



**FACILITIES LEVEL MEMBERSHIP AGREEMENT
FOR
THE UNIVERSITY OF TENNESSEE
CENTER FOR MATERIALS PROCESSING**

THIS AGREEMENT is entered into and made effective the ___ day of _____ 20__ (“Effective Date”) by and between The University of Tennessee, on behalf of the College of Engineering, at The University of Tennessee, Knoxville, and its Center for Materials Processing (hereinafter referred to as THE UNIVERSITY or CENTER) and _____ a _____ with offices in _____ (hereinafter referred to as MEMBER).

The research program contemplated by this Agreement is of mutual interest and benefit to the parties and will further the instructional and research objectives of the UNIVERSITY’s status as a public higher education institution and instrumentality of the State of Tennessee, and the research objectives of MEMBER.

Object of a CMP Facilities Level Membership is for the MEMBER’S membership funds to be held in an account where charges for instrument usage and low amounts of student and/or staff time for assistance collecting and/or analyzing data (Project) are recovered. If MEMBER requires additional services they are encouraged to explore CMP Associate or Full Membership levels.

In consideration of the mutual covenants contained herein, the parties agree as follows:

THE UNIVERSITY has established a Center for Materials Processing as part of the College of Engineering at the Knoxville campus of THE UNIVERSITY. This CENTER is a research program of The University of Tennessee with the purpose of conducting research in areas relevant to the processing of materials, including development of new or improved materials and methods for processing them. The cost of such research will be funded by a Center of Excellence Award from the State of Tennessee, membership fees received, contributions from supporting members and royalties from licenses granted by THE UNIVERSITY to non-members in accordance with this Agreement and THE UNIVERSITY’S Statement of Policy on Patents, Copyrights, and Licensing.

THE UNIVERSITY shall maintain the Center’s principal office on THE UNIVERSITY’S Knoxville campus. At the present time, it is anticipated that the Center’s work will be carried out in the facilities of THE UNIVERSITY of TENNESSEE. THE UNIVERSITY hereby reserves the right in its sole discretion to utilize such other personnel or facilities in carrying out the CENTER’S work as THE UNIVERSITY deems appropriate.

Although THE UNIVERSITY intends that research undertaken by the CENTER will be conducted in accordance with accepted scientific principles on a reasonable effort basis, it does not guarantee the results of such work. THE UNIVERSITY specifically disclaims all warranties, either expressed or implied, as to the research to be performed by the CENTER. The parties agree that THE UNIVERSITY shall have no liability to MEMBER except the duties and obligations specifically stated herein.

THE UNIVERSITY, at its sole discretion, shall have the right to dissolve the CENTER at any time upon twelve (12) months written notice to all members. Such dissolution shall not constitute a breach of this Agreement, and THE UNIVERSITY shall incur no liability to MEMBER therefore.



Upon execution of this CMP Facilities Level Agreement, the MEMBER agrees to pay to THE UNIVERSITY, for support of the CENTER.

1. RESEARCH SUPPORT

The total amount to be provided by MEMBER is \$ _____ (“Support”). Payments should be made to the UNIVERSITY according to the following schedule:

Insert schedule of payments

Payments under this Agreement will be made by MEMBER in U.S. dollars by check or electronic funds transfer to The University of Tennessee.

Payment by Check:

Dr. Claudia J. Rawn
Director, Center for Materials Processing
513 East Stadium Hall
University of Tennessee
Knoxville, TN 37996-0750

Payment by Electronic Fund Transfer:

(Banking information provided upon Agreement execution)

2. TERM AND TERMINATION

The term of this Agreement will commence on the Effective Date and will terminate one (1) year from the Effective Date, unless sooner terminated according to the provisions of this Agreement. This Agreement may be extended, renewed, or otherwise amended, including adding more funds to cover instrument and student and/or staff support, at any time by the mutual written consent of authorized representatives of the parties.

- In the event that either the UNIVERSITY or MEMBER defaults in the performance of its obligations under this Agreement or any representation by either party proves to be false, the defaulting party shall cure the default within thirty (30) days of written notice. If the defaulting party fails to cure the default, then the party giving such notice may elect to terminate this Agreement by final written notice to the defaulting party.
- The parties recognize that the results of any particular research project cannot be guaranteed even through the use of the UNIVERSITY's reasonable effort. Therefore, it is specifically agreed that the failure of the UNIVERSITY to achieve specific research results shall not constitute a default or breach of this Agreement.
- Either UNIVERSITY or MEMBER may terminate this Agreement without cause upon written notification to the other at least thirty (30) days prior to the effective date of termination.

- If the total funds paid by MEMBER as of the date of termination are insufficient to cover the costs and non-cancellable commitments incurred by the UNIVERSITY in the performance of the Project, MEMBER shall reimburse the UNIVERSITY for same within thirty (30) days of termination. In no event shall MEMBER be responsible for any amount in excess of the Support.

3. CONFIDENTIALITY

The UNIVERSITY and MEMBER recognize that the conduct of a research program may require the transfer of proprietary information between the parties ("Confidential Information"). Except as otherwise provided in this Agreement, for a period of five (5) years following the date of disclosure, the receiving party will not disclose Confidential Information without the consent of the disclosing party. Confidential Information shall be subject to the following:

- "Confidential Information" shall include only information that is clearly marked as proprietary or confidential at the time of disclosure. For oral disclosures to constitute "Confidential Information," such disclosures must be identified at the time as proprietary or confidential and the disclosing party must provide a written summary to the Member and address specified in 6B below (Communications) to of the "Confidential Information" within ten (10) days after disclosure to the receiving party.
- The subject matter of the Confidential Information is to be limited to information related to the Project.
- The receiving party will not publish or otherwise reveal to any third party the Confidential Information of the disclosing party without the disclosing party's written permission, unless the information:
 - (1) is already lawfully in the receiving party's possession at the time of receipt from the disclosing party as evidenced by appropriate documentation;
 - (2) is or later becomes public through no fault of the receiving party;
 - (3) is lawfully received from a third party whom receiving party reasonably believes has the right to make the disclosure as evidenced by appropriate documentation;
or
 - (4) is required by law to be disclosed, including the Tennessee Public Records Act, Tenn. Code Annotated § 10-7-503, as modified by § 49-7-120 .

4. BINDING AGREEMENT

This Agreement is not assignable or transferable, in whole or in part, by any party without the prior written consent of the other parties.

5. LIMITATION OF LIABILITY / INDEMNIFICATION

The UNIVERSITY is self-insured under the provisions of the Tennessee Claims Commission Act (T.C.A. 9-8-301 *et seq.*). Any liability of the UNIVERSITY to MEMBER or any third parties for any claims, damages, losses, or costs arising out of or related to acts performed by the UNIVERSITY or its employees under this Agreement will be governed by the provisions of said Act.

Notwithstanding anything in this Agreement to the contrary, any provisions of this Agreement



will not apply to the extent that it is (they are) finally determined to violate the laws or Constitution of the State of Tennessee.

MEMBER shall indemnify, defend, and hold harmless any and all of UNIVERSITY, its employees, officers, and directors, from and against any and all claims and suits which shall be based on any injury or damage arising out of its efforts conducted hereunder, including the testing of devices, or any act or omission of MEMBER involving the use, manufacture or distribution of any product or process arising out of or involved with this Agreement.

6. MISCELLANEOUS

A. Ownership of the Data

The MEMBER shall have full ownership of the data that is produced through the CMP Facilities Level Membership Agreement.

B. Communications

Any payment, notice or other communication required or permitted hereunder ("notice") shall be in writing and shall be hand-delivered, sent by overnight courier, mailed by certified United States mail, return receipt requested, or sent by email or facsimile, to the address(es) given below or to such other address(es) as the parties may hereafter specify in writing. Notice shall be deemed given and received five (5) days after being deposited with the U.S. Postal Service certified mail (postage prepaid and return receipt requested), or if notice is hand-delivered or sent by overnight courier, upon the date of actual delivery, or if sent by facsimile or email, upon the date the recipient party acknowledges receipt in writing, by email or otherwise. An email notice shall be given concurrently to up to three (3) email addresses provided hereunder by the recipient party and the first acknowledgment of receipt from the recipient party shall establish the date on which such notice is given.

All communications shall be sent to the addresses identified below or to such other address as a party may designate by advance written notice to the other party(ies).

MEMBER

Name: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Center for Materials Processing :

Name: Claudia J. Rawn, PhD
Director, Center for Materials Processing

Address: 513 East Stadium Hall
University of Tennessee
Knoxville, TN 37996-0750

Telephone: 865-974-3466

Fax: 865-974-2805

Email: crawn@utk.edu



B. Each of the parties' relationship to the other parties in the performance of this Agreement is that of an independent contractor.

C. This Agreement is made and entered into in the State of Tennessee and its validity and interpretation and the legal relations of the parties shall be governed by the laws of the State of Tennessee. The University can only agree to governing law of the State of TN or remain silent. The University is an instrumentality of the State of Tennessee, has sovereign immunity under Article I, Section 17 of the Tennessee Constitution and therefore is prohibited from agreeing to the law or courts of another state. No representative of the University is authorized to waive its sovereign immunity; this can be done only by the State General Assembly.

D. No party will use the name of another party in any form of publicity, promotion, or advertising without the prior written permission of that party. However, nothing herein is intended to preclude or precludes, the UNIVERSITY or the MEMBER from acknowledging the existence of this Agreement or the relationship of the parties in reports of sponsored activity. The CMP publishes an Annual Report that lists industrial members as partners and gives a brief description about the company approved by the MEMBER in advance.

E. This Agreement constitutes the sole, full, and complete agreement by and between the parties, and no amendments, changes, additions, deletions, or modifications to or of this Agreement shall be valid unless in writing, and signed by authorized representatives of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by affixing hereto the signatures of their duly authorized representatives.

MEMBER

THE UNIVERSITY OF TENNESSEE

By: _____

By: _____

Title: _____

Assistant Vice Chancellor
for Research