of Reference may be adapted from time to time by Photonics 21, independently from the Parties to this Agreement.

## 2) Scope and establishment Association

- 2.1 This Agreement describes the contractual relation between the Members of the Association, the Parties, the relation of the Parties with their Representatives and with the Board Members. It further describes the relation between the Association, its Members and Photonics 21, including the interaction with the various bodies of Photonics 21.
- 2.2 The Parties agree and commit themselves, that they shall establish the Association, based on the Articles of Association, substantially in the form attached hereto as **Annex 1**. The Association shall be established by the Parties immediately after the Effective Date.
- 2.3 As soon as the Association is established, the Parties will, in their capacity as Member, adopt the By-Laws of the Association in the first General Assembly held and approve signing by the Board of the PPP Contract.
- 2.4 Any proposal to amend the Articles of Association initiated by either the Board or one or more of the Members, and any amendment to this Agreement, requires the consent from the Photonics21 BoS. The Parties will instruct the Board to request such consent whenever required. In the absence of this consent, the Parties, in their capacity as Members, agree to vote against the proposed amendment.

## 3) Party Criteria and Representatives

- 3.1 Each Party to this Agreement has to be the employer of one Photonics21 EB Member ("Party Criterion"). In case a SIG does not actually employ a Photonics21 EB Member, but has a Photonics21 EB member appointed by the Photonics21 B.o.S. from within such SIG's organisation, such SIG is still deemed to comply with this Party Criterion.
- 3.2 Each Party has to fulfil the Party Criterion. As soon as this Party Criterion is no longer met by a Party hereto, the provisions of the Articles 9.2 and 9.4 will apply.
- 3.3 Each Party shall appoint one person to represent such Party in the General Assembly, herein referred to as "**Representative**". Such Representative shall be the Photonics21 EB Members employed by such Party, or in case of a SIG without such employment relation, appointed from within such SIG.
- 3.4 It is, however, explicitly understood, that in any discussion or voting on Photonics 21 Matters, each Party will have its Representative to act in accordance with the provisions of Article 7.
- 3.5 Each Party shall enable its Representative to attend the General Assemblies of the Association and to fulfil the other tasks of the Members that can only be fulfilled in person, and each Party shall pay the expenses made in relation thereto.

## 4) Board of the Association

- 4.1 The Parties, in their capacity of Member of the Association, shall appoint the members of the board of the Association, hereinafter referred to as "the **Board**". In accordance with the Articles of

Association, the Board will, among others, have a chairman ("Chairman of the Board"), who will always be the President of the Executive Board of Photonics 21.

- 4.2 Each Party shall nominate its own Representative as member of the Board and all Parties shall have their Representative vote to support the nomination of each Party in this respect. Effectively the Photonics21 EB Members will become the members of the Board.
- 4.3 Any notice to be given by the Board to one or more of the Parties hereto, can be given by the Chairman of the Board.
- 4.4 Each Party shall enable the member of the Board nominated by it, to fulfil its tasks as member of the Board, to attend the meetings of the Board and meetings with the European Commission when required, and pay for the expenses made in relation thereto.

## 5) Accession to Agreement

- 5.1 In case Photonics 21 has elected a new Photonics21 EB Member, its employer is obliged to become a Member of the Association and a Party to this Agreement. A new Party can only accede to this Agreement as a Party, by executing the Deed of Accession, substantially in the form attached hereto as **Annex 4**, which shall also be executed on behalf of all other Parties, by the Chairman of the Board.
- 5.2 In case a new Party takes the place of an existing Party, in view of a change of Photonics21 EB members, this Agreement will terminate for the leaving Party in accordance with Article 9.2.

## 6) Budget and Membership Fee

- 6.1 For each calendar year, and prior to such calendar year, the Parties shall have their Representatives, in their capacity of Board members, to present a proposal on the membership fees, which proposal shall be accompanied with an overview stating which amount of the yearly budget of the Association is to be covered by membership fees from the Parties and which amount is to be covered by service fees to be paid by the members of the Photonics21 B.o.S.. The proposal will always provide that the membership fees to be paid per Member shall be equal to the service fee to be paid per member of the Photonics21 B.o.S..
- 6.2 The amount to be covered by membership fees shall be divided between all Parties being a Member during that same calendar year and each Party shall pay its membership fee within 30 days after the date of the relevant invoice for such amount.
- 6.3 In case a new Party accedes to this Agreement in replacement of another Party, it shall pay to the replaced Party such part of the membership fee paid by the replaced Party, as is relative to the remaining part of the calendar year (at the date of accession), for which such membership fee was due.
- 6.4 In case a new Party accedes to this Agreement, but does not replace any other Party, it shall pay such part of the membership fee, as is relative to the remaining part of the calendar year (at the date of accession), for which such membership fee was due, unless it has

already paid its service fee for the same calendar year as a member of the Photonics21 B.o.S..

## **7 Photonics 21 Matters**

- 7.1** Any decision to be taken by the Parties as Members of the Association that are related to Photonics 21 Matters, shall be voted upon by their Representatives in the General Assembly, and such voting shall always be fully in line with the decisions taken on the same Photonics 21 Matters by the Photonics21 B.o.S..
- 7.2** In case a Representative does not vote on one or more Photonics 21 Matter in accordance with the decision taken in that respect by the Photonics21 B.o.S., this shall amount to a material breach, as referred to in Article 9.3, of the Party that employs such Representative.
- 7.3** Each Party shall ensure that its Representative shall comply with all provisions of this Agreement and of the Articles of Association relevant to it, and in particular shall vote in accordance with the first paragraph of this Article, as well as with Article 2.4 hereof.

## **8) Tasks of Photonics 21**

- 8.1** For the avoidance of any doubt, the work to be performed in order to come to an SRIA, the priority setting towards the Horizon 2020 PPP work programs, derived from the SRIA, as well as other activities carried out by Photonics 21 until the time of execution of this Agreement, will still be carried out by Photonics 21 after execution hereof, and are not part of the tasks of the Board or of the Association as a whole. It is therefore not at the discretion of the General Assembly, nor of the Board, to decide which person(s) or organisation(s) actually take part in carrying out such activities.

## **9) Term, termination and consequences**

- 9.1** This Agreement is effective as from the Effective Date and shall be in effect for an undefined period of time. It cannot be terminated in its entirety, unless with the approval of all Parties hereto.
- 9.2** However, this Agreement will terminate automatically for a Party, in case and at the time,
- (i) the Representative appointed by it, a) loses its capacity of Photonics21 EB Member in accordance with the Terms of Reference, for whatever cause or reason, or b) leaves the Party as an employee, unless such Representative as Photonics21 EB Member is replaced by the Photonics21 B.o.S. with a new Photonics21 EB Member that is also employed by such Party, or
  - (ii) a Party has withdrawn itself as a Member of the Association in accordance with the Articles of Association (at the Effective Date, Article 9) or
  - (iii) the membership of the Association ends in any other way in accordance with the Articles of Association.

- 9.3 a) This Agreement can further be terminated for a Party with immediate effect through written notice from the Board, in case of a material breach by a Party (“Defaulting Party”) that cannot be remedied, or, if remediable, was not remedied by the Defaulting Party within one month after written notice to that effect (“Notice of Default”) from the Board, or within any other reasonable term given for that purpose in the Notice of Default. A Notice of Default shall be given only upon a decision thereto supported by at least 75% of all Parties except the Defaulting Party.  
b) However, the notice of termination shall not be given before the Defaulting Party is heard on the matter, so as to enable it to present its defence against the Notice of Default.
- 9.4 This Agreement can further be terminated for a Party through written notice from the Board with immediate effect, in case Control over a Party changes to others than those having Control at the time of execution of this Agreement, or, in the case of acceded Parties, at the time of such accession. A decision to give notice of termination by the Board under this paragraph 9.4, requires a majority of 75% of all Parties, except the Party whom it concerns. For the purpose of this provision, “Control” shall mean the direct or indirect ultimate beneficial ownership of more than 50% of the share capital in a Party, and/or the direct or indirect ultimate authority to appoint the majority of the decision taking managers or board members in such Party.
- 9.5 In case of termination for a Party, for whatever reason or cause,  
9.5.1 this Agreement will continue in full force and effect between the remaining Parties,  
9.5.2 the provisions of Article 1(Definitions), 9.5, 10 and 11 shall continue to be in effect for such terminated Party, and  
9.5.3 the terminated Party’s membership of the Association shall terminate automatically in accordance with the Articles of Association, and  
9.5.4 any such termination shall be without prejudice to any other remedies the other Parties, or one or more of them, may have in relation to any breach, if any, whether material or not.
- 9.6 In case of termination of this Agreement in its entirety, the provisions of Article 1(Definitions), 9.5, 9.6, 10 and 11 shall continue to be in effect.

## **10) Miscellaneous**

- 10.1 Any amendments to this Agreement, with the exception of Annexes 1, 2 and 3, are subject to mutual written agreement between all the Parties hereto, as well as to the consent of the Photonics21 B.o.S.. The Parties cannot change the text of the Annexes 1, 2 and 3. When the text of the Articles of Association, the By-Laws and/or the Terms of Reference are changed by those bodies authorised to do so, the Annexes 1, 2 and 3 are deemed to have changed accordingly.
- 10.2 The rights and obligations arising from this Agreement cannot be assigned to any third party.
- 10.3 This Agreement and the accessions thereto are concluded in the English language. In any case of inconsistency between the English version and any translation into other languages, the English version shall prevail.

- 10.4 In the event that any provision/clause of this Agreement for whatever reason is or will be found to be legally unenforceable or in any case of a lacuna in the Agreement that needs to be filled in, the enforcement of the Agreement shall not be effected, it being understood that the legally unenforceable provision/clause or the lacuna to be filled in, shall upon mutual agreement between the Parties hereto be substituted/completed with a provision/clause which, within the legal possibilities, is nearest to that what the parties would have intended if they had known the non enforceability or if they had envisaged the missing point in question.
- 10.5 The Parties to this Agreement shall not be liable for the debts of the Associations. Their liability towards each other, arising out of the performance or non-performance of this Agreement, is restricted to loss, damages and/or expenses that occur as a direct result of fraud, gross negligence and malicious intent. Any such liability is further limited to the amount of the membership fee applicable in the year that any such liability would accrue.

### **11) Law and dispute resolution**

- 11.1 This Agreement is governed by and construed in accordance with the laws of Belgium without giving effect to its conflict of laws provisions.
- 11.2 Any dispute arising out of or in connection with this Agreement shall be settled amicably between the Parties hereto. In case such dispute cannot be settled amicably, it will be finally settled by the competent court in Brussels.

This Agreement will be signed in various copies, none of which may contain the signatures of all Parties. All these copies together will form (the) one legal instrument embodying this Agreement.

Agreed between the Parties hereto and signed by their duly authorised representatives:

### **Aixtron SE**

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Name:

Title:

Date:

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Name:

Title:

Date:



**Aledia SA**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Consiglio Nazionale delle Ricerche**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Ericsson AB**

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Name:

Title:

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Name:

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Date:

**Hamamatsu Photonics Europe GmbH**

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Name:

Title:

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Name:

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Date:

**Jenoptik AG**

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Name:

Title:

Date:

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Name:

Title:

Date:

**LIMO Lissotschenko Mikrooptik GmbH**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Nederlandse Organisatie voor Toegepast- Natuurwetenschappelijk Onderzoek**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Oclaro Technology Ltd**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Philips Lighting B.V**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Politechnika Warszawska**

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Name:

Title:

Date:

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Name:

Title:

Date:

**Tecan Trading AG**

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Name:

Title:

Date:

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Name:

Title:

Date:

# Annex 1

## Articles of Association

Draft Statutes

Photonics 21 Association

### STATUTES

#### DEFINITIONS

- **Association** means the international non-profit association under Belgian law, “Photonics 21 Association”, to which these Statutes relate;
- **Board of the Association** means the management body of the Association as described in Part 4 of these Statutes;
- **By-Laws** means the internal regulation of the Association, providing for additional rules governing the Association, its Members and its governing bodies, as described in Article 28;
- **Chairman of the Board of the Association** means the person appointed in accordance with Article 17 c);
- **Photonics 21** means the European Technology Platform as described in the Report EUR 21265 by the *Commission Inter-Service Group on Technology Platforms* of the European Commission, which was established on December 1, 2005 and carries the name “Photonics 21”, having as its mission to promote research, development and innovation in the field of photonics, in order to strengthen the competitiveness of the European industry in this field, and representing industry and other organizations active in this field;
- **Photonics 21 Board of Stakeholders (BoS)** means the main decision-making body of the Photonics 21;
- **Photonics 21 EB Member** shall mean a member of the executive board of Photonics 21;
- **Photonics 21 Matters** means those subjects that are related to the SRIA and to the priority setting towards the Horizon 2020 PPP work programs, derived from the SRIA;
- **Photonics 21 Partner** means any participant of the Photonics 21;
- **General Assembly** means the body of the Association as described in Part 3 of these Statutes, in which the Members are gathered;
- **Member** means a legal entity that is member of the Association;
- **Members agreement** means the contractual arrangement that each Member shall execute or accede to, in accordance with the provisions of that agreement;
- **Membership Fee** means the financial contribution by the Members to the Association;
- **PPP Contract** means the contractual arrangement to be entered into between the Association and the European Commission for the establishment of a public private partnership under Horizon2020;

- **Statutes** means these statutes governing the Association;
- **SRIA** shall mean the Strategic Research and Innovation Agenda of Photonics 21, as determined and decided upon by Photonics 21 BoS in accordance with its internal rules (“Terms of Reference”), and outlining the research and development programme for the years 2014 up to and including 2020, of industry, R&D institutes, universities and other organisations and persons being a Photonics 21 Partner, and indicating the commitment of these participants for executing activities to meet the objectives of the programme both in type of research and development activities as well as in the size and amount of personal, financial and other recourses required to be made available to that purpose.

## **Part 1**

### **NAME, FORM, HEAD OFFICE, OBJECTIVES, DURATION**

#### **Art. 1 Name**

**Name.** The name of the Association is “Photonics 21 Association”.

#### **Art. 2 Form, Head Office**

(a) **Form.** The Association is an international non-profit association with scientific purpose governed by the provisions of Title 3 of the Belgium Law of twenty-seventh of June nineteen hundred twenty-one, and its revisions, on non-profit associations, international non-profit associations and foundations.

(b) **Head Office.** The Association has its seat in Brussels, Belgium.

Its first address is at:

c/o VDI-Office Brussels

Rue du Commerce, 31

1000 Brussels

Belgium

The Association may change its seat to any other location in Belgium upon decision of the General Assembly to be published in the Belgian Official Gazette.

#### **Art. 3 Purpose**

The purpose of the Association is to enter into the PPP Contract, to execute this PPP Contract and to promote R&D in the Photonics industry in order to strengthen the Photonics industry in the European Union, to foster technology skills in Europe by attracting students and to increase the competitiveness of the European industry by providing new tools and capabilities for manufacturing in Europe.

In execution of the above mentioned purpose, the Association will enter into the PPP Contract and may:

- (i) Confirm the SRIA;

- (ii) Liaise with Photonics 21;
- (iii) Collaborate and communicate with the European Commission with regard to all Photonics 21 Matters;
- (iv) Obtain and use financial contributions or donations that might be received by the Association from other sources than the Members in accordance with the terms and conditions applicable to such contributions or donations;
- (v) Represent and address the legitimate interests of the Members and Photonics 21 towards the European Commission, other public authorities and stake holders, without the authority to legally bind Members or legal entities belonging to Photonics 21;
- (vi) Share information of common interest among the Members and Photonics 21 to the purpose mentioned above, as far as legally permitted;
- (vii) Perform everything that is related to the above.

#### **Art. 4 Duration**

The Association is established for an indefinite period of time and can be dissolved at any time in conformity with Article 29 of these Statutes.

### **Part 2**

## **MEMBERSHIP**

#### **Art. 5 Members**

(a) **Legal Nature of Members.** Membership in the Association is open to and limited to entities with legal personality.

(b) **Members of the Association.**

The Members of the Association are those legal entities that are employing a Photonics 21 EB Member and have entered into the Members agreement.

Each Member shall for the duration of its membership remain a party to the Members agreement.

#### **Art. 6 New Members**

Legal entities that are the employer of a newly appointed Photonics 21 EB Member will automatically be a Member of the Association and enter into the Members agreement.

#### **Art. 7 Rights of the Members**

Members of the Association will have the rights attributed to them by these Statutes, the By-Laws and decisions taken by the bodies of the Association in accordance with these Statutes and the By-Laws.

### **Art. 8 Obligations of the Members**

The Members shall comply with the applicable law, these Statutes and the By-Laws and the decisions taken by the bodies of the Association in accordance with these Statutes and the By-Laws.

### **Art. 9 Termination**

The membership of any Member shall automatically terminate upon the expiry or termination for whatever reason of the mandate of Photonics 21 EB Member it is employing.

In case the Photonics 21 BoS replaces a Photonics 21 EB Member and provided that the Photonics 21 EB Member is employed by the same legal entity (or its affiliate), there is no change in the membership of that legal entity.

A Member may withdraw as a Member with immediate effect.

### **Art. 10 Exclusion**

If any Member does not comply with these Statutes, the By-Laws, and/or any rules and regulations, issued pursuant to these Statutes or the By-Laws, or any decision of the bodies of the Association, or no longer fulfills the membership conditions, all hereinafter referred to as “default”, it can be excluded as a Member subject to the following:

a) In the event of a default which is irremediable or is not remedied within one month of the date of receipt of a written notice from the Chairman of the Board of the Association, acting on the basis of a decision taken by the Board of the Association with at least 75% majority, not calculating the defaulting Member, such notice requiring that the default be remedied, the Board of the Association may decide to terminate the membership of the defaulting Member. For the avoidance of doubt, the termination of the Members agreement for a Member shall be considered as an irremediable default for the Member concerned.

In case that a member of the Board of the Association has a conflict of interest in any decision taking by the Board of the Association, such a member of the Board of the Association shall abstain from taking part in that decision.

b) Upon a decision to terminate membership taken in accordance with the previous paragraph, the Board of the Association, acting through its Chairman, shall send a notice of decision of termination to the Member concerned, stating the reasons of such termination. Such decision may only become effective after the expiry of a period of 30 days during which the Member concerned shall have had the right to present its defense to the Board of the Association. At the expiry of the 30 days period, the Board of the Association, acting through its Chairman, shall after having considered the defaulting Member’s defense, if any, communicate in writing to the defaulting Member its confirmation of its decision of termination or its withdrawal of the decision of termination.

d) The membership of any Member that is not or not longer a party to the Members agreement, shall be terminated with a written notice from the Chairman of the Board of the Association .Such notice of termination shall have immediate effect.

e) The membership of any Member that judicially has been declared insolvent or bankrupt can be terminated with a written notice from the Chairman of the Board of the Association, acting on the basis of a decision taken by the Board of the Association. Such notice of termination shall have immediate effect.

#### **Art. 11 Effects of termination of membership.**

A Member who ceases to be a Member of the Association through withdrawal, exclusion or any other cause shall have no claim to the Association's assets; such Member shall remain liable for its Membership Fee, as far as applicable, in relation to the current financial year. Such termination shall not affect commitments entered into or liabilities incurred by such Member towards the Association prior to such withdrawal or termination.

#### **Art. 12 Assets of the Association**

The assets of the Association shall consist of:

- a) Subsidies;
- b) Membership Fees;
- c) Service fees from the members of Photonics 21 BoS;
- d) Donations, properly obtained in accordance with the applicable law;
- e) Any other assets or income received.

### **Part 3**

#### **GENERAL ASSEMBLY**

#### **Art. 13 Powers of the General Assembly**

The General Assembly shall have all powers not attributed to other bodies of the Association by law or by these Statutes, to achieve the purpose stated in Article 3. Amongst other things, the General Assembly shall have the powers to discuss and:

1. set Membership Fees, upon proposal of the Board of the Association;
2. approve or reject annual budgets and annual accounts, proposed by the Board of the Association;
3. elect and dismiss the members of the Board of the Association;
4. grant discharge to the members of the Board of the Association;



5. appoint and dismiss the statutory auditors for the Association;
6. approve the PPP Contract;
7. approve all agreements with commitments exceeding one year or exceeding a value of 50.000 €;
8. approve or reject the By-Laws of the Association as proposed by the Board of the Association;
9. provide confirmation of the SRIA and any update thereof, upon proposal of the Board of the Association;
10. amend the Statutes, and amend the By-Laws, including decisions pertaining to the change of the seat of Association;
11. dissolve the Association.

#### **Art. 14 Composition of the General Assembly**

The General Assembly shall be composed of the Members of the Association.

Each Member is represented by one delegate, hereinafter referred to as the “Member representative”. In case a Member representative cannot attend the General Assembly, the Member can choose to give proxy to a Member representative of another Member.

Provisions concerning the registration of Member representatives and alternates for Member representatives (if any) may be outlined in the By-Laws.

The meetings of the General Assembly shall be chaired by the Chairman of the Board of the Association, or if the Chairman is not available, another member of the Board of the Association. The Chairman shall designate a secretary in charge of establishing the minutes of the meeting of the General Assembly. All members of the Board of the Association shall have the right to attend and speak at the meetings of the General Assembly and shall use their reasonable effort to attend such meetings.

#### **Art. 15 Quorum, Majority**

- (a) **Quorum.** Unless otherwise provided by these Statutes, the General Assembly can only take decisions if a majority of the Members is represented at the meeting. If this condition is not met at a meeting, the Chairman of the Board of the Association shall call another meeting pursuant to Article 16 with the same agenda within the following three months, which meeting shall constitute a quorum regardless of the number of Members represented, provided, however, that this has been clearly stated in the convocation of this second meeting.
- (b) **Majority.** Each Member shall have one vote in the General Assembly. For decisions of the General Assembly a simple majority the votes of the Members represented is required, unless stated otherwise in these Statutes.
- (c) For amendments to the Statutes, dissolution of the Association and approval or rejection of the By-Laws or amendments to the By-Laws, the provisions of Article 29 of these Statutes apply.

## **Art. 16 Meetings, Agenda, Resolutions**

16.1 The General Assembly shall take decisions in ordinary or extraordinary meetings. At least one General Assembly shall be organized per year.

The Chairman of the Board of the Association shall each year call an ordinary meeting of the General Assembly (the “annual meeting of the General Assembly”) with at least the following points on the agenda: (1) approval of annual accounts for the past financial year, (2) approval of annual budgets for the current financial year, (3) election and dismissal of members of the Board of the Association, (4) discharge to members of the Board of the Association for the execution of their mandate during the past financial year and (5) appointment of the statutory auditor .

The Chairman of the Board of the Association shall further call extraordinary meetings of the General Assembly whenever he or she deems this appropriate and is obligated to convene an extraordinary meeting upon written request to the Board of the Association from at least 20% of all Members.

16.2 Meetings shall be called by the Chairman of the Board of the Association, acting on behalf of the Board of the Association, with at least one month prior written notice to every Member. The notification shall contain an agenda for the meeting. An item has to be included on the agenda of the General Assembly on the request from at least 10% of the Members. Members may put additional points on the agenda, provided that all Members are present and agree with such addition . Notwithstanding the foregoing, the call for the first meeting of the General Assembly is not subject to the one month prior written notice and the first meeting of the General Assembly may be called with three days prior written notice to every Member. A General Assembly meeting shall be held at the seat of the Association or such other venue within the European Union as may be specified in the invitation.

16.3 General Assembly meetings can be held in physical form, or via electronic means of communication, including but not limited to telephone or video conference, provided that the form of the meeting is so announced in the written notice calling for the meeting.

In all cases the General Assembly may be held and decisions in such meetings taken through any electronic means of communication provided that the Member representatives via the electronic means of communication can be identified, can participate directly to the deliberations held during the meeting and can exercise their voting right.

When indicated by the Board of the Association acting through its Chairman or on the request from at least ten per cent (10%) of the Members, the General Assembly may make decisions by a written procedure.

To that effect, the Chairman of the Board of the Association shall send the proposed resolution(s) with a written notice to all Members via regular mail and/or via e-mail.

The proposed resolution(s) shall be accompanied by a memorandum of the Board of the Association signed by the Chairman of the Board of the Association, setting forth (1) the reasons which have led to the use of the written procedure, as well as (2) the context of the proposed resolutions and (3) the specific requirements of the written procedure as provided for herein.

The proposed resolutions shall be deemed approved if within thirty days after having been sent, 75% of all the Members have approved the proposed resolution through duly completed written and signed communications returned to the Chairman of the Board of the Association. For the avoidance of doubt, Members not replying to the proposed resolution within the

period of 30 days shall be deemed not to have expressed an opinion on the to proposed resolution.

16.4 The proceedings at every meeting of the General Assembly shall be laid down by the secretary or another person designated by the Chairman in minutes.

The opinion of the Chairman expressed at the meeting of the General Assembly about the outcome of a vote shall be decisive. The same shall apply to the contents of a resolution passed, in so far as a vote was taken about a proposal not laid down in writing.

If, however, immediately after the utterance of the opinion referred to in the paragraph above its correctness is contested, a new vote shall be taken if the majority of the Members represented at the General Assembly or, if the original vote had not been taken as a poll or in writing, one Member desires this. As a result of this new vote the legal consequences of the original vote shall be cancelled.

The minutes shall be submitted for approval to the Members within a period of 30 days after the date of the meeting of the General Assembly. The minutes shall be brought to the knowledge of the Photonics 21 BoS.

The resolutions shall be registered and kept in a minute book at the seat of the Association at the disposal of all Members.

## **Part 4**

### **BOARD OF THE ASSOCIATION**

#### **Art. 17 The Board of the Association**

(a) **Functions.** The Board of the Association shall have the powers to:

1. propose for confirmation to the General Assembly the SRIA and any update thereof ;
2. monitor the progress of the Association's activities;
3. terminate membership of defaulting Members, in accordance with the provisions of 10;
4. propose to the General Assembly Membership Fees;
5. prepare and file for acceptance by the General Assembly annual budget and annual accounts pursuant to Article 26;
6. propose for resolution by the General Assembly the By-Laws pursuant to Article 28;
7. decide about the opening of offices for the Association, and decide upon the participation in other legal entities, except for profit associations;
8. manage the Association.

- (b) **members of the Board of the Association** The members of the Board of the Association shall be elected by the General Assembly. Each of the Members shall have the right to propose one candidate. There will be minimum three members of the Board of the Association.

The first members of the Board of the Association shall be the persons listed in the deed of constitution of this Association.

- (c) **Chairman of the Board of the Association.** The Chairman of the Board of the Association will be the President of the Photonics 21 EB.

The Chairman of the Board of the Association shall be appointed in his/her role by the General Assembly.

- (d) **Term.** The term of the mandate of the members of the Board of the Association shall be undetermined.

A member of the Board of the Association shall immediately resign, if the Member having nominated such a member of the Board of the Association is no longer is a Member.

- (f) **Dismissal.** The General Assembly can dismiss the members of the Board of the Association at any time.

## **Art. 18 Meetings**

The Board of the Association shall meet at least two times a year. The meetings of the Board of the Association shall be chaired by the Chairman of the Board of the Association. The Chairman of the Board of the Association shall duly notify the Board of the Association of such meeting at least (14) fourteen days before the date of the meeting, together with an agenda specifying for which item of the agenda a vote will be required. Further details may be regulated in the By-Laws. Meetings of the Board of the Association can be held in physical form or through any electronic means of communications provided that the form of the meeting is so announced in the written notice calling for the meeting.

When the meeting is held by any electronic means of communications, the following requirements need to be met: via the electronic means of communication the members of the Board of the Association can be identified, can participate directly to the deliberations held during the meeting and can exercise their voting right.

Notwithstanding the foregoing, the call for the first meeting of the Board of the Association is not subject to the fourteen days prior written notice and the first meeting of the Board of the Association may be called upon, upon written notice of minimum three days.

Each member of the Board of the Association can be represented by another member of the Board of the Association, provided, however, that no Board member can represent more than one other member of the Board of the Association For this purpose, the member of the Board of the Association shall communicate a written power of attorney to the Chairman of the Board of the Association, at least three days prior to a meeting of the Board of the Association Resolutions of the Board of the Association shall be kept by the Chairman of the Association of the Board of the Association in a minute book.

A dated and detailed document signed by the members of Board of the Association and recorded or inserted in the register of minutes shall equal a decision of the Board of the Association.

Resolutions of the Board of the Association shall be filed by the Chairman at the seat of the Association.

#### **Art. 19 Quorum, Majority**

- (a) **Quorum.** The Board of the Association is properly convened if at least two-thirds of the members of the Board of the Association are present or duly represented.
- (b) **Majority.** In case of voting, each member of the Board of the Association shall have one vote. A simple majority of the votes of the members of the Board of the Association present is required for taking decisions, unless stated otherwise herein.

#### **Art. 20 Representation of the Association**

The Association will be legally represented towards third parties and in legal proceedings, by two members of the Board of the Association acting together.

More specific and more limiting rules for the representation of the Association, including with regard to the representation of the Association for the daily management, may be laid down in the By-Laws.

The Board of the Association may grant general or specific powers of attorney to any person it deems appropriate.

The Board of the Association is authorised to delegate or outsource parts of its tasks, but not its responsibilities, to an external party. The tasks that can be outsourced are:

- bookkeeping and accounting
- secretarial work
- collecting Membership fees
- any other tasks as the Board of the Association deems fit

### **Part 5**

#### **CHAIRMAN TREASURER, SECRETARY**

#### **Art. 21 Chairman of the Board of the Association**

The Chairman of the Board of the Association shall be responsible for :

- Having a coordinating role between the Board of the Association and the Photonics 21 EB Members and the Photonics 21 BoS.

- Being the primary contact person of the Association towards the EU Commission, Photonics 21 and third parties within the framework of the daily management, in due consideration of decisions of the Board of the Association and the General Assembly and the provisions of the By-Laws.
- Reporting to Photonics 21 on a /regular basis, on all matters related to Photonics 21, including the communication in that respect with the European Commission

#### **Art. 22 Treasurer, Secretary**

The following persons will be appointed and dismissed by the Board of the Association from within the membership of the Board of the Association:

- The Treasurer
- The Secretary

The powers of the Chairman, Treasurer and the Secretary are defined in the By-Laws.

The Treasurer and the Secretary are appointed for a term of 2 years and their mandate can be renewed. However, the Board of the Association can at any time dismiss the Treasurer or the Secretary.

### **Part 6 MEMBERSHIP FEES, FINANCIAL YEAR, ANNUAL ACCOUNTS**

#### **Art. 23 Membership Fees and other Contributions**

The Membership Fees are determined by the General Assembly upon proposal of the Board of the Association for each financial year. Such proposal shall divide the amount of the budget for each financial year that shall be covered by Membership Fees over the Members.

The Membership Fee shall be payable at such time and in such manner as shall be determined by the General Assembly.

#### **Art. 24 No individual liability for the Members**

Members of the Association do not incur by their membership any individual or joint and several liability for the Association's undertakings and the obligations of Members are strictly limited to the amount of their Membership Fee.

#### **Art. 25 Financial Year**

The financial year begins on the first of January and ends on the thirty-first of December of each year. The first financial year of the Association shall run from the date of establishment of the Association until December 31, 2014.

#### **Art. 26 Annual Accounts**

Each year the annual accounts for the past financial year and the budget for the current financial year shall be submitted to the annual meeting of the General Assembly.

Together with the annual accounts, the Board of the Association shall submit to the General Assembly a “management report” in which it shall account for its management actions and provide all legally required information.

#### **Art. 27 Audit**

If required by law, the General Assembly appoints one or more statutory auditors or any other person fulfilling the requirements imposed by law, who will be charged with the audit of the financial status of the Association, the annual accounts and the regularity of the Association’s transactions reflected in these annual accounts (“the Audit”). The statutory auditor(s) will draw up a comprehensive written report (the ‘supervision report’), which will be submitted to the annual General Assembly.

### **Part 7**

#### **BY-LAWS**

#### **Art. 28 Issuing of By-Laws**

The General Assembly on specific proposal from the Board of the Association shall adopt By-Laws compatible with the provisions of these Statutes, in order to ensure the functioning of the Association and its administration, containing but not limited to provisions regarding:

- Representation at meetings of the General Assembly;
- Representation at meetings of Board of the Association;
- Representation of the Association;
- delegation of task and/or authorisations to one or more members of the Board of the Association or third parties.

### **Part 8**

#### **AMENDMENTS, DISSOLUTION, EFFECTIVE DATE**

## **Art. 29 Amendments to the Statutes, Adoption and Amendments to By-Laws Dissolution,**

- (a) **Amendments of Statutes, Dissolution.** Decisions to amend the Statutes and/or to dissolve the Association require a majority of 75% of the Members represented in the General Assembly, while for these purposes, the General Assembly shall not be deemed to be properly convened unless three quarters of the Members are represented at the meeting.
- (b) **Adoption and Amendments of By-Laws.** Decisions to adopt the By-Laws and decisions on amendments of the By-Laws require a majority of 75% of the Members represented in the General Assembly, while for these purposes, the General Assembly shall not be deemed to be properly convened unless a simple majority of the Members are represented at the meeting.
- (c) **Liquidation.** In the event of a decision by the General Assembly to dissolve the Association, the General Assembly shall decide on the method of liquidation, and will designate the liquidator or liquidators and determine their powers. The General Assembly will also decide upon the destination of Association's funds remaining after liquidation, taking into consideration that the assets must be disposed of to the benefit of an organisation pursuing a similar and non-profit objective. All decisions shall be taken with the same quorum and majority requirements as are set forth in Article 29 (a).
- (d) In case a General Assembly is not properly convened for the resolutions referred to in paragraphs (a) (b) and (c) above, the Chairman shall call another meeting with the same resolutions on the agenda, within the following three months, which meeting shall constitute a quorum regardless of the number of Members represented, provided, however, that this has been clearly stated in the convocation of this second meeting. The majority requirements shall be as set forth in Article 29 (a).

## **Part 9**

### **GENERAL PROVISIONS**

#### **Art. 30 Miscellaneous**

All matters which are not covered by the present Statutes, shall be settled in accordance with applicable law or, if not covered in applicable law, by a decision of the Board of the Association.

#### **Art. 31 Settlement of disputes**

- (a) All disputes or differences arising directly in connection with these Statutes, the By-Laws, and the decisions taken by the bodies of the Association which cannot be settled amicably, shall be subject to the jurisdiction of the competent court of Brussels, Belgium. Such court shall have jurisdiction in the event of a counterclaim made by the defendant in any legal action.



- (b) The Members concerned and the Association may instead elect unanimously to seek to resolve by mediation any dispute or difference which cannot be settled amicably by them.

## **Annex 2**

### **By-Laws**

#### **BY-LAWS: Photonics 21 Association**

##### **Preamble**

These are the By-Laws as referred to in Article 28 of the Statutes of the Association.

In the event of a conflict or the incompatibility of any of the provisions of these By-Laws with the provisions of the Statutes, the Statutes shall always prevail.

##### **ART. 1: DEFINITIONS**

*All terms used with capital letters herein, and not defined in these By-Laws, shall have the meaning assigned to it in the Statutes of the Association.*

##### **ART. 2: MEMBERS - GENERAL ASSEMBLIES**

###### **2.1 Written Notice and agenda for the meeting.**

The prior written notice for a meeting of the General Assembly as provided for in Article 16.2 of the Statutes shall be sent by regular mail to the registered addresses of the Member Representatives.

The prior written notice shall also be sent by email for information purposes only to the registered e-mail addresses of the Members.

The notice shall contain an agenda for the meeting and identify and specify with sufficient detail the matters for which a vote will be required. The notice shall also specify the time and in case of a physical meeting, the place of the meeting, and in case that a meeting shall be held by way of electronic means of communication, the type of electronic communication for such meeting, which may also be through telephone.

###### **2.2 Voting Mechanisms.**

Voting shall be done by show of hands, or, in case of meeting by electronics means, by speech of voice or via electronic voting respectively.

The chairman of the General Assembly shall determine the voting mechanism at the beginning of the meeting.

##### **ART 3: LEGAL AND FINANCIAL POWERS AND DELEGATIONS THEREOF**

**3.1** The following categorises the representation powers to be delegated to the Chairman of the Board of the Association, the Secretary and the Treasurer. A distinction is made between Type A Powers and Type B Powers.

###### **3.2 Type 'A' Powers.**

Type A Powers are all powers of the Board of the Association listed in Art. 17 a) 1 to 8 of the Statutes, except for the powers and the actions listed in the Type B powers.

These Type A Powers comprise amongst others, solely for operational activities of the Association in accordance with the purpose:

- the signing of the daily correspondence related to the Association's activity;

- the accepting of endorsed or registered mail addressed to the Association, as well as the receiving of postal or telegraphic mandates, be they international or not, addressed to the Association in the same conditions; for this purpose granting all discharges, signing all registers and all documents;
- the signing of receipts for amounts paid to the Association;
- issuing of invoices for Membership fees and service fees from the Photonics 21 BoS members;
- the signing and terminating of all purchase contracts and license agreements for software;
- the leasing and renting of all movable and immovable property;
- the signing and terminating of labour contracts and of all documents pertaining to the personnel administration;
- the signing and terminating of contracts relating to consultancy services or other services provided by third parties;
- the signing and cancelling of insurance contracts and the signing of all correspondence related to the insurances of the Association;
- the granting of powers of attorney to third parties within the limits of this proxy to bind the Association;
- to this end, the passing and signing of all documents, and in general doing everything that is useful and/or necessary to manage the assets of the Association.

### **3.3 Type 'B' Powers – Financial powers.**

These Type B Powers comprise, solely for operational activities of the Association in accordance with the purpose

- Disposing of all the available assets of the Association by way of transfers, payments or transfer orders or by other instructions;
- Disposing of the future available assets of the Association by accepting commercial instruments such as bills of exchange, bank acceptances, letter of credits, promissory notes, order letters and any other form of debt recognition;
- Contracting all loans, by means of direct loans, credit openings or in any way whatsoever, with all banks and persons, except by means of bonds and debentures, for an amount of € 50.000. Committing the Association to repayment of the principal and to payment of the interests, at the times and in the manner to be agreed upon;
- Issuing guarantees or having them issued for the benefit of public and private institutions, both Belgian and foreign;
- Approving financial transactions on the exchange, money, capital and derived markets.

### **3.4 Attribution of Powers.**

The Type A Powers and the Type B Powers are delegated to the Chairman of the Board of the Association, the Treasurer or the Secretary, in accordance with the following provisions:

As far as the amount of the transaction does not exceed 10,000 Euros the powers can be exercised with the signature of the Chairman of the Board of the Association, acting alone or when the Chairman is not available, the signature of the Treasurer and the Secretary, acting jointly. Where the transaction in question exceeds a value of 10,000 Euros the powers can be exercised with the signature of the Chairman of the Board of the Association and the Treasurer or the Secretary, acting jointly, or when the Chairman is not available, the signature of the Treasurer and the Secretary, acting jointly.

## **ART. 4: GENERAL PROVISIONS**

### **4.1 Notices.**

**(a) Notices.** Notices to the Association, the Board of the Association, or to any other body of the Association shall be made in writing (i.e., by fax, e-mail, or letter) to the address of the Association as set forth in the Statutes under Article 2(b) as the Association's address.

Tel: +

Fax: +

E-mail:

with copy to the secretariat of the Photonics 21.

Changes to the telephone or fax numbers and email addresses of the Association shall be communicated in writing to the Members and the new telephone or fax numbers and email addresses shall be used as from the date indicated in the written communication.

All notices to the Members (i.e., by letter or e-mail) shall be made to the registered addresses (physical addresses, e-mail addresses and numbers) of the Members, as to be provided by the Members to the Chairman of the Board of the Association upon their admission to the Association. Such addresses shall be kept by the Chairman of the Board of the Association in the Association's registry. In communicating with the Members, the Association shall only use such addresses and numbers. Members have the right to change their registered addresses and number at any time and shall provide a written notice to that effect to the Chairman of the Board of the Association in accordance with this Article 4. Such change shall be effective upon its receipt by the Association.

For the avoidance of doubt, mail delivery includes delivery by postal services and by courier services.

**(b) Receipt of Notices.** Any written notice or other communication to be given or made pursuant to the Statutes, By-Laws, or resolutions of the General Assembly or Board of the Association, shall be effective upon receipt which shall be deemed to have occurred, if delivered by hand at the time of delivery, if sent by e-mail upon receipt of an automatic notification of receipt or receipt of a confirming return e-mail, if sent by regular mail two working days after posting, and if sent by registered mail five working days after posting.

### **4.2 Language.**

In general and except if requested otherwise by law, correspondence, the agenda of meetings, working documents and minutes will be in English. Except for special cases, the Association is not obliged to supply translations of documents received from outside sources.

## Annex 3

# Terms of Reference of Photonics 21

## § 1

### GENERAL

- (1) **Photonics21** is a European Technology Platform as described in the Report EUR 21265 by the Commission Inter-Service Group on Technology Platforms of the European Commission<sup>1</sup>. It is a voluntary informal association of stakeholders in the field of photonics in Europe, primarily industrial enterprises and research institutions working at the industrial-scientific interface.
- (2) **Photonics21** has been founded on 1<sup>st</sup> December 2005 in Brussels through the formation of the initial Board of Stakeholders (BoS), at that time composed of 62 individual members from leading organisations directly or indirectly involved with photonics research and development in Europe.
- (3) **Photonics21** is not registered as an independent legal entity. No individual, no group of individuals and no legal entity may engage in legal or financial transactions or responsibilities on behalf of **Photonics21**, nor may **Photonics21** or any of its members be held responsible or liable for any such activities. **Photonics21** holds no assets or possessions of any kind.
- (4) Members of **Photonics21** or of its bodies act on voluntary basis and are not entitled to financial compensation for their activities from **Photonics 21**.
- (5) shortly after the Establishment Decision, the Affiliations of the EB members (shall) have established an association named “Photonics21 Association”.

## § 2

### DEFINITIONS

- “**Affiliation**” shall mean the company, institute, university or other organisation, either employing a Photonics 21 member and/or a BoS Representative and/or an EB Member, or, in case such employment relation does not exist, having a Photonics21/BoS/EB member representing it in Photonics21. “**Association**” shall mean the association “Photonics21 Association.” established by its members in accordance with the Establishment Decision.
- “**BoS**” shall have the meaning assigned to it in § 5.
- “**BoS Member**” shall mean a member of the BoS.
- “**BoS Representative**” shall have the meaning assigned to it in § 5 (3).
- “**Election Date**” shall have the meaning assigned to it in §5(6) a).
- “**Establishment Decision**” means the decision by the BoS that the Association shall be established, which decision was taken on 14 October 2014.
- “**Executive Board**” and “**EB**” shall have the meaning assigned to it in § 6.
- “**Members Agreement**”, shall mean the agreement executed by the Members of the Association, subsequent to the Establishment Decision.
- “**Group**” shall mean either an Affiliation, or, if more than one Affiliation is controlled by a group of companies, institutes or other organisation: such group of companies, institutes of other organisations, where “to control” means having the power, whether or not normally exercised, to direct the management and affairs of another corporation or other legal entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. In the case of a corporation, to have the direct or indirect ownership of more than fifty per cent (50%) of its outstanding share capital shall in any case be deemed to confer “to control” .

<sup>1</sup>

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“**Member of the Association**”, shall mean a member of the Association in accordance with the Members Agreement and the articles of association of the Association.

“**Mirror Group**” shall have the meaning assigned to it in § 10.

“**Photonics21**” has the meaning assigned to it in §1(1)

“**Photonics21 member**” shall mean any participant in Photonics 21, as further defined in Article § 7 (1).

“**Photonics21 Secretariat**” shall have the meaning assigned to it in § 9

“**President**” means the chairman of the Executive Board, as further described in § 6(5)

“**Terms of Reference**” shall mean this present document, including its Annexes, as adopted by the BoS in its present form on October 14, 2013

“**Service Agreement**” means the service agreement between a BoS member and the Association, for the services to be rendered by the Association to the interest of Photonics 21 and to all its participants and bodies, in the form attached hereto as **Annex 1**.

“**Service Fee**” shall have the meaning assigned to it in § 5 (10).

“**SIG**” shall have the meaning assigned to it in §7 (1)

“**Work Group**” shall have the meaning assigned to it in § 8.

“**Workgroup Member**” shall have the meaning assigned to it in § 8(3)

### § 3 MISSION

(1) The mission of the European Technology Platform **Photonics21** is the concerted strategic planning, the coordination and the facilitation of photonics industrial and research activities in Europe, encompassing education, basic research, applied research, development, manufacturing and application.

(2) To this end, **Photonics21** will determine common industrial, scientific, technical, political, social and economic objectives and agree on actions to be taken in order to achieve them.

(3) These objectives and actions are reflected in a Strategic Research and Innovation Agenda (“**SRIA**”) and the prioritisation within such SRIA, which are formed and decided upon within Photonics 21 in accordance with the decision making process as set out in **Annex 2** to these Terms of Reference. This process may be changed from time to time upon approval by the BoS.

### § 4 ORGANISATION

(1) **Photonics21** is composed of the following bodies:

- The Board of Stakeholders (BoS)
- The Executive Board (EB)
- Work Groups

of which the constitution, function, responsibilities, internal way of working, position in the governance of **Photonics 21**, and, if applicable, the election and appointment, are set out in paragraphs 5, 6 and 8.

### § 5 BOARD OF STAKEHOLDERS

(1) The Board of Stakeholders (BoS) is the main decision-making body of the platform. In particular, the BoS bears responsibility for:

- the decision on all matters related to **Photonics21**, unless otherwise stated within these Terms of Reference;
- defining, pursuing and implementing the objectives of **Photonics21** in accordance with its mission;
- establishing or discontinuing Work Groups and appointing the Work Group Chairs;
- appointing the other Executive Board members, in accordance with §6(2);
- excluding BoS members in accordance with §5(9) of these Terms of Reference;
- receiving and approving the annual activity report from the President, including the activities of the Vice Presidents, the Executive Board, the Work Groups and the Photonics21 Secretariat;
- all necessary decisions on Photonics21 Membership issues;
- approving the yearly Service Fee proposed by the EB;
- excluding Ph21 members in accordance with §7(4) and §5(9) and
- changing these Terms of Reference

(2) BoS members can only be companies, institutes, universities and other organisations that either are Photonics 21 members or employ a Photonics21 member.

(3) a) Each BoS member shall have a representative to act, speak and vote on behalf of it in the BoS meetings and otherwise in relation to the tasks of the BoS set out herein, with the endorsement of the BoS member, hereinafter referred to as “**BoS Representatives**”. The BoS Member is the Affiliation of such BoS Representative. A BoS member cannot have more than one BoS Representative, unless the BoS member represents more than one independent branch, application field and/or field of technology and two or more BoS Representative can each substantially contribute to the mission and strategy of **Photonics 21** in two or equally more different Work Groups, , in which case such BoS member may have equally more BoS Representatives, if approved upon by the Executive Board, as based on these criteria. In such case the BoS member will also have equally more votes in BoS meetings.

Not more than one Affiliation within a Group can be a BoS member, unless two or more Affiliations represent more than one independent branch, application field and/or field of technology, in which case the Executive Board will approve an additional Affiliation with its candidate BoS Representative to take part in the BoS election, described in §5(6) below.

b) Each BoS members enters into a Service Agreement with the Association.

(4) The BoS members commit themselves to taking an active part in the endeavours of **Photonics21**, to comply with the responsibilities of the BoS and with the Terms of Reference and to have their BoS Representatives attend all meetings of the BoS. In the case of being unable to be represented, a BoS member may transfer the vote by proxy to another BoS Representative or to another qualified replacement representative, upon written prior notice to the Photonics21 Secretariat. In case a BoS Representative has not been present, either in person or represented through proxy, in two consecutive meetings of the BoS, its Affiliation (the BoS member) will, unless absence was due to special circumstances, be assumed to have resigned from the BoS of which written notice will be given by the President. In case such assumption is not accepted by the relevant BoS member, it can object to the exclusion and explain its position to the Executive Board who may reconsider. In case the Executive Board does not change its decision, the relevant BoS member can appeal with the BoS who shall have the final decision on such membership.

(5) BoS members are elected in accordance with § 5(6) under the condition that the majority of the BoS members shall, at any time, represent industry and/or industrial organisations, respectively, and the total size of the BoS does not exceed 100 members.

**(6) Election of BoS Members**

a) At least once a year, in the last quarter of each calendar year, there will be held an election for new BoS members. The EB will determine the date of the election (“**Election Date**”) and all Photonics 21 members will receive notice of the Election Date at least three months in advance, including the number of vacancies available. Furthermore, election of BoS members may not result in more than 30 (thirty) BoS members from the same country or less than 50% from industrial parties.

b) No later than 45 days before the Election Date new candidates can be proposed with a letter of nomination to the Photonics21 Secretariat, signed by at least 10 Photonics21 members. A candidate nomination will always contain the name of the candidate organisation together with its proposed BoS Representative, and voting on a candidate implies voting on this combination. A letter proposing a candidate, shall be in English and shall contain a description of the activities of, and information about the added value and contribution to the BoS by both the nominated BoS member and the BoS Representative. One of the nominating Photonics21 members may be required to provide further information to the Photonics21 Secretariat on the candidate combination upon request.

c) Per election each Photonics 21 member has one vote, it being understood, however, that only one vote per each Affiliation can be cast, regardless of how many Photonics21 members the Affiliation employs. It is the responsibility of each Affiliation to organise that the correct vote is cast on behalf of all the Photonics21 members it employs. New Photonics21 members cannot vote in a BoS member election, unless they have submitted their application to become a Photonics21 member at least 6 weeks prior to the Election Date.

d) Voting will take place electronically, through a web-based election tool. A vote can only be cast during the period of two weeks prior to the Election Date and on the Election Date itself. No later than four weeks before the Election Date, the Photonics 21 Secretariat will send the list of BoS candidates and the information received in that respect under sub-paragraph b) above, to each Photonics 21 member or, as the case may be, Affiliation, allowed to vote in accordance with sub-paragraph c) above, containing a login name and password for casting that particular vote (“Voting Notice”) The Voting Notice will also inform the recipients on the date when the election tool is open for voting.

e) The candidates with the most votes will be considered elected until the total of the vacancies is reached.

- In case two or more candidate combinations receive an equal amount of votes, and allowing all these candidates to be elected would cause the total numbers of vacancies to be exceeded, all these candidate combinations shall be considered to be elected.

- In case two or more candidate combinations receive an equal amount of votes, and allowing all these candidates to be elected would cause the total number of BoS members from one country to exceed 30, the EB will draw lots between these candidates, in order to admit such number of candidates that the total number of 30 is exactly reached.

- In case two or more candidate combinations, not representing industry and/or industrial organisations, receive an equal amount of votes, and allowing all these candidates to be elected would cause the total number of BoS members not representing industry and/or industrial organisations to become 50% or more of the total number of BoS members, the EB will draw lots between these candidates, in order to admit such number of candidates that the total number of BoS members not representing industry and/or industrial organisations will be one less than 50%.



(7) In general, when selecting new candidate BoS members and their BoS Representatives to the BoS, the Photonics 21 members take into account the following the standing of the candidate,

- the relevance of the candidate for pursuing and achieving the objectives of **Photonics21** and the current and potential future contribution of the candidate combination to the total platform or to the individual Work Groups, and/or the skills they would bring to enhance the BoS
- The Chairmen of the Work Groups will endeavour to include as candidates, special interest groups of consumers and end user industries, European cluster organisations and/or other entities being stakeholders in development in the field of photonics in Europe.

(8) A BoS member is elected for a period of four years, from one Election Date to the Election Date four years thereafter. However, in case a BoS member employs an EB member, the BoS member shall continue its position until its employee is no longer an EB member or until the end of the four years period, whichever comes latest, unless the BoS membership has ended for another cause or reason. Immediate re-election after the end of the four years period is possible.

a) BoS membership ends

(i) per the end of the four year period referred to above, unless the BoS member is re-elected immediately,

(ii) by a written notice of resignation by the BoS member to the President,

(iii) by a written notice of the President to the BoS Member, or, as the case may be, by a subsequent decision of exclusion by the BoS, in accordance with § 5(4)

(iv) in case the BoS member and its BoS Representative no longer fulfil the criteria to be a Photonics21 member, to be established by the EB, or in case the BoS member enters the state of bankruptcy or suspension of payment, or

(v) by exclusion in accordance with § 5(9).

b) In case the BoS Representative of a BoS member (or all of them in case of § 5(3) a) last sentence) is no longer employed by the BoS member, the BoS member can appoint a successor BoS Representative who will be in position until the next BoS election to follow, at which point in time the BoS membership ends with possibility of re-election.

c) When BoS membership ends for a BoS member, the position of its BoS Representative(s) also ends.

(9) Exclusion from BoS membership is possible on the basis of a “Severe Cause”. Severe Cause includes, but is not limited to violation by a BoS member or its BoS Representative of the regulations of these Terms of Reference, material breach by a BoS member under the Service Agreement, activities against the mission of **Photonics21**, and any actions or activities that impair the public standing of **Photonics21**. A BoS Member can be excluded with immediate effect through written notice from the President, in case of a Severe Cause that cannot be remedied, or, if remediable, is not remedied by the pertaining BoS Member within 30 days, or any other reasonable term given, after written notice to that effect from the President, followed by a decision to exclude such BoS member, taken by at least a majority of three quarters of the EB Members. The BoS member can appeal from this decision at the first BoS meeting to follow, with an appeal notice to the Photonics21 Secretariat at least three days prior to such BoS meeting. The decision of the BoS meeting requires a majority of three quarters of the BoS members present or represented by proxy and shall be final.

**(10) Service Fee to the Association:**

a) In the second half of each year, the EB will propose the service fee (“**Service Fee**”) to be paid in the next year by each BoS member to the Association under the Service Agreement, except for such BoS members that employ an EB member..

b) Once approved by the BoS, all BoS members are bound by this decision, it being understood that if a BoS member, who voted against such decision, resigns from its position within four weeks after such decision is taken, the Service Fee will not apply to the BoS member so resigning.

c) In case a BoS member has more than one BoS Representative in accordance with § 5(3), it shall pay the Service Fee one time per each of its BoS Representatives.

(11) Meetings of the Board of Stakeholders will be held once a year upon invitation of all BoS members by the President, or so much more frequent as the President or at least 15% of the BoS Members deem necessary. Any convocation of a meeting of the BoS shall take place at least three weeks before such meeting is held, and shall include the agenda of such meeting. Decisions of the BoS are made at these meetings and require the presence or representation of more than the half of the BoS members. Decisions of the BoS are taken by simple majority vote unless otherwise stated herein. An abstention or an invalid vote are considered as not voting. Each BoS Representative, including the President, has one vote.

(12) Decisions by the BoS may also be taken through electronic means, such as e-mail, on-line voting and the like.

## § 6

### EXECUTIVE BOARD

(1) The Executive Board (**EB**) is the managing body of **Photonics 21**. The EB is responsible for the coordination and execution of the operations of **Photonics 21**, for the preparation and the implementation of the decisions of the BoS and for the external representation of **Photonics 21**.

(2) The EB is composed of the **President**, up to four **Vice-Presidents** and the **Work Group(WG)** Chairs. The EB will be appointed by the BoS from amongst its BoS Representatives. At least one representative of the Photonics21Secretariat will be delegated as non-voting attendant of the EB meetings. Each BoS member can nominate candidates for the EB. Candidates for the function of President or Work Group Chair shall be appointed in such function by the BoS. A candidate EB member for the function of Work Group Chair shall have a high level of expertise and experience in the field of the pertaining Work Group and shall be a participant of such Work Group at the time of its nomination.

(3) a) Each member of the BoS can nominate its BoS Representative as a candidate for the EB. The members of the EB shall be appointed by the BoS for a period of two years, with immediate re-appointment being possible. Appointment of an EB member can only take place if the BoS member, that nominates the candidate EB member, accepts to become a Member of the Association and a Party to the Members Agreement , and to comply with all obligations attached to being a Member of the Association, as set out in the articles of association of the Association and the Members Agreement.

b) Such acceptance by the Affiliation shall be put in writing through execution of a standard document, substantially in the form, attached hereto as **Annex 3**, prior to the voting on the pertaining candidate EB member.

c) In case an Affiliation of an EB member does not accede to the Members Agreement within one month after the appointment of such EB member, or no longer is a Member of the Association whether through withdrawal, termination or exclusion in accordance with the articles of association of the Association, or as a consequence of termination of its position as BoS member, this EB member shall be deemed to have resigned immediately.

d) A BoS Representative that is appointed in the EB, retains its position as BoS Representative and its right to cast one vote in meetings of the BoS.

(4) The EB reports to the BoS at least twice a year during a BoS meeting.

(5) The EB is chaired by the **President**. The President is the official representative of **Photonics21**. He or she acts in this capacity in accordance with the rules set by the BoS and reports regularly to the BoS about his/her activities. The President may appoint one of the Vice Presidents as his/her substitute on single occasions.

(6) The EB may establish its own rules and procedures.

(7) The EB members, in their position of members of the board of the Association, will always appoint the President as the Chairman of this board.

## § 7

### PHOTONICS21 MEMBERSHIP

(1) The Photonics21 Membership forms the basis of **Photonics21**. Membership in **Photonics21** is open to all individuals, companies, institutes universities and other organisations concerned with, and active in, research and innovation in the field of photonics in Europe on a professional basis, as well as to representatives of special interest groups of consumers, end user industries, European cluster organisations and/or other European entities, being stakeholders in the development in the field of photonics in Europe (hereafter “**SIG**”), all herein referred to as “**Photonics21 members**”.

(2) Membership can be obtained by submitting an application<sup>2</sup>.

(3) Membership is for an undefined period of time. It ends by a written notice of resignation by the member to the Photonics21 Secretariat. Membership also ends by death, in case the Photonics21 member no longer fulfils the criteria to be a Photonics21 member, to be established by the Executive Board, or in case it enters the state of bankruptcy or suspension of payment, or by exclusion.

(4) Exclusion from membership is possible on the basis of severe cause. To a matter of severe clause § 5 (9) will apply mutatis mutandis for **Photonics21** members, it being understood that the initial decision to exclude the Photonics 21 member is taken by the Executive Board.

(5) Membership of **Photonics21** is free of charge. Members shall bear their own expenses arising from their participation in **Photonics21** activities.

(6) Photonics21 members contribute to the mission and to the activities of Photonics 21. This is done particularly by participating in the Work Groups. Each Photonics21 member is assigned to one Work Group according to his/her preference, and possibly to a second Work Group. However, representatives of SIGs can be assigned to more than two Work Groups upon request. In addition, Photonics21 members gain access to the restricted member area of the **Photonics21** website and receive relevant information on strategies, collaboration projects, funding opportunities, and others.

(7) Assemblies of the Photonics21 Membership will generally be held at least once a year upon invitation by the President.

(8) A complete list of the Photonics21 Membership is publicly available on the **Photonics21** website [www.photonics21.org](http://www.photonics21.org). When submitting their membership application the applicant will indicate the Work Group(s) of their preference and agree to have their names and, if applicable, Affiliation listed, and in general agree with and, to the extent relevant, will comply with, all provisions of these Terms of Reference. Each Photonics21 member has to provide an e-mail address that contains the domain name of its Affiliation or SIG, if applicable. This e-mail address will not be published on the publicly available list of Photonics21 members.

## § 8

### WORK GROUPS

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<sup>2</sup>

e.g. using the online form on the **Photonics21** website [www.photonics21.org](http://www.photonics21.org).

(1) The Work Groups (WGs) of **Photonics21** are the main centres of activities within Photonics21. They focus on application-oriented, cross-disciplinary issues and on specific tasks. Work Groups can be established or discontinued by the Board of Stakeholders.

(2) The composition of a Work Group will be established under the responsibility of its Chairperson (WG Chair), who reports to the Executive Board.

(3) Each Photonics 21 Member that applies to be part of a Work Group, will be admitted as a member of that Work Group.

## § 9

### PHOTONICS21 SECRETARIAT

(1) The BoS has established an office for the Technology Platform, the “**Photonics21 Secretariat**”, which shall provide organisational and operational support to the BoS, to the EB and to the WGs. The Photonics21 Secretariat acts on behalf of and reports to the EB.

(2) The Photonics21 Secretariat in particular provides the following support and services:

- managing all matters related to membership and administration of the platform,
- organising platform meetings and meetings of the BoS and the EB
- organise BoS member elections,
- collecting and distributing information,
- collecting Service Fees, or, as the case may be membership fees, from the BoS Members upon request from the Association.
- conducting and coordinating publications of the platform,
- acting as an internal and external contact point and
- maintaining the technology platform’s website, and
- taking minutes of the meetings of the BoS and the EB

(3) The Photonics21 Secretariat shall have access to all necessary information related to its operation. The Photonics21 Secretariat may set up its own rules and regulations which require approval from the Executive Board. Each amendment to these rules will require the approval of the Executive Board.

(4) The person(s) or the entity operating the Photonics21 Secretariat shall be appointed by the BoS every two years.

## § 10

### MIRROR GROUP

(1) A Mirror Group composed of representatives from relevant public authorities may be established.

(2) The Mirror Group shall inform and advise the BoS and the EB regarding political issues and objectives and governmental activities at national and European level. Moreover, the Mirror Group may take up recommendations developed by **Photonics21** and support their implementation.

(3) The Mirror Group may establish its own rules and procedures.

## § 11

### TRANSITIONAL PROVISIONS

(1) In view of the amendment of these Terms of Reference (“**Amendment**”), effective per 14 October 2013, “the **Amendment Date**”, certain positions within the bodies of Photonics 21 have to be re-confirmed.

(2) Provided the Affiliations of all EB members sign the Members Agreement and establish, and become a member of, the Association, all existing EB members will continue to be EB member. Their schedule of resignation as applicable prior to amendment of these Terms of Reference per the Amendment Date, will continue to apply. The position of the President, Vice Presidents and the Work Group chairmen do not change as a consequence of this Amendment.

(3) The Affiliations of the BoS members at the time of Amendment, will be deemed to have entered into the Service Agreement per the Amendment Date, and they will become the new institutional BoS member. If the Service Fee for the year 2014 is not paid by such BoS member, this will amount to a Severe Cause, as referred to in § 5(9).

(4) The BoS members at the Amendment Date will, as from the Amendment Date, be the BoS Representatives of the new institutional BoS members. If, in case as a result thereof a BoS members has more than one BoS Representative, all such BoS Representatives remain in their position and the approval by the EB, as referred to in § 5(3) a) last sentence, is deemed given.

(5) Immediately upon the election of BoS members in the last quarter of 2015, the Executive Board will determine by drawing lots, which BoS members, that have become a BoS member as a consequence of the Amendment of these Terms of Reference per October 14, 2013, will have a BoS membership period of respectively four, three, two and one year, calculated from the date of such drawing of lots, it being understood that the exact end of each BoS membership period will be the same date as the Election Date in the relevant year.

(6) There will be no changes to the Photonics 21 membership, to the constitution of the Work Groups, their Chairmen, or to the Photonics 21 Secretariat, as a consequence of this Amendment.

## **§12**

### **COMPLIANCE**

(1) In the execution of the activities related to Photonics 21 all Photonics 21 members, whether or not in the position of Work Group member, BoS Representative of EB member, shall adhere to all laws and regulations applicable to both themselves, Photonics21, the Association and the commercial relationship with the other Photonics21 members, including, but not limited to, criminal law, competition laws and export control laws, and shall refrain from all practices which may lead to penal liability due to fraud, crimes in violation of competition laws, bribery or other corruption crimes. Any verifiable violation of the above, by a Photonics21 member will be regarded as a Severe Cause.

## **§ 13**

### **CONCLUDING CLAUSE**

(1) These Terms of Reference have been amended and adopted to its present form by the Board of Stakeholders during at special BoS meeting held on October 14, 2013 in Brussels and are in effect from that date on.

(2) Decisions regarding amendments of these Terms of Reference shall be taken with a majority of at least two-third of the BoS members present or represented by proxy.

Annexes:

Annex 1: Service Agreement

Annex 2: SRA decision making process

Annex 3: Statement candidate EB member Affiliation

**Annex 1**  
**Service Agreement**

Between:

The Association: Photonics21 Association, with registered office at ..... , ..... in ..... ,  
hereinafter “**the Association**”,

and

....., with registered office at ..... , ..... in ..... ,  
hereinafter “**BoS Member**”

Agree as follows:

- 1) All terms used herein with initial capital shall have the meaning assigned to them in the Terms of Reference of the European Technology Platform Photonics 21, which is known by both parties hereto.
- 2) The Association provides and will provide various services to BoS Member and to all other BoS members, as well as to Photonics 21 and its Photonics 21 members, the Work Groups, the BoS and the EB, with the purpose to promote R&D in the Photonics industry in order to strengthen the Photonics industry in the European Union and thereby acting in the interest of Photonics 21.
- 3) For these services, each year BoS Member will pay a Service Fee, the amount of which shall each year be established by the BoS at the proposal of the EB. However, if, and as long as, BoS Member employs an EB Member, it does not pay the Service Fee.
- 4) BoS Member shall receive an invoice from the Association for the Service Fee, sent by the Photonics21 Secretariat, which invoice shall be paid within 30 days after the date of such invoice.
- 5) If the BoS Member does not agree with the decision by the BoS regarding the Service Fee and voted against it, and resigns from its position as BoS member within one month after such decision is taken, BoS Member is not obliged to pay the Service Fee and consequently this Service Agreement ends per the date of BoS Member’s resignation.

Agreed by and signed on behalf of:

Association Photonics 21

[name BoS Member]

Name:

Name:

Function:

Function:

Date:

Date:

## **Annex 2**

### **Decision Making Process SRIA**

#### **Operational structure and decision making process in Photonics21**

Photonics21 consists of three organisational layers with following roles and tasks:

- The **Work Groups (WGs)** are the major source of strategy development within the Photonics21.
- The **Board of Stakeholders (BoS)** reviews the outcomes of the work group strategy and votes on the overall priorities and focus of the PPP.
- The **Executive Board (EB)** executes the decisions of the Board of Stakeholders - through the PPP association - and will be the mouthpiece of the ETP towards the European Commission in the PPP.

**Work Groups (People): Strategy Development** (Proposal: “Multiannual Roadmap” as well as “Research and Innovation Priorities for Horizon2020 PPP work programmes”)

The Photonics21 ETP Membership forms the basis of the Photonics21 PPP. Membership in the ETP Photonics21 will continue to be on a personal basis and open to all concerned with and active in research, innovation and manufacturing in the field of photonics in Europe on a professional basis. This also includes end user industries and European cluster organisations and national technology platforms. Each member (currently >2000) is assigned to a WG according to his/her preference. Thus, all strategic issues to be addressed in the PPP will originate from the WGs. The Photonics21 WGs each draft their strategy documents and research and innovation priorities for the PPP. Subsequently, the EB and more specifically the WG chairs within the EB are coordinating the input from the WGs and preparing submissions to facilitate the decision-making process in the BoS.

#### **Board of Stakeholders (Parliament): Prioritization and Decision Making**

The respective Photonics21 WG draft strategy documents and research and innovation priorities for the PPP are reviewed and prioritized (by vote, if needed) by the Photonics21 Board of Stakeholders (BoS). Therewith the BoS determines the PPP strategy (like the Photonics PPP Multiannual Strategic Roadmap) and a focussed set of Research and Innovation priorities for the Photonics PPP.

#### **Executive Board (Government): Execution**

The Photonics21 Executive Board (EB), democratically elected by the BoS members for a period of two years, is executing the decisions of the Board of Stakeholders and builds the strategic link between the BoS and the WGs.



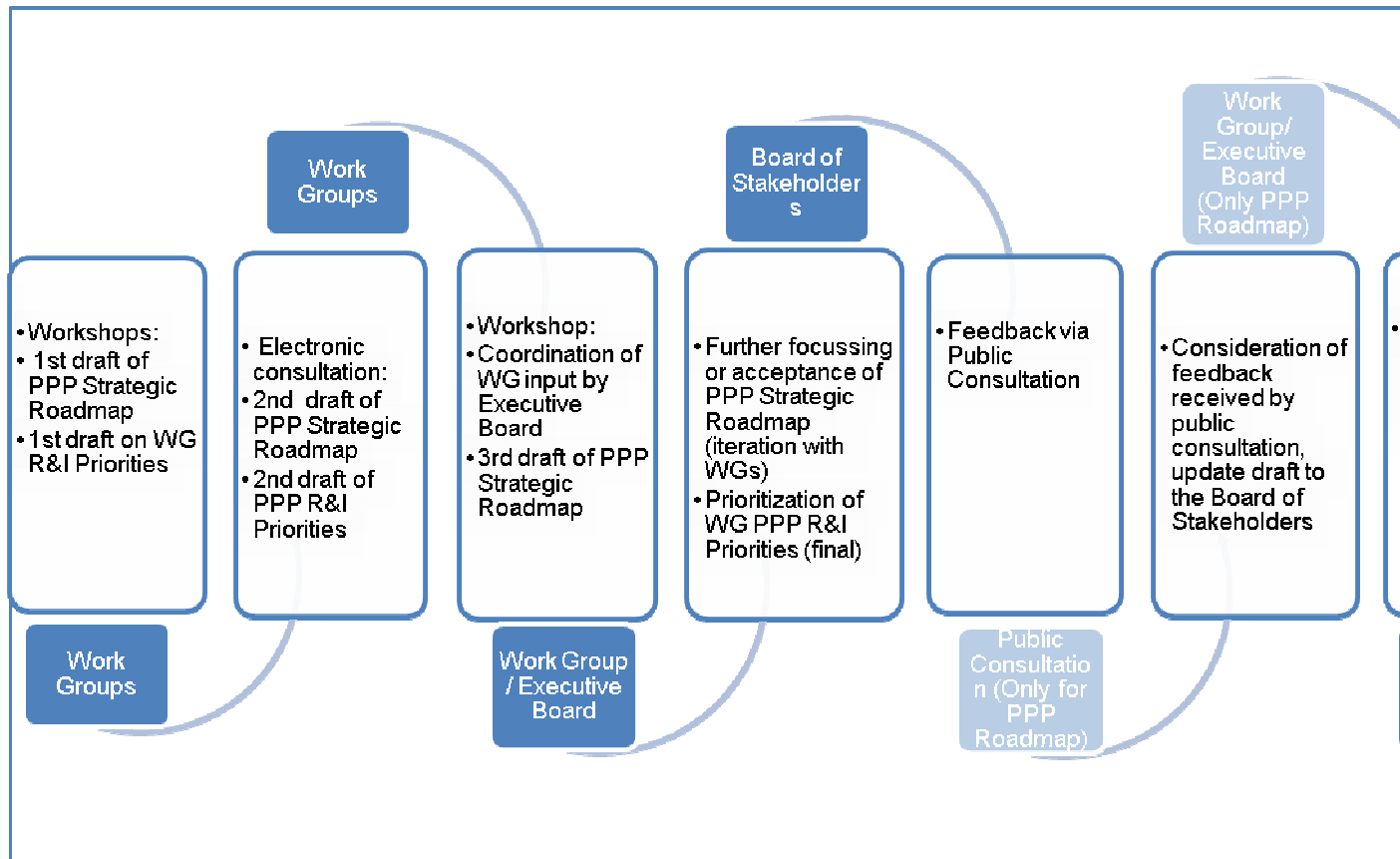


Figure 13: Decision making process: Photonics21 PPP Multi Annual Roadmap and PPP Research and Innovation (R&I) Priorities

**Template for setting research and innovation priorities for Horizon2020 PPP work programme [Period] (circulated to the WG Chairs)**



**Photonic PPP**  
**Photonic21 Research and Innovation topics for the Horizon2020 PPP**  
**Work Programme [period]<sup>3</sup> (e.g. 2014 -2015)**

**WORK GROUP No:**

**Per work group**

- 1. Research topics: Time to market ~6-10 years**
- 2. Innovation topic: Time to market ~3 years (optional)**

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<sup>3</sup> Number of work group proposals on research/innovation topics is not limited

## I. Preamble:

. There will be at least one call per year where Research and Innovation (R&I) actions under the Photonics PPP (and under the cross-cutting KETs WP) could be supported by the EC

There is therefore a need for:

1. Defining in much more detail than the level of description provided in the SRIA each of the specific R&I actions which could be candidates for inclusion in the ICT WP [Period]
2. Prioritising such candidate R&I actions (incl. the definition of the respective budget figures) for their inclusion in the ICT WP [Period].

The purpose of this document is therefore to request, from each of the WG, specific inputs with regard to items 1 and 2 above. Separate inputs are requested for the research actions (topics) and for the innovation actions.

## II. Description of the area where Horizon2020 funding is requested (1 page max)

### 1. Area to be addressed

- Application domains<sup>4</sup> (e.g. “Automotive”)
- targeted application (e.g. “Sensors for automotive safety”)

### 2. Position of Europe in the application domain (research, industry), foreseen evolution from now to 2020+ **What is the challenge (in Europe) in the respective area today?**

*(e.g. The excellent results obtained by European research centers and industrial labs in the field did not give birth to any product up to now; the reason is 3-fold:*

- *Some materials involved and process steps do not exist in current foundries.*
- *Large investment are needed to produce this new technology in European foundries*
- *Tier 2 suppliers in this field are quite weak in Europe; European Tier 1suppliers currently implement Asian products in their commercial equipment.)*

### 3. What needs to be done?

*Necessary steps to overcome the problem described, including the type of activity (research, innovation, other)?*

*(e.g.:*

- a. Consolidate R&D in the field, especially regarding the validation of the technology by Tier 1 suppliers and automobile manufacturers (Research activity).*
- b. Set-up a pilot production line involving the technology providers as well as the potential European customers; they should be provided a free access to the products of the pilot line and integrate them in equipment pre-series (Innovation activity).*
- c. Explore the other potential fields of valorisation, including niche markets, where cost constraints can be relaxed (Innovation activity).*

### 4. When should it be launched and how much funding is needed?

*In which year should the area be called: as part of WP [year a] or WP [year a+1]?*

*(e.g.:*

- a,c WP2014*
- b. WP2015)*

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<sup>4</sup> For horizontal work groups focus can be on generic technology domains

### **III. Proposal for Research or Innovation Topic(s) (2 page max) in Horizon2020 WP [Period]**

For each Research or Innovation topic, please provide a few lines of description which comprises of at least the issues listed below under 1 to 6 (for the level of granularity of the description per R&D topic, see for example the WP text of Objective 3.2 Photonics under the ICT FP7 WP 2013)<sup>5</sup>. Innovation actions can be in the form of a pilot production line, a demonstration action, a combination of these or any other form of action.

#### **1. Research or Innovation Topic (the title should specify explicitly the nature of the topic, i.e. “Research” or “Innovation”):**

1. **Description of the topic, objective:** *What shall be reached in concrete terms including Specs and TRL?*<sup>6</sup>
2. **Relevant Research & Innovation present in Europe?**  
*What is the positioning of EU research of this topic? With regard to the current EU industrial landscape, are the results likely to be exploited in the EU?*
3. **Impact on European economy, employment;** *What is/are the concrete business case(s)? Why/how will it improve the competitiveness of the EU industry? Direct market potential [market fig.]/ impact on End user markets [market fig.]; Which value/supply chain(s) does the product(s) address, which parts of the value/supply chain(s) are likely to be located in Europe? Creation of jobs in Europe;*
4. **Impact on societal challenges**
5. **EU added value:** *Need for EU investment rather than national or local investment? Why should it be funded at EU level?*
6. **Funding:** *What could be the share of financing requested under Horizon 2020 compared to the overall investment required (only for innovation actions)?*

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<sup>5</sup> See <http://cordis.europa.eu/fp7/ict/docs/ict-wp2013-10-7-2013-with-cover-issn.pdf>, pages 40-42.

<sup>6</sup> Note: In the particular case of a pilot production line, please define the TRL ([http://de.wikipedia.org/wiki/Technology\\_Readiness\\_Level](http://de.wikipedia.org/wiki/Technology_Readiness_Level)) of the action and whether this is an "open" access pilot or not..

## 2. Evaluation criteria

### **EU added Value: Yes/No**

*Please note that any action proposed needs to have an EU added value to be considered.*

<b>Criteria</b>
<b>Economic relevance of the Application domain</b>
<b>Relevance of the Topic: Research and/or Innovation present or can be built up</b>
<b>Impact of the topic on economy, employment and societal challenges</b>
<b>EU added value</b>
<b>Value for money</b>

**3. Time planning:  
Photonics21 Research and Innovation Priorities for Horizon2020 Work  
Programme [Period]**

<b>Date</b>	<b>Action Item</b>	<b>Coordination level</b>
	Preparation of the WG priorities by Work Group Chairs/Sherpas (or as the case may be smaller editor group) - based on the Photonics Multi-Annual Roadmap	<b>WG Level</b>
	WG chairs send out WG proposal to WG membership	
	Deadline for feedback from WG members	
	Final, consolidated proposal circulated to the WG	<b>WG Level</b>
	WG Chair/Sherpa meeting on prioritization of Ph21 WG proposal for Horizon2020 WP [Period]	<b>EB Level</b>
	WG Chair/Sherpa meeting - prioritization of Ph21 WG proposal for Horizon2020 WP [Period]	
	Executive Board Telco: Prioritization of WG Proposals (EB Proposal) WP [Period]	<b>EB Level</b>
	Circulation of the 1 <sup>st</sup> EB Proposal to the BoS	
		<b>BoS Level</b>
	Feedback from BoS on 1 <sup>st</sup> draft EB Proposal	
	Telco: WG Chair/Sherpa - prioritization of Ph21 WG proposal for Horizon2020 WP [Period] result: 2 <sup>nd</sup> draft EB Proposal	
	Circulation of the 2 <sup>nd</sup> draft EB Proposal to the BoS	
	Feedback from BoS on 2 <sup>nd</sup> draft EB Proposal	
	Telco: Executive Board - prioritization of Ph21 proposal for Horizon2020 WP [Period]	
	Circulation of the final Photonics21 Proposal to the BoS	
	EB/Sherpa: Meeting with the EC on Work Programme topics	<b>EB/EC Level</b>

	EB: Report back to the BoS on the outcome of the meeting with the EC	<b>EB/BoS Level</b>
	EB and BoS discuss and finalise the Ph21 Horizon2020 WP [Period]	<b>EB/BoS Level</b>

**Annex 3**  
**Statement candidate EB member Affiliation**

The undersigned, ....., with registered office  
at ....., in ....., hereafter “BoS member”, herewith states that:

- 1) it is aware that its BoS Representative, ....<name> ..... (“the Candidate“), is a candidate EB member and
- 2) if the Candidate is appointed as EB member, BoS member shall accede to the Members Agreement, the content of which is know to it, in accordance with the relevant provisions thereof, and become a Member of the Photonics21 Association, and comply with all obligations connected thereto.

Signed on behalf of .....<name BoS member> .....

Name:

Function:

Date:



## Annex 4 Deed of Accession

..... **GmbH/B.V./, SarL/etc.** a ..... corporation/legal entity having its principal office at .....[ address]....., .... [country]. ....., hereinafter referred to as “.....”, and

..... **GmbH/B.V./, SarL/etc.** a ..... corporation/legal entity having its principal office at .....[ address]....., .... [country]. ....., hereinafter referred to as “.....”, and

..... **GmbH/B.V./, SarL/etc.** a ..... corporation/legal entity having its principal office at .....[ address]....., .... [country]. ....., hereinafter referred to as “.....”, and

[etc.]

all hereinafter together referred to as "**Members**" [and represented by ...[Chairman of the Board].....],

and

.....  
(Company/institute/etc. name, address, country ), herein duly represented  
by .....  
Direct contact name  
Tel: .....  
E-mail: .....

– hereinafter referred to as "**X**"

Whereas

- the Members have executed or acceded to the Members Agreement, a copy of which is enclosed as appendix, hereinafter referred to as "the Agreement",
- the accession of further parties is made possible according to Article 5 of the Agreement,
- **X** wishes to accede to the Agreement, and
- an employee of [X] was appointed by the Photonics21 B.o.S. as Photonics21 EB Member of Photonics 21,

Therefore the Members and **X** agree as follows

- 1) All terms herein used with capital shall have the meaning assigned to it in the Agreement.
- 2) All Members and [X] accept with effect from ..... [X's] accession as a Party to the Agreement.
- 3) "[X]", recognises and accepts the conditions of the Agreement, including the Articles of Association and the By-Laws of the Association, both in their most recent (amended) form, as well as the resolutions taken by the Board of the Association, prior to the date of this accession.

..... [ X ] .....

.....  
(Place of Business

.....  
(Signature)

Name:

Date:

**On behalf of all Members:**

.....  
(Signature)

Name:

Function: Chairman of the Board

Date: