

# JOINT PROCUREMENT AGREEMENT

## Pilot Line xxxx

The **Chips Joint Undertaking** (hereafter “the “Chips JU”), represented for the purposes of signature of this agreement by its Executive Director, Jari Kinaret,

and

the following competent contracting authority of the [name of the Member State/Hosting Entity entrusted by the Member State in accordance with the Procurement Directive], Member State of the Chips Joint Undertaking,

[name of the contracting party of the Member State], represented by [name and position], hereafter “National Contracting Authority

In this Agreement, the Chips JU and the National Contracting Authority are referred to collectively as the “Contracting Parties” and individually as “Contracting Party”.

### PREAMBLE

#### WHEREAS:

(1) The Chips Joint Undertaking (“the Chips JU”) was established by Council Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe<sup>1</sup> (hereinafter “SBA”) and by its amendment, Council Regulation (EU) 2023/1782 of 25 July 2023<sup>2</sup>. (hereinafter, “the Regulations”).

(2) In addition, Regulation (EU) 2023/1781 of 13 September 2023<sup>3</sup> (hereinafter “Chips Act”) establishes in its third recital that one of the objectives of the Chips JU is to create the necessary conditions for enhancing the Union’s competitiveness and innovation capabilities. In line with this, the fourth recital introduces the “Chips for Europe Initiative” (hereinafter “the Initiative”), with the primary objective of facilitating the convergence between the Union’s advanced research and innovation capacities and their sustainable industrial utilization.

(3) The Chips Act also introduces the concept of pilot lines as a strategic tool within the Initiative for attaining its objectives. More specifically, in Recital (16) the Initiative aims to bolster both the improvement of existing pilot lines and the establishment of new advanced pilot

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<sup>1</sup> OJ L 427, 30.11.2021, p. 17–119.

<sup>2</sup> OJ L 229, 18.9.2023, p. 55–62.

<sup>3</sup> OJ L 229, 18.9.2023, p. 1–53

lines, fostering the progress and implementation of state-of-the-art semiconductor technologies and next-generation innovations in the semiconductor sector. These designated pilot lines are intended to serve as industry facilities where the testing, experimentation, and validation of semiconductor technologies and system design concepts can occur.

(4) Pursuant to Article 12(1) of the Chips Act the implementation of the Initiative's operational on pilot lines will be implemented by the Chips JU.

(5) Article 126(2)(d) of the SBA Amendment states that one specific objective of the Chips JU is to *“enhance existing and develop new advanced pilot lines across the Union to enable development and deployment of cutting-edge semiconductor technologies and next-generation semiconductor technologies”*.

(6) For that purpose the Chips Joint Undertaking shall launch, jointly with the contracting authorities of the Member State where the Hosting Entity is established, calls for tenders for the acquisition of the equipment needed for the pilot line and acquire it, jointly, with these contracting authorities. The contracting parties shall sign a Joint Procurement Agreement in that regard.

(7) Following a successful application to the call for expression of interest for the selection of the Hosting Consortia, including the relevant Hosting Entity/ies, for with the reference: XXXX, [name of the Hosting Entity] has been selected by the Chips Joint Undertaking Public Authorities Board Decision No XXX of XXX as a Hosting Entity within the Hosting Consortium of pilot line XXXX for which the tools and equipment are to be acquired by the Chips JU and the [Member States].

(8) This joint procurement shall be co-funded by the Union's budget stemming from the Horizon Europe and Digital Europe Programmes and by contributions from the relevant Participating States. The Union's contribution from Horizon Europe and Digital Europe Programme funds would cover 50% of the total costs of the pilot line (acquisition costs of the pilot line equipment plus the setup and integration costs and the operational cost) with the remaining 50% to be funded through contribution from the [Participating States] of the Hosting Consortium.

(9) Given the important role that a pilot line has in bridging the gap between the Union's advanced research and innovation capabilities and their sustainable industrial exploitation, the Chips Joint Undertaking should co-own 50% of the crucial pieces of the tools and equipment that constitute a pilot line.

(10) For that purpose, following Article 43(5) of the Financial Rules of the Chips Joint Undertaking, the Contracting Parties intend to pursue the joint action, through the award of a contract for the purchase of equipment following a joint procurement procedure within the meaning of Article 165(2) of Regulation 2018/1046 on the financial rules applicable to the general budget of the Union<sup>4</sup>, (the “EU Financial Regulation”). Considering that the financial

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<sup>4</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No

contribution of the [Member State] to the acquisition of the equipment will cover 50% of the total acquisition cost, the intention is that the public procurement law provisions of the [Member State] will be applicable to the joint procurement. Therefore, the Contracting Parties have decided that the procedural rules of the [Member State] shall be applied for the procurement procedure relating to the acquisition of the equipment.

(11) All provisions of this Agreement are without prejudice to the rights and obligations of the National Contracting Authority of the Member State, the Chips JU or the European Commission under the EU Treaties, the Single Basic Act and its amendment, and the Chips Act Regulation.

## THE CONTRACTING PARTIES HAVE AGREED

on the terms below including the following Annexes:

**Annex I -** Declaration of absence of conflict of interest and protection of confidentiality to be given by member(s) of the opening and evaluation committee(s) as referred to in Article 21(7)

**Annex II-** Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures as referred to in Article 33(3).

## Title I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter

1. The Contracting Parties shall jointly acquire the equipment listed in XXXX through the award of a contract on the basis of a joint procurement procedure.

2. This Agreement lays down the practical modalities governing the joint procurement procedure in accordance with Article 43(5) of the Chips Joint Undertaking Financial Rules and Article 165(2) the EU Financial Regulation. In line with this Article, the Contracting Parties have decided that the procedural rules of the [name of the Member State which public procurement rules applies] shall apply to the procurement procedure relating to the acquisition of the equipment listed in XXXX (hereinafter “national public procurement provisions”), namely [National Public Procurement Regulation] which transposed Directive 2014/24/EU on public procurement into national law<sup>5</sup>.

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1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1

<sup>5</sup> OJ L 094 28.3.2014, p. 65.

3. This Agreement also covers ancillary matters such as the management of the resulting contract, the adoption of any legal action arising under the joint procurement procedure or the resulting contract, any breach of the commitments included in this Agreement and the amicable settlement of disputes between the Contracting Parties.

## Article 2

### Definitions

1. All terms in this Agreement derived from or defined in the national public procurement provisions or Directive 2014/24/EU on public procurement or the Single Basic Act, its amendment or the Chips Act Regulation shall have the same meaning as under those acts.

2. For the purposes of this Agreement:

- (a) “contractor” means an economic operator with whom a public contract has been signed.
- (b) “Chips JU pilot line” or “pilot line” means an experimental project or action to further develop an enabling infrastructure necessary to test, develop, demonstrate, validate and calibrate a product or system with the model assumptions. It consists of the tools (equipment, machines, etc.), technical infrastructure and expertise, including R&D expertise, necessary to develop experimental manufacturing process technology for leading-edge and advanced technologies.
- (c) “Crucial pieces of equipment of the pilot line” means equipment of a value equal or higher than EUR 500,000 .
- (d) “Hosting Entity” means the legal entity established in a Participating State to the Joint Undertaking that is a Member State, and which includes facilities to host and operate the Chips JU pilot line and which has been selected by the Chips Joint Undertaking following the Call for Expression of Interest as part of the Hosting Consortium.
- (e) “hosting site” means the physical facilities at which a Hosting Entity that is part of the Hosting Consortium will host and operate the Chips JU pilot line or part of the Chips JU pilot line and which is established in a Participating State that is a Member State. It must be noted that a Chips JU pilot line may be distributed across different hosting sites that are located in different Member States.
- (f) “Treaty” means the Treaty on the Functioning of the European Union;
- (g) “resulting contract” means a public contract, resulting from a joint procurement procedure conducted pursuant to this Agreement and signed by the contractor on the one side, and the National Contracting Authority and the Chips JU on the other;
- (h) “handling” information or documents means generating, processing, storing, transmitting or destroying information or documents;
- (i) “persons working in connection with this Agreement” means any person working for a Contracting Party in connection with this Agreement regardless of whether or not they are employed by that Contracting Party;
- (j) “need-to-know basis” means the need of a person working in connection with this Agreement to have access to information under this Agreement in order to be able to perform a function or a task in connection with this Agreement. Access shall not be authorised merely

because a person occupies a particular position, however senior.

(k) “staff” means any person working for a Contracting Party;

(l) “Court of Justice” means Court of Justice of the European Union;

(m) “third party” means any natural or legal person, public entity or group thereof that is not a signatory to this Agreement.

### Article 3

#### **Rules governing the joint procurement procedure**

1. The national public procurement procedural provisions shall be applied for the procurement procedure relating to the acquisition of the pilot line equipment, provided that those rules may be considered as equivalent as those of the Union institution, , in accordance with article 165(2), subparagraphs 4 and 5 of the EU Financial Regulation.

2. In case of conflict, the national public procurement provisions and Directive 2014/24/EU on public procurement shall prevail over the respective provisions of this Agreement.

3. The contracting parties shall respect the principles of sound financial management, transparency, proportionality, equal treatment and non-discrimination in accordance with the Directive 2014/24/EU.

4. For the purpose of this agreement, the procurement rules applicable to the national contracting authority, i.e. national public procurement provisions shall be considered as equivalent to those of the Joint Undertaking, provided that the National Contracting Authority complies with all measures set in this agreement to protect the financial interests of the Union.

### Article 4

#### **Authorisation granted to the National Contracting Authority**

1. The authorisation granted to the National Contracting Authority is limited to the subject matter of this Agreement and the Decision of the Chips Joint Undertaking authorizing the respective call for tenders in accordance with Article 7 (4) (f) of the Statutes of the Chips JU, annexed to the Regulation. The Contracting Parties authorize the National Contracting Authority to act on their behalf in accordance with national public procurement provisions:

(a) to conduct the joint procurement procedure including the award of the contract. One representative of the Chips Joint Undertaking shall be invited by the National Contracting Authority to all the meetings organised during the joint procurement process and may participate in the evaluation committee as a member or observer, at the discretion of the Chips Joint Undertaking;

(b) to manage the resulting contract.

2. Nothing in this agreement prevents the National Contracting Authority from entrusting the above mentioned tasks, as specified in Title II of this Agreement, to another state organization or entity or to a Hosting Entity, as long as that Hosting Entity can be considered a “contracting

authority” within the meaning of the Procurement Directive<sup>6</sup>. However, this is without prejudice to the National Contracting Authority’s full responsibility to ensure protection of the financial interest of the Union and for the proper performance and implementation of this Agreement in accordance with the applicable legal framework. The National Contracting Authority is fully responsible to extend these obligations to any third party involved in the implementation of the procurement.

## Article 5 **Points of Contact**

1. Each Contracting Party will designate a Point of Contact acting as authorised representative to exchange any communication related to this Joint Procurement Agreement.
2. Each Contracting Party will inform the other Contracting Party on any change of its Point of Contact during the duration of this Joint Procurement Agreement.
3. Meetings of the Points of Contact or other authorised representatives of the Contracting Parties will be held on a regular basis and at least quarterly to enable updates, reporting and exchange of views on any topic related to the Joint Procurement Agreement and its implementation. The contractor may also be invited at the request of the Contracting Parties.

## Title II

## **PROCEDURE**

### Article 6

#### **The role of the National Contracting Authority in the joint procurement procedure**

1. The National Contracting Authority shall, as required under this Agreement, ensure the overall orientation, preparation, organization and administration of the joint procurement procedure, and facilitate the amicable resolution of any dispute between the Contracting Parties arising out of this Agreement and the joint procurement procedure.
2. The National Contracting Authority shall be in charge of managing the joint procurement procedure and the resulting contract. This includes:
  - (a) Defining and implementing the procurement procedure, the submission of tenders (including time limits) and the evaluation procedure;
  - (b) Drafting the tender documents (including contract notice, invitation to tender, tender specifications, draft contract) in accordance with applicable procedural rules and legal framework;

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<sup>6</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

- (c) Fulfilling advertising and publicity requirements (publication of notices);
- (d) Drafting the necessary documentation and administrative correspondence between and on behalf of the Contracting Parties;
- (e) Carrying out the opening and evaluation of tenders, keeping a record of the meetings of the opening and evaluation committee(s) and producing relevant reports (including evaluation report) communicate important documents and invite the Chips JU to any important step of the procurement procedure;
- (f) Making appropriate arrangements for handling of information or documents related to the joint procurement procedure or the resulting contract;
- (g) Notifying candidates or tenders on the outcome and providing relevant information.

In doing so, the National Contracting Authority will apply national public procurement provisions

Wherever necessary to ensure the smooth operation of the joint procurement procedure, the National Contracting Authority, shall seek the opinion of the Chips JU.

3. The National Contracting Authority shall be the sole representative of the Contracting Parties with regard to economic operators, candidates or tenderers throughout the joint procurement procedure, including any matters arising in relation to the joint procurement procedure following the award of contract. When necessary or appropriate, National Contracting Authority shall involve the Chips JU in the relevant proceedings.

4. In case of a dispute with a contractor or a third party, each Contracting Party shall inform the other Contracting Party when it becomes aware of the dispute. The Contracting Parties authorise the National Contracting Authority to act as their sole representative in defending any legal proceedings brought by a contractor under a resulting contract.

The National Contracting Authority, as sole representative of the Contracting Parties, shall seek the opinion of the Chips JU on the conduct of any legal proceedings covered as soon as it receives notice of such legal proceedings.

5. The Contracting Parties hereby authorise the National Contracting Authority to act as their sole representative in bringing any legal proceedings against a contractor under a resulting contract.

Before the initiation of such proceedings, the National Contracting Authority, as sole representative of the Contracting Parties, shall seek the opinion of the Chips JU on the initiation and conduct of any legal proceedings covered by this paragraph without undue delay.

6. The National Contracting Authority may settle any disputes and legal proceedings brought under paragraphs 3 or 4, only after consensus on the terms of such settlement is reached between both Contracting Parties and only after prior written approval of the Chips JU.

7. The National Contracting Authority may request the Chips JU to assist it in its defence or pursuit of any legal proceedings. The Chips JU shall use its best endeavours to provide such assistance and shall refrain from taking any action that could jeopardise the defence or pursuit of any such legal proceedings.

8. The National Contracting Authority, as sole representative if the Contracting Parties shall report, at least quarterly, to the Chips JU, on any ongoing legal proceedings and submit a risk assessment in that regard.

## Article 7

### **Management of a procurement procedure**

1. In accordance with this Agreement and the Decision of the Chips JU authorising the respective call for tenders, the National Contracting Authority shall manage the procurement procedure in accordance with the national public procurement provisions.

## Article 8

### **Publication of notices**

1. The National Contracting Authority shall make sure that the contract notice and the award notice are published in the *Official Journal of the European Union*, , on its national portal on public procurement and on its website and/or electronic tool, in compliance with the national law applicable to the procedure.

2. Chips JU shall make sure that the contract notice and the award notice are published on its own website.

## Article 9

### **Specific provisions regarding the opening of tenders**

1. Tenders shall be opened by authorized personnel of the National Contracting Authority in accordance with the national public procurement provisions.

2. The Chips JU may request the National Contracting Authority to allow one of its representatives to observe the opening of tenders.

3. Any observers shall neither participate in the deliberations of the authorized personnel of National Contracting Authority nor make known any views to the authorized personnel of National Contracting Authority.

## Article 10

### **Evaluation**

1. The National Contracting Authority shall appoint an evaluation committee for the evaluation



of tenders in accordance with the national public procurement provisions.

The Chips JU may designate one (1) person as a member or observer in the evaluation committee.

The National Contracting Authority may decide that external experts and /or experts proposed by the other Contracting Party shall assist the evaluation committee. The members of the evaluation committee and any external experts shall comply with Article 61 of the EU Financial Regulation or its equivalent as foreseen in the national public procurement provisions.

2. The outcome of the evaluation shall be an evaluation report drafted in accordance with the national public procurement provisions and containing the proposal to award the contract. The evaluation report shall be dated and signed by the members of the evaluation committee.

3. The evaluation report, containing a proposal to award the contract, shall be communicated to the Chips JU.

## Article 11

### **Award of a contract**

1. The contract is awarded by the National Contracting Authority on behalf of the participating Contracting Parties to the winning tenderer.

## Article 12

### **Information for candidates and tenderers**

1. The National Contracting Authority shall notify all candidates or tenderers, of the decisions reached concerning the outcome of the procedure in accordance with the national public procurement provisions.

## Article 13

### **Cancellation of the procurement procedure**

1. The National Contracting Authority may, before the contract is signed, in consultation with the Chips JU and provided that both parties agree, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation in accordance with the national public procurement provisions.

## Article 14

### **Specific provisions relating to contacts with economic operators or tenderers during the joint procurement procedure**

1. The National Contracting Authority shall be the sole point of contact between the Contracting Parties and economic operators, candidates and tenderers, or their representatives, concerning any matter pertaining to the joint procurement procedure.
2. The Chips JU shall ensure that, where persons working in connection with this Agreement are approached by an economic operator, tenderer, or their representative concerning any matter pertaining to the joint procurement procedure following the entry into force of this Agreement, they shall state, that the National Contracting Authority is the sole contact point with economic operators, candidates or tenderers, or their representatives and refer any such person to the National Contracting Authority. They shall simultaneously inform the National Contracting Authority of the details of the approach and the referral and shall not disclose any confidential information related to the procurement procedure.
3. The Contracting Parties retain the right to communicate with the economic operators, tenderers or their representatives in relation to procurement procedures outside the scope of this Agreement, including procurement of other equipment for their service.

## Article 15

### **Specific provisions relating to the signature of the contract and entry into force**

1. After the award decision, and in accordance with national public procurement provisions [the National Contracting Authority and the Chips JU will sign the contract or the National Contracting Authority is mandated by the Chips JU to sign the contract on behalf of the Contracting Parties]. All Contracting Parties will get a signed copy of the signed contract.
2. The National Contracting Authority as leading contracting authority will manage the resulting contract on behalf of Chips Joint Undertaking and will inform it of any issues, changes, or amendments.
3. The resulting Contract is governed by Union law, as complemented by national law and procedures of the National Contracting Authority.

## **Title III**

### **PROVISIONS APPLICABLE TO THE HANDLING OF INFORMATION OR DOCUMENTS**

#### **Article 16**

##### **Sharing of information or documents**

1. The Contracting Parties shall provide each other with the information or documents required for the purposes of carrying out their respective roles under this Joint Procurement Agreement fully respecting the professional secrecy and confidentiality requirements.
2. The Contracting Parties shall agree on the (security) classification of documents before starting any procurement procedure.
3. EU Classified Information shall be protected in accordance with Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU).

#### **Article 17**

##### **Professional secrecy**

1. Without prejudice to paragraph 2, persons working in connection with this Agreement shall be prohibited, even after their duties have ceased, from disclosing information of any kind covered by the obligation of professional secrecy.
2. Information or documents covered by the obligation of professional secrecy handled by the Contracting Parties under this Agreement shall be disseminated only according to the needs of persons working in connection with this Agreement on a strict “need to know” basis and only insofar necessary to enable them to perform a function or a task in connection with this Agreement. Access shall not be authorised merely because a person occupies a particular position, however senior.

Once the information or documents referred to in the first subparagraph have lawfully been made publicly available, the obligation of professional secrecy shall no longer apply.

3. Each Contracting Party shall be responsible for ensuring that all persons working for it in connection with this Agreement are legally bound to respect the obligations in paragraphs 1 and 2 during their employment and following the termination of their employment for a subsequent period of ten (6) years after the effective termination of their intervention.
4. Where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraphs 1 and 2 on itself, as well as on each of its employees for a subsequent period of ten (6) years after the effective termination of their intervention.

## Article 18

### **Use of Information or Documents and Confidentiality**

1. The Contracting Parties shall not use any information or document handled under this Agreement for purposes other than those pertaining to this Agreement.

2. To the extent possible under the applicable Union or national law, any Contracting Party considering the release of any information or document handled under this Agreement, shall consult in writing the originator of the information or document in good time prior to releasing the information or document in question, and shall take the utmost account of the views of the originator.

Where prior consultation in accordance with the first subparagraph is not possible, the Contracting Party shall nonetheless inform the originator of the release including the factual and legal circumstances pertaining to it without undue delay.

3. Each Contracting Party shall be responsible for ensuring that all persons working for it in connection with this Agreement are legally bound to respect the obligations in paragraphs 1 and 2 during their employment and following the termination of their employment.

4. Where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraphs 1 and 2 on its employees.

## Article 19

### **Measures for protecting information or documents handled under this Agreement**

1. The National Contracting Authority shall propose specific handling instructions applicable to information or documents handled under this Agreement and security measures applicable to meetings of the opening or evaluation committees.

2. The Contracting Parties undertake to preserve the confidentiality of any document, information or other material, in any format, disclosed in writing or orally relating to the subject of the Agreement.

3. Each Contracting Party must:

- a) not use confidential information or documents for any purpose other than to perform its obligations under the contract without the prior written agreement of the other Contracting Party;
- b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information and in any case with due diligence;

c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other Contracting Party.

4. A receiving Contracting Party shall notify the disclosing party if it is legally required to disclose any confidential information, or learns of any unauthorized disclosure of confidential information. Upon request from the other party, the receiving party will return all copies and records of all confidential information or documents disclosed by the other party and will not retain any copies or records disclosed by the other party.

5. The parties shall be bound by the obligation referred to in the above paragraphs during the implementation of the Agreement and for as long as the pilot line equipment remains in the Hosting Entity under the ownership of the Chips JU, and for a period of five (5) years starting from the date of its termination, unless:

- a) the concerned Contracting Party agrees to release the other Contracting Party from the confidentiality obligations earlier;
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Contracting Party bound by that obligation;
  - c) the applicable law requires the disclosure of the confidential information or documents.
5. Each member of the evaluation committees shall sign the Declaration of absence of conflict of interest and of confidentiality as provided for in Annex I.

## Article 20

### **Conflict of interest**

1. Each Contracting Party shall be responsible for ensuring that all persons working for it in connection with this Agreement are not in a situation that might create a conflict of interest or otherwise compromise the impartiality or objectivity of their work in connection with this Agreement during their employment.

2. Where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraph 1 on its employees.

## Article 21

### **Access to documents**

Nothing in this Agreement shall preclude a Contracting Party from complying with provisions of Union or national law applicable to it regarding public access to documents, the protection of personal data or the protection of classified information.

## Article 22

### **Compliance**

1. Each Contracting Party shall be responsible to the other Contracting Party for ensuring compliance with this Title and for making good any damage caused by the breach of those provisions.
2. Each Contracting Party shall take appropriate measures in accordance with the rules, laws or regulations applicable to it, to:
  - (a) prevent and detect the disclosure of information or documents covered by the obligation of professional secrecy and confidentiality handled under this Agreement to unauthorised persons;
  - (b) comply with handling instructions relating to information or documents covered by the obligation of professional secrecy and confidentiality handled under this Agreement;
  - (c) prevent, detect and eliminate conflicts of interests that may arise in the performance of this Agreement.
3. Each Contracting Party shall notify the other, of any breach of this Title or where information or documents protected under this Title have been lost or inappropriately handled, without undue delay, upon becoming aware of such a breach, loss or inappropriate handling.
4. The Contracting Party concerned shall promptly investigate, in accordance with the rules, laws or regulations applicable to it, the breach, loss or inappropriate handling of the information or documents, where it is known or where there are reasonable grounds for suspecting that the information or documents covered by the obligation of professional secrecy handled under this Agreement may have been lost or inappropriately handled.
5. Without prejudice to the rules, laws or regulations applicable to them, the Contracting Parties shall co-operate with one another in the investigation of any breach of this Title or where information or documents protected under this Title have been lost or inappropriately handled.
6. Without prejudice to the fifth subparagraph, the Contracting Parties shall co-operate with one another in finding appropriate solutions to eliminate, remedy or mitigate the impact of any breach of this Title.

Title IV  
**FINAL PROVISIONS**

Article 23

**Duty of sincere co-operation**

1. The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement or from any action taken under it. They shall abstain from any measure that could jeopardize the attainment of the objectives of the Chips JU and the common objectives of the contracting Parties under this Agreement.
2. This Article is without prejudice to the right of Contracting Parties to carry out procurement procedures outside this Agreement, even where such procedures involve the procurement of equipment which form the subject of a joint procurement procedure or a contract or involve economic operators or contractors who are tendering for, or have signed, a contract pursuant to a joint procurement procedure under this Agreement.

Article 24

**Protection of the Financial Interests of the Union**

**24.1 Checks, Audits, and Investigations**

- a) The National Contracting Authority shall ensure the protection of the financial interests of the Union through appropriate means, in particular when involving third parties for the implementation of the procurement procedure and contract administration.
- b) The Joint Undertaking or the European Commission may conduct checks, and audits on the proper implementation of the procurement procedure and compliance with the obligations under this Agreement.
- c) The following bodies may also carry out checks, reviews, audits and investigations:
  - i. the European Anti-Fraud Office (OLAF) under Regulations No 883/2013 and No 2185/96
  - ii. the European Public Prosecutor's Office (EPPO) under Regulation 2017/1939.
  - iii. the European Court of Auditors (ECA) under Article 287 of the Treaty and Article 257 of EU Financial Regulation.
- d) The parties must cooperate in good faith and the National Contracting Authority must provide any requested information and data related to the procurement procedure within a reasonable deadline. For on-the-spot visits, the National Contracting Authority must ensure access to sites and premises (including for any external audit firm) and must

ensure that information requested is readily available.

- e) The National Contracting Authority must ensure that all obligations under this article also apply to any third party involved in the implementation of the procurement procedure and contract administration.

## **24.2 Checks, Audits, and Investigations of the Contractor**

- a) The contracting authority shall ensure that the Joint Undertaking, the Commission and the bodies listed in paragraph 3 of Article 24.1 have all necessary access to conduct checks, audits and investigations of the performance of the contract with their own staff or with external experts.
- b) Such checks and audits may be initiated at any moment during the *performance of the relevant contract* and up to five years starting from the payment of the balance.
- c) The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.
- d) The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.
- e) The contractor must grant the contracting authority's staff and outside *personnel* authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.
- f) On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.
- g) On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with the relevant procedure and may take any other measure which it considers necessary.
- h) In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an



investigation may lead to criminal prosecution under national law.

i) The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

j) None of the provisions of this agreement shall be interpreted as limiting the Joint Undertaking's right to undertake all measures necessary to protect the financial interest of the Union, including termination of the agreement and recovery of any unduly paid amounts, in particular following findings of checks, audits and investigations if any.

## Article 25

### **Consequences of non-compliance**

1. In the event of a failure to comply by any Contracting Party with this Agreement, the Contracting Parties shall use their best endeavours to promptly and jointly determine the means to redress the situation as soon as possible.

2. In the event of a disagreement between the Contracting Parties with regard to the interpretation or application of this Agreement, the Contracting Parties shall use their best endeavours to settle the matter directly.

3. If the processes set out in paragraphs 1 and 2 do not remedy the lack of compliance or settle the disagreement, the matter may be referred to the Court of Justice in accordance with Article 26 and 27.

## Article 26

### **Competent court for hearing disagreements**

1. Any failure to comply with this Agreement, or disagreement with regard to the interpretation or application of this Agreement between the Contracting Parties, may be brought before the Court of Justice by the Contracting Party concerned, pursuant to Article 272 of the Treaty.

2. The Court of Justice shall have exclusive jurisdiction to decide upon any failure to comply with this Agreement or disagreement with regard to the interpretation or application of this Agreement.

3. The Court of Justice may award any remedy it deems appropriate in cases brought before it under this Article.

## Article 27

### **Applicable law and severance**

1. Matters or disputes arising within the subject matter of this Agreement shall be governed by applicable Union law, complemented where necessary by the law of the Member State.
2. If any one or more of the provisions of this Agreement should be or become fully or partly invalid, illegal or unenforceable in any respect under the applicable law, the validity, legality and enforceability of the remaining provisions contained therein shall not be affected or impaired thereby.

## Article 28

### **Non-contractual liability and indemnity for actions for damages**

1. Without prejudice to Article 25 and 26, each Contracting Party shall, in accordance with Union law, make good any non-contractual damage to third parties or to the other Contracting Party, arising out of this Agreement caused by its authorities or by any persons working in connection with this Agreement for those authorities.
2. The Chips JU non-contractual liability arising out of this Agreement is governed by the second paragraph of Article 340 of the Treaty.
3. This Article shall not apply to contractual liability arising under the resulting contract.

## Article 29

### **Financial Provisions**

1. The share of the equipment acquired and owned by the Chips JU under this Joint Procurement Agreement is exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Article 3 of Protocol (No. 7) on the privileges and immunities of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.
2. The Chips Joint Undertaking is not subject to Value Added Tax (VAT) linked to the procurement of the pilot line, however depending on applicable national VAT rules where the pilot line is to be located a case-by-case agreement will be necessary before the signature of the Joint Procurement Agreement.
3. The Chips JU's ownership share of the crucial pieces of equipment of the pilot line to be acquired and co-owned under this Joint Procurement Agreement shall be equal to 50%. The National Contracting Authority or the relevant Member State(s) shall own the remaining 50% of the crucial pieces of equipment. Each Contracting Party will be responsible for the costs of its

own contribution to this Joint Procurement Agreement.

## Article 30

### **Preamble and Annexes**

1. This Agreement shall be interpreted in the light of its Preamble and Union Law, in particular, the Regulation.
2. The Annexes to this Agreement shall constitute an integral part thereof.

## Article 31

### **Amendments**

1. The Contracting Parties may propose amendments to this Agreement.
2. The Agreement may be amended at any time by the mutual written consent of the Contracting Parties. Any amendment to the Agreement shall be made in writing.
3. Any request for amendment shall be duly justified and shall be sent to the other Contracting Party in due time before it is due to take effect, except in cases duly substantiated by the Party requesting the amendment and accepted by the other Contracting Party.
4. Amendments shall enter into force on the date on which the last Contracting Party signs or on the date of approval of the request for amendment. Amendments shall take effect on a date agreed by the Contracting Parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

## Article 32

### **Term and termination**

1. The Agreement shall enter into force on the date on which it is signed by the last party and shall remain in force until either the last part of the ownership of the pilot line equipment owned by the Chips JU is transferred by the Joint Undertaking to the Hosting Entity. The Joint Undertaking shall promptly inform the National Contracting Authority of any such transfer of ownership to the Hosting Entity.
2. The extension of the duration of the present Agreement is subject to the express written agreement of both parties.
3. This Agreement may be terminated if agreed in writing by the Contracting Parties.

4. Termination of the Agreement shall not have financial consequences for either Contracting Party provided that the withdrawal takes effect before the call for tender is published.

5. The termination shall not affect the contractual obligations of either Contracting Party under the contract that has been signed following the procurement procedure.

### Article 33

#### **Communication**

All notices under this Agreement shall be valid if given in writing and sent to the addresses:

- **Chips JU:**

E-mail:

- **National Contracting Authority:**

Name of the NCA: [    ]

Address: [    ]

E-mail: [    ]

### Article 34

#### **Signature and entry into force**

1. This Agreement shall be established and executed in English.

2. The Agreement shall be signed in two (2) duplicates one for each Contracting Party.

3. The Agreement shall enter into force on the date on which the last Party signs, provided that the National Contracting Authority has submitted to the Chips JU the Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures, attached as Annex II.

## **SIGNATURES**

**IN WITNESS WHEREOF** the undersigned, being duly authorised, have signed this Agreement.

**For the National Contracting Authority**  
[Name and position]

**For the Chips Joint Undertaking**  
Jari Kinaret  
Executive Director

Done in English  
in [     ], on the date

Done in English,  
in Belgium, on the date

## ANNEXES

### Annex I

#### **Declaration of absence of conflict of interest and protection of confidentiality to be given by members of the evaluation committee(s) as referred to in Article 21 (7)**

Title of contract:

Reference:

(Call for tenders No):

I, the undersigned ....., having been [appointed to the evaluation committee] [given the responsibility of assessing exclusion and selection criteria and/or award criteria] for the above-mentioned contract, declare that I am aware of Article 61 of the Financial Regulation<sup>7</sup>, which states that:

*“1. Financial actors within the meaning of Chapter 4 of this Title and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.*

*2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall*

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<sup>7</sup> Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012 (2012 Financial Regulation) (OJ L 193, 30.7.2018, p. 1).

*ensure that any further appropriate action is taken in accordance with the applicable law.*

*3. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.”*

I hereby declare that, to my knowledge, I have no conflict of interest with the economic operators who have [applied to participate] [submitted a tender] for this contract, including persons or members of a consortium, or the subcontractors proposed.

I confirm that, if I discover during the evaluation that such a conflict exists, I will declare it immediately and resign from the committee.

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate outside the committee any confidential information that is revealed to me or that I have discovered or any information relating to the views expressed during the evaluation. I will not make any adverse use of information given to me.

Signed:

## **Annex II**

### **Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures as referred to in Article 33 (3)**

**[Letter-head of authority representing a Contracting Party for the purposes of this Agreement]**

European Chips JU [Address]  
Email: [xxx]

**Re: Confirmation of completion of national procedures for the approval of the Joint Procurement Agreement for the procurement of pilot line equipment or the absence of a need for such procedures in accordance with Article 33 (3) of that Agreement**

Dear Sir/Madam

We refer to Article 33 (3) of the above-mentioned Joint Procurement Agreement.

#### **EITHER**

We hereby notify you that our national procedures for the approval of the above-mentioned Joint Procurement Agreement were completed on [date].

#### **OR**

We hereby notify you that no national procedures are required for the approval of the above-mentioned Joint Procurement Agreement by [Name of Contracting Party].

Yours faithfully

[Name of Contracting Party] [National Authority]  
[Name, Function]  
[Address]  
Fax: [xxx]



### **Annex III**

#### **List of crucial equipment.**