



**CENTER FOR MATERIALS PROCESSING (CMP)
MEMBERSHIP AGREEMENT
FOR
THE UNIVERSITY OF TENNESSEE**

THIS CMP MEMBERSHIP AGREEMENT is entered into and made effective the ____ day of _____ 20__ (“Effective Date”) by and between The University of Tennessee, on behalf of the Tickle College of Engineering, at The University of Tennessee, Knoxville, and its Center for Materials Processing (CMP) (hereinafter referred to as THE UNIVERSITY or CMP) 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 a.) 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 b.) further the research objectives of MEMBER.

The intent of a CMP Membership is for the membership funds to support research on a topic of mutual interest to the MEMBER and CMP.

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

THE UNIVERSITY, at its sole discretion, shall have the right to dissolve the CMP 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 Membership Agreement, the MEMBER agrees to pay to THE UNIVERSITY, for support of the CMP.

1. MEMBERSHIP 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, CMP for Materials Processing
423 Ferris 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 the

MEMBER adding more funds to cover instrument, 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 CMP 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 CMP's reasonable effort. Therefore, it is specifically agreed that the failure of the CMP to achieve specific research results shall not constitute a default or breach of this Agreement.
- Either CMP 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 CMP 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. EQUIPMENT

Title to any equipment or consumable items purchased, manufactured, or otherwise acquired in the course of the work under this Agreement shall vest in the UNIVERSITY, regardless of any contribution directly or indirectly from SPONSOR.

4. PUBLISHING

CMP reserves to itself and its faculty, staff, and students the sole right to publish the results of the Project in whole or in part as they deem appropriate. In order that premature public disclosure of such information does not adversely affect the interests of the parties, CMP shall provide MEMBER with a copy of each manuscript pertaining to the research that is intended for publication. MEMBER may request delay in publication for a period not to exceed sixty (60) days from the date on which MEMBER receives the manuscript. If MEMBER does not make a written request for delay in publication within thirty (30) days after receipt of a manuscript, CMP shall be free to publish the manuscript at any time after the end of the thirty (30) days. Students have the option of requesting a 12-month embargo after the conferral of their degree to delay public release of the thesis or dissertation. MEMBER's right to request a delay in publication shall not apply to any thesis or dissertation.

5. CONFIDENTIALITY

The CMP 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 Membership.
- 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 .

6. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES

No party claims by virtue of this Agreement any right, title, or interest in (a) any issued or pending patents, copyrights, or other intellectual property, owned or controlled by another party or (b) any previous invention, process, computer software, or product of another party, whether or not patented or patentable. Consistent with UNIVERSITY'S intellectual property (IP) policy, any IP created by sponsoring one or more of the UNIVERSITY's personnel would be UNIVERSITY's IP and the MEMBER can get a non-exclusive royalty free license to the IP for internal research purposes only. The MEMBER will receive an option to negotiate a commercial license for the IP.

7. 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.

8. 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.

9. NEGATION OF WARRANTIES BY THE UNIVERSITY

Although the CMP will use reasonable efforts to perform the research of mutual interest to the CMP and MEMBER agreed upon as part of this membership, the CMP makes no representations or warranties, either express or implied, as to the work to be performed under this Agreement. The CMP specifically disclaims any warranties of merchantability or fitness for a particular purpose. The CMP shall not be liable for any direct, consequential, or other damages suffered by MEMBER or others resulting from the work performed under this Agreement.

10. MISCELLANEOUS

A. 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 _____

CMP for Materials Processing :

Name: Claudia J. Rawn, Ph.D.
Director, CMP for Materials Processing
Address: 423 Ferris Hall
University of Tennessee
Knoxville, TN 37996
Telephone: 865-974-3466 Email: crawn@utk.edu

Technical/Faculty Representative:

Name: _____
Address: _____
Telephone: _____
Email _____



CENTER FOR MATERIALS
PROCESSING

- 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.
- 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. Export Control: MEMBER acknowledges that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government. MEMBER agrees that it will not disclose, export or re-export any materials or technical data received under this Agreement to any countries for which the U.S. Government requires an export license, unless the MEMBER has obtained prior written authorization first from the U.S. agency or authority responsible for such matters. MEMBER agrees that it is responsible for any fees or expenses associated with obtaining an Export License, if required. CMP neither represents that a license shall not be required nor that, if required, it shall be issued.
- F. HIPAA: The parties agree to comply with HIPAA regulations insofar as they apply to the parties under this Agreement. SPONSOR agrees to use any subject data or Protected Health Information (as defined in HIPAA regulations) only for purposes authorized by the signed subject consent form, authorization, or approved waiver.
- G. Use of Human Subjects/Laboratory Animals: It is understood that no work involving human subjects or laboratory animals will begin until the Project has been approved by the Institutional Review Board or the Institutional Animal Care and Use Committee, respectively.
- H. 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.

The PARTIES agree to be bound by the terms and conditions of this Membership Agreement

MEMBER

THE UNIVERSITY OF TENNESSEE

By: _____

By: _____

Title: _____

Associate Vice Chancellor
for Research Administration