

EVALUATION AGREEMENT

Between: **Stichting IMEC Nederland**, having its registered office at High Tech Campus 31, 5656 AE Eindhoven, The Netherlands ("IMEC") and

Fundació URV, with its registered offices at C/Escorxador s/n, 43003 Tarragona, ("Partner A") and

Institute of Organic Chemistry and Biochemistry of the CAS (Ústav organické chemie a biochemie AV ČR, v.v.i.), with its registered offices at Flemingovo nám. 542/2, 160 00 Prague 6, Czech Republic ("Partner B").

Partner A and Partner B shall be collectively referred to as "University".

Individually referred to as a "Party" and collectively as "Parties", as the case may be.

- (A) Whereas IMEC is active in advanced research in the field of nano-electronics and digital technology;
- (B) Whereas IMEC has acquired and developed a substantial amount of valuable Confidential Information, as hereinafter defined, [REDACTED];
- (C) Whereas the main objective of Fundació URV (Partner A), is to promote relations between the University Rovira i Virgili (URV), society and the socioeconomic environment, to promote research, innovation and lifelong learning, and to act as a structure that channels and conveys the transfer of knowledge and technology from the URV. In accordance with article 106 of the URV Statute and article 5 of the founding Statutes of the Fundació URV, and the management assignment formalized by resolution of the URV Rector's Office dated 22 July 2022, approved by the Governing Council on 19 July, the Fundació URV is the entity entrusted by the URV to manage research and development contracts and agreements, and services with companies and public and private entities provided for in article 60 of the LOSU, Organic Law 2/2023 of 22 March on the university system, and other applicable legislation.
- (D) Whereas the Partner A has a Tool to be used for the performance of the Evaluation as hereinafter defined;
- (E) Whereas the Partner B has a Tool to be used for the performance of the Evaluation as hereinafter defined;
- (F) Whereas the Parties are willing to enter into this Agreement in order to perform the Evaluation and to share the Evaluation Results in accordance with the following terms and conditions;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereto agree as follows:

1. DEFINITIONS

1.1 "Affiliate" means any legal entity, which is

- (a) Controlling a Party, or
- (b) under the same Control as a Party, or
- (c) Controlled by a Party.

"Control" or "Controlled" or "Controlling" as referred to in sub items (a), (b) and (c) above shall exist through the direct or indirect power to exercise a decisive influence on the appointment of the majority of the directors or managers, who have a decisive vote.

A legal entity shall be deemed to be an Affiliate only as long as the Control lasts.

- 1.2 **“Agreement”** means this evaluation agreement and its Technical Annex.
- 1.3 **“Background”** means the full range of a Party’s Intellectual Property Rights and factual knowledge, including but not limited to recipes, processes, specifications, methods, practices and procedures in the same field as the Evaluation (a) existing on the Effective Date and/or (b) licensed to, acquired or developed by a Party outside of this Agreement but during the term of this Agreement, and which that Party is free to dispose of.
- 1.4 **“Confidential Information”** means any information and data of a confidential nature, labelled as such, including but not limited to technical, developmental, marketing, sales, operating, performance, cost, know-how, trade secrets, business and process information, computer programming techniques, and all record-bearing media containing or disclosing such information and techniques, which are disclosed by a Party or its Affiliates (hereinafter referred to as the “Discloser”) to another Party or its Affiliates (hereinafter referred to as the “Recipient”) within this Agreement. A Party remains liable for compliance by its Affiliates with this Agreement.
- 1.5 **“Effective Date”** means the date of signature of the last signing Party.
- 1.6 **“Evaluation”** means the evaluation activities performed under this Agreement as further detailed in Article 2 and the Technical Annex.
- 1.7 **“Evaluation Results”** means the results originating from the performance of the Evaluation, being factual measurement data and/or the analysis thereof, irrespective of whether or not they can be protected by any form of Intellectual Property Right.
- 1.8 **“Intellectual Property Rights”** or **“IPR”** means any and all intellectual property rights, whether registered or not, including any applications therefor, such as, without limitation, patents, copyrights, copyrights in software, database rights, design rights, semiconductor products, mask rights, industrial designs, utility models and other similar or equivalent forms of protection, recognized under any applicable law in any country worldwide.
- 1.9 **“Personnel”** means employees, consultants, advisors, subcontractors, (PhD) students and postdocs within a Party’s organization, and those within a Party’s Affiliates’ organization.
- 1.10 **“Samples”** [REDACTED]
- 1.11 **“Technical Annex”** means the technical annex attached hereto which forms an integral part of this Agreement.
- 1.12 **“Tool”** [REDACTED]

2. SCOPE AND PERFORMANCE OF THIS AGREEMENT

- 2.1 **Scope.** The Parties shall, for the purpose of this Agreement, perform the Evaluation as follows:
- (a) IMEC shall send the Samples to Partner A and Partner B ;
 - (b) IMEC shall provide University with all information related to the Samples reasonably necessary for the performance of the Evaluation;
 - (c) University shall use its Tool to perform the Evaluation;
 - (d) the Parties shall jointly discuss the Evaluation Results.
- 2.2 **Performance.** The Parties agree to perform the Evaluation on a reasonable business endeavour basis taking into account the actual status of knowledge in the scientific field concerned (hereafter the “State of the Art”). Notwithstanding the above, the Parties agree that, given the State of the Art, no Party warrants the actual achievement of the aim of this Agreement or any particular deliverable and no Party shall be liable to another Party for the absence thereof nor for any delay in the implementation.

- 2.3 **Place of performance for IMEC.** The Parties acknowledge that for IMEC, the Evaluation will be performed at the premises of OnePlanet Research Center, Plus Ultra II, Bronland 10, 6708 WE Wageningen The Netherlands.
- 2.4 **Shipment.** The Parties agree that IMEC shall arrange at its cost for delivery of the Samples and will be under DAP (to receiving Party's (Partner A + Partner B) registered office as set forth above Incoterms @2020

3. FINANCIAL PROVISIONS

Unless otherwise agreed during the performance of this Agreement and mentioned in a written notification signed by the Parties, the Parties agree that no fees are payable within the frame of this Agreement by one Party to another Party. Each Party shall bear its own costs incurred during the performance of the Evaluation.

4. CONFIDENTIALITY

- 4.1 **Labelling.** All Confidential Information shall, if in written, visual or electronic form, be marked as "Confidential" or marked with a similar label before being turned over to the Recipient. All oral disclosures of Confidential Information shall be identified as being confidential at the moment of disclosure and shall be summarized or confirmed in writing by the Discloser.
- 4.2 **Confidential Information.** Confidential Information, unless as otherwise agreed upon in this Agreement, shall remain the property of the Discloser. The Recipient shall cease using the Confidential Information of the Discloser upon termination or expiration of this Agreement or within 30 days of receipt by the Recipient of a written request from the Discloser, subject to Article 5.2.
- 4.3 **Samples, Tool.** IMEC shall remain owner of the Samples. University shall remain owner of the Tool. The Parties hereby agree that the Samples and the Tool shall be treated as Confidential Information by the Recipient (even if not identified as confidential by the Discloser) and shall be handled by the Recipient in accordance with the terms and conditions of this Article 4.
- 4.4 **Allowed disclosures.** The Recipient has the right to disclose the Confidential Information only to its Personnel, provided that,
- (a) they are engaged in the performance of this Agreement,
 - (b) they have a need to know for the execution of this Agreement,
 - (c) they are informed of the confidential nature of the Confidential Information and
 - (d) they agree to be bound by terms no less stringent than the ones set forth in this Agreement.
- 4.5 **Degree of care.** To avoid disclosure of Confidential Information to any third party, the Recipient shall, at all times, treat the Confidential Information with the same degree of care that is used with respect to its own information of similar importance which is to be kept confidential, and with not less than a reasonable degree of care. The Recipient shall be liable for disclosure of the Discloser's Confidential Information if such care is not used and the burden shall be upon the Recipient to prove that such care was effectively used.
- 4.6 **No modification.** The Recipient agrees not to modify, analyse, reverse-engineer, decompile or disassemble the Confidential Information in any way in order to determine its composition or build-up without the express prior written permission from the Discloser.
- 4.7 **Right to refuse.** Each Party shall have the right to refuse to accept any Confidential Information if it believes that receiving such Confidential Information would limit or restrict in any way the use of its own technology or otherwise impair its business interests, while nothing herein shall oblige a Party to disclose any particular information to another Party.

- 4.8 **Exceptions.** The above-mentioned obligations of confidentiality shall not apply to any information if the Recipient can prove that the information concerned:
- (a) is already in the public domain at the time of disclosure or becomes available to the public through no breach of this Agreement by the Recipient; or
 - (b) was already in the possession of the Recipient prior to its disclosure; or
 - (c) is received independently from a third party free to disclose such information; or
 - (d) is independently developed without the use of the Confidential Information of the Discloser; or
 - (e) is approved for release by prior written authorization; or
 - (f) is required to be disclosed by rule of law or by final court or administrative order, provided that prior notice of such requirement is furnished to the Discloser.
- 4.9 **Public domain.** Confidential Information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are, or become, known to the public.
- 4.10 **Survival.** The Recipient's confidentiality obligations hereunder with respect to each item of Confidential Information shall survive termination or expiration of this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement.

5. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY RIGHTS

- 5.1 **Background.** Each Party shall retain undivided ownership in and to its Background.
- 5.2 **License.** Each Party grants to the other Parties a non-exclusive, non-transferable, royalty-free and world-wide license, without the right to sublicense, on that part of its Background which is necessary for the performance of the Evaluation, and solely for the term of this Agreement.
- 5.3 **Evaluation Results.** The Evaluation Results are jointly owned by IMEC and the Partners with each Party having an undivided and equal interest in that ownership. Each Party is free to use the Evaluation Results for its own research (non-commercial) purposes. Notwithstanding the foregoing, any other use of the Evaluation Results (namely for commercial purposes) is subject to a written agreement of IMEC, Partner A and Partner B, where dispositions with Evaluation Results shall be agreed in detail.
- 5.4 **No IPR or license grant.** No Intellectual Property Right or license is granted by this Agreement with respect to a Party's Confidential Information and Background, subject to the exception mentioned in Article 5.2.

6. PUBLICATION

- 6.1 **Evaluation Results.** Unless otherwise agreed by the Parties, any publication of or which includes the Evaluation Results within a period of five years after expiration or termination of this Agreement has to be approved in writing by the Parties prior to such publication. No Party shall unreasonably withhold its approval for such publication, except if such publication may prejudice protection by an Intellectual Property Right or jeopardize a Party's business interests. In case a Party has not responded to a request for publication or dissemination within 30 calendar days after the requesting Party has sent the intended publication to the other Parties, the requesting Party may proceed with such publication or dissemination.
- 6.2 **Background.** Publications including a Party's Background shall always need to be approved by the Party owning such Background subject to the term set forth in Article 4.10 of this Agreement.

7. TERM AND TERMINATION

- 7.1 **Effective Date and Term.** This Agreement shall enter into force on the Effective Date and shall remain in force for a period of one (1) year, unless terminated sooner in accordance with the terms provided herein.

7.2 **Termination.** A Party shall have the right to terminate this Agreement for any substantial breach of any of the Articles of this Agreement by another Party provided that a 30 calendar days' notice is given in writing by registered mail, and such breach has not been remedied prior to expiration of such notice period.

7.3 **Surviving articles.** Notwithstanding the expiration or termination of this Agreement by a Party, all provisions which by their nature survive the term of this Agreement will remain in full force and effect after the expiration/termination of this Agreement.

8. WARRANTY - LIABILITY

8.1 **Warranty.** Except as otherwise expressly provided in this Agreement, the Parties agree that no warranties of any kind are given, including but not limited to implied warranties of merchantability or fitness for any particular purpose with respect to Confidential Information, Background or Evaluation Results. No Party warrants that the use of the foregoing shall not infringe any Intellectual Property Rights of a third party. Any information exchanged under this Agreement is provided "AS IS", without warranty of any kind. No Party shall be liable for any damages arising out of the use of such Party's Confidential Information, Background or Evaluation Results by the other Parties.

8.2 **Limited liability.** To the extent permitted by applicable mandatory law, no Party shall be liable for any indirect, incidental or consequential damages including but not limited to, loss of profit or loss of opportunity, nor for direct damages except in case of gross negligence or wilful misconduct of a Party.

9. MISCELLANEOUS

9.1 **Disputes.** All disputes between the Parties in connection to the validity, interpretation, execution or termination of this Agreement shall first be discussed in good faith between the Parties in order to try to find an amicable solution. If no such solution can be found to settle the dispute within 45 calendar days after giving notice to the defaulting Party, the dispute will be submitted to the courts of Leuven, Belgium, which will have the sole jurisdiction. This Agreement shall be governed and construed in accordance with the laws of Belgium, and no effect shall be given to any national or international conflict-of-laws provisions.

9.2 Export compliance.

- (a) Each Party assures that it will not (a) use any item or technical data (herein referred to as "Item") received from the other Parties under this Agreement in (i) the design, development, production, stockpiling or use of weapons of mass destruction, such as nuclear, chemical or biological weapons nor for any missiles or UAV that are capable of delivering such weapons; (ii) military end-use in a country under arms embargo, or (iii) threats to public security, including the prevention of acts of terrorism, cyber-surveillance activities and/or human rights violation, (b) export and/or re-export, transfer or release (collectively "Export") the Item to its Personnel and/or third party who is known or suspected to be involved in relation to any such activities.
- (b) Each Party shall be responsible for compliance with all applicable export control and economic sanctions laws and regulations in connection with any Export of an Item that such Party and its Personnel carry out. Each Party assures that it will not directly or indirectly Export any Item to any Personnel, destination, person, entity or end user prohibited or restricted under such export control regulations, without obtaining prior authorization from the applicable government authorities to the extent required by those laws.
- (c) Upon request by the receiving Party, the disclosing Party will provide the receiving Party with the Export control classification Number (ECCN) and ITAR/ML of any export-nature of the Item(s) and related specific instructions, if applicable.

9.3 **Necessary powers.** Each Party warrants and represents that it possesses all necessary powers and rights to comply with the obligations set forth in this Agreement.

- 9.4 **Entire agreement.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and supersedes all prior communications, agreements, and understandings relating to it.
- 9.5 **Modification.** The provisions of this Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by the Parties.
- 9.6 **Assignment.** This Agreement may not be assigned by a Party without the prior written consent of the other Parties. A Party shall not unreasonably withhold, condition or delay its consent. A request for approval of such assignment should be provided to [REDACTED]. Any purported assignment without such prior consent shall be null and void. In case of an assignment by a Party without prior consent of the other Parties, such Party will be deemed to be in breach and the other Parties are entitled to terminate this Agreement in accordance with Article 7. For the avoidance of doubt, a permitted assignment in accordance with this Article 9.6 shall be definitive and shall mean that the assigning Party is being replaced by the approved assignee.
- 9.7 **Severability.** The partial or complete invalidity of any of the Articles or provisions set out by this Agreement will not result in the invalidity of the Agreement itself. Any partially or completely invalid Article or provision set out by this Agreement will automatically be substituted by a valid Article or provision concurring with the original intention of the Parties.
- 9.8 **Waiver.** Consent by a Party to, or waiver of, a breach of any Article of this Agreement by the another Party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
- 9.9 **Headings.** The headings in this Agreement are for the convenience of the Parties only and shall not be considered in the construction or interpretation of this Agreement.
- 9.10 **Independent contractors.** The relationship of the Parties is that of independent contractors. This Agreement does not create an agency, partnership or similar relationship between the Parties.
- 9.11 **Prevalence.** In case of conflict between the Technical Annex and the terms and conditions of any other document or agreement, except for this Agreement, the Technical Annex shall prevail. In case of conflict between the provisions of the Technical Annex and the terms and provisions of this Agreement, the terms of this Agreement shall prevail.
- 9.12 **Execution.** The signature of a Party via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via DocuSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility. Each Party receives a fully executed copy of this Agreement. Delivery of the fully executed copy via e-mail or via an electronic signature system shall have the same force and effect as delivery of an original hard copy.
- 9.13 The Parties agree with publication of the Agreement in the Register of Contracts under the Czech Act No. 340/2015 Coll., On the Register of Contracts. Publication of the Agreement in the register shall be done by Partner B.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates specified below:

For IMEC

Name: Mr. Jo De Boeck

Title: Managing Director

Date: 13 September 2024

For Partner A
Fundació URV

Name: Francesc López Saperas

Title: Resources Director

Date: 16 de septiembre de 2024

For Partner B

Institute of Organic Chemistry and Biochemistry of the CAS

Name: prof. RNDr. Jan Konvalinka, CSc.

Title: Institute Director

Date: _____

Technical Annex

