

## NCREPT Agreement

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ (EFFECTIVE DATE) by and between The Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas Fayetteville campus (UNIVERSITY) and \_\_\_\_ (COMPANY).

WHEREAS, the parties mutually agree that there is need for research to identify power electronics-based solutions to reliable power transmission problems; and

WHEREAS, COMPANY desires to support and UNIVERSITY desires to conduct research in the areas of scope generally referred to as advanced power electronics (e.g., power systems, power electronics, IC design and CAD, controls, and test and evaluation).

THEREFORE, the parties to this Agreement intend to join together in a cooperative effort to support a National Center for Reliable Electric Power Transmission (CENTER) at UNIVERSITY whereby the parties identify power electronics-based problems and UNIVERSITY searches for solutions by conducting research, stimulating industrial innovation, providing COMPANIES with an enhanced understanding and capability in the field of power electronics and related technologies, and promoting the education of new and current practitioners of the art and science of power electronics.

The parties hereby agree to the following terms and conditions:

**Section 1. Funding and Operation.** CENTER will be operated by certain faculty, staff and students at the UNIVERSITY. The CENTER anticipates receiving support from industry, including COMPANIES, local, state and federal grants and appropriations, and the UNIVERSITY.

**Section 2. Membership (Subject to Foreign Export Restrictions).** Any COMPANY, Federal Research and Development organization, or any Government-owned Contractor Operated laboratory may become a sponsor of the CENTER, consistent with applicable state and federal laws and statutes.

UNIVERSITY and CENTER are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including, but not limited to, the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Their obligations hereunder are contingent on the compliance with applicable United States export laws and regulations. Neither UNIVERSITY nor COMPANY shall require any action which would result in noncompliance with such laws and regulations.

CENTER reserves the right to recruit and execute agreements similar to this Agreement with additional COMPANIES. Such agreements may be made for the purpose of providing funding, or replacing a COMPANY which has terminated its agreement, or to enhance the Center by obtaining additional funding.

**Section 3. Membership Fees, Payment.** COMPANY will contribute annually a sum of money (MEMBERSHIP FEES) in support of the CENTER and thereby become a member. If COMPANY is a company that has been in business for less than ten (10) years, with annual sales of less than \$10 million, fewer than fifty (50) full-time equivalent employees, and no public offering, its MEMBERSHIP FEES shall be initially five thousand dollars (\$5000.00). All others shall initially pay MEMBERSHIP FEES of twenty thousand dollars (\$20,000.00). MEMBERSHIP FEES may be changed as deemed appropriate, with at least ninety (90) days notice to COMPANY before the annual renewal date.

Payment of these MEMBERSHIP FEES shall be made to the UNIVERSITY as a lump sum due and payable one month after the EFFECTIVE DATE of this agreement, and each year thereafter for each year of sponsorship. Checks from COMPANY should be mailed to:

Rosemary H. Ruff, Director  
Research Support and Sponsored Programs  
120 Ozark Hall  
Fayetteville, AR 72701

and made payable to University of Arkansas, Fayetteville. Because research of the type to be done by the CENTER takes time and research results may not be obvious immediately, COMPANY should join CENTER with the intention of remaining a fee paying member for at least two years.

MEMBERSHIP FEES will be used solely to support the CENTER.

**Section 4. Industrial Advisory Board.** There will be an Industrial Advisory Board (BOARD) composed of one representative from each COMPANY. This BOARD makes recommendations on (a) the research projects to be carried out by CENTER, (b) the identification of resources and apportionment to these research projects, (c) the direction of future research by CENTER, (d) changes to MEMBERSHIP FEES, including whether to accept in-kind donations in lieu of or in combination with a sum of money, and (e) changes in the bylaws.

The organization and operation of CENTER and BOARD will be specified by CENTER bylaws that will be adopted by the BOARD with all due haste. The bylaws, when adopted, will become part of this Agreement.

If COMPANIES exceed twenty (20) in number or annual MEMBERSHIP FEES exceed four hundred thousand dollars (\$400,000.00), the BOARD shall consider changing its membership to a proportional representation.

Federal Research and Development organizations and Government-owned Contractor Operated laboratories may become sponsors of the CENTER on terms and conditions other than those in this agreement upon approval by UNIVERSITY and two-thirds of the Industrial Advisory Board.

**Section 5. Confidentiality.** The Parties may wish, from time to time, in connection with activities contemplated under this Agreement, to disclose proprietary information (CONFIDENTIAL INFORMATION) to each other. Each Party will use reasonable efforts to prevent the disclosure of any CONFIDENTIAL INFORMATION belonging to other Parties to third parties for a period of three (3) years from receipt thereof, provided that the recipient Party's obligation hereunder shall not apply to information that:

- (a) is not disclosed in writing or reduced to writing and conspicuously marked as CONFIDENTIAL INFORMATION within thirty (30) days of disclosure;
- (b) is already in the recipient Party's possession at the time of disclosure thereof;
- (c) is or later becomes part of the public domain through no fault of the recipient Party;
- (d) is received from a third party having no obligations of confidentiality to the disclosing Party;
- (e) has been independently developed by an employee or agent of recipient Party that has not had access directly or indirectly to CONFIDENTIAL INFORMATION, and recipient Party can substantiate any claim of independent development by written evidence; or
- (f) is required by law or regulation to be disclosed.

Before COMPANY discloses CONFIDENTIAL INFORMATION to UNIVERSITY, COMPANY shall notify UNIVERSITY of its intent to disclose CONFIDENTIAL INFORMATION, and UNIVERSITY shall have the right to decline disclosure of CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION shall be clearly and conspicuously marked as "Confidential Information". Each party to this Agreement agrees to treat CONFIDENTIAL INFORMATION received from others with the same degree of care with which it treats its own CONFIDENTIAL INFORMATION.

**Section 6. Dissemination of Results and Opportunity to Delay Dissemination.** All COMPANIES shall have the same right to reports, licenses and other project materials, except as otherwise provided for in this Agreement or in the bylaws. Further, UNIVERSITY reserves the right to release information, including the publication or presentation of the results of any research performed by CENTER.

COMPANY shall have the opportunity to review such proposed release if it contains or may contain CONFIDENTIAL INFORMATION of COMPANY or other information that may be of commercial value, and shall have the right to request a delay in release for a period not to exceed one (1) year from the date of submission to COMPANY, for proprietary reasons, provided that COMPANY submits a written request and justification for such delay by overnight courier or personal delivery to UNIVERSITY within thirty (30) days from the date the proposed release is submitted to COMPANY. UNIVERSITY shall be free to release such information, subject to its good faith

consideration of COMPANY's timely request and with reasonable regard for the commercial interests of COMPANY.

**Section 7. Intellectual Property and Grant of Rights.** UNIVERSITY and COMPANY recognize that patents and other intellectual property may be derived from work performed or inventions conceived or reduced to practice in the course of research conducted by the CENTER.

UNIVERSITY and COMPANY further recognize that:

- (a) Intellectual property which is made solely by UNIVERSITY (UNIVERSITY INTELLECTUAL PROPERTY) shall be owned by UNIVERSITY.
- (b) Intellectual Property in which at least one inventor is an employee of COMPANY (JOINT INTELLECTUAL PROPERTY) shall be jointly owned by UNIVERSITY and COMPANY.
- (c) Such JOINT INTELLECTUAL PROPERTY may further include contributions by inventors from entities besides UNIVERSITY and COMPANY (MULTI-PARTY INTELLECTUAL PROPERTY), and rights to such MULTI-PARTY INTELLECTUAL PROPERTY shall be negotiated in good faith between and among the parties.
- (d) Intellectual property which is made solely by COMPANY (COMPANY INTELLECTUAL PROPERTY) shall be owned by COMPANY.

UNIVERSITY shall have a nonexclusive, nontransferable right and license to all such SOLE, JOINT, and MULTI-PARTY intellectual property, including patents, for non-commercial, educational, and research purposes.

It is anticipated that intellectual property development may be supported wholly or partially by federal funds. In this event, UNIVERSITY, pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, will have ownership of all patents developed from UNIVERSITY INTELLECTUAL PROPERTY, subject to "march-in" rights as set forth in this Act. Governmental entities shall have rights to patents for internal, governmental use according to 37 CFR 401. Administration of the rights and licenses thereof shall be conducted in accordance with UNIVERSITY's policies.

If COMPANY wishes to obtain rights to a non-exclusive, royalty-free license to a patent, COMPANY agrees to pay 110% of its pro rata share of the costs (calculated per capita), including attorney fees, of obtaining and maintaining the patent and thereby becomes a SPONSOR of that patent. If SPONSOR wishes to sublicense its subsidiaries and affiliates, it shall obtain a fee-bearing license from the UNIVERSITY. If only one COMPANY seeks a license, that COMPANY may, at the discretion of UNIVERSITY, obtain a fee-bearing license and may obtain the right to sublicense its subsidiaries and affiliates. UNIVERSITY may also negotiate fee-bearing licenses

(whether exclusive or non-exclusive) with non-MEMBERS or MEMBERS (whether or not SPONSORS) for its intellectual property, including patents.

Any royalties or fees generated from intellectual property, over and above expenses incurred, that are received by UNIVERSITY under this Agreement, will be distributed in accordance with UNIVERSITY policy.

**Section 8. COMPANY Benefits.**

Reports, papers, theses, dissertations, and the like produced as the result of the NCREPT program, including those which may have commercial value, will be made available free of charge to COMPANY in a timely manner, subject to foreign export and confidentiality restrictions as well as other restrictions that may be imposed by a sponsor, and subject to the requirements of Section 6.

COMPANY will have specific intellectual property rights as described in Section 7 of this Agreement.

COMPANY will have the right to results and the right to delay dissemination of results as described in Section 6.

Representatives of UNIVERSITY may meet with COMPANY at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, of the NCREPT Program. Such meetings may include scheduled seminars as well as more informal interactions. CENTER anticipates sponsoring continuing education opportunities, including courses and engineering residencies. Meetings, workshops and symposia sponsored by CENTER may be available to COMPANY at a discount.

COMPANY will have ongoing interactions with and access to the CENTER, including its faculty, staff and students.

Additional benefits may be established by the BOARD or found elsewhere in this Agreement.

**Section 9. Survivorship.** The provisions of Section 5, and Section 10 through Section 18, inclusive, shall survive any expiration or termination of this Agreement.

**Section 10. Termination.** Either party may terminate this Agreement without cause upon ninety (90) days written notice to the other. MEMBERSHIP FEES are not refundable in the event of COMPANY terminating the agreement without cause. If UNIVERSITY terminates the Agreement without cause, MEMBERSHIP FEES are refundable on a pro-rated basis.

If either party commits any material breach of or default in any terms or conditions of this Agreement, and fails to reasonably remedy such default or breach within sixty (60) days after receipt of written notice thereof, the other party may, at its option and in addition to any other remedies which it may have at law or in equity,

terminate this Agreement by sending notice of termination in writing to the other party. Termination under this clause shall be effective as of the day of receipt of such notice.

**Section 11. Disputes.** The Parties reserve the right of any Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement.

Moreover, if a Party has a claim, dispute, or controversy (DISPUTE) with another Party, such Party shall promptly advise the other Party in a written statement which describes in reasonable detail the nature of such DISPUTE. If the representatives of the Parties have not been able to resolve the DISPUTE within sixty (60) days after receipt of such written statement, the Parties shall have the right to pursue any other remedies legally available to resolve such DISPUTE in either the Courts of the State of Arkansas or in the United States District Court for the Western District of Arkansas, or the Arkansas State Claims Commission, to whose jurisdiction for such purposes the Parties each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this Section shall be construed to waive any rights or timely performance of any obligations existing under this Agreement or the sovereign immunity of the UNIVERSITY.

**Section 12. Other Research Activities.** Nothing contained herein shall be interpreted to preclude UNIVERSITY from undertaking efforts of a same or similar type to those performed under this Agreement either for third parties or for internal utilization. COMPANIES shall not have any license rights in any results of such research.

**Section 13. Use of Names.** No advertising or publicity matter having or containing any reference to UNIVERSITY or any of its respective divisions, units or affiliated institutions shall be made use of by the COMPANY or anyone in the COMPANY's behalf unless and until the same has first been submitted to and received the approval of UNIVERSITY. COMPANY shall not release material containing the name of UNIVERSITY or any of its employees without prior written approval by an authorized representative of UNIVERSITY, and said approval shall not be unreasonably withheld.

**Section 14. Indemnification.** Under Arkansas law, UNIVERSITY may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages. However, with respect to loss, expense, damage, liability, claims or demands either at law or in equity, for actual or alleged patent, trademark, copyright or other property right infringement arising from the work performed under this Agreement by the UNIVERSITY and its employees or agents, the UNIVERSITY agrees with COMPANY that: (a) it will cooperate with COMPANY in the defense of any action or claim brought against COMPANY seeking the foregoing damages or relief; (b) it will in good faith cooperate with COMPANY should COMPANY present any claims of the foregoing nature against UNIVERSITY to the Claims Commission of the State of Arkansas, (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable

efforts to expedite said hearing; provided, however, the UNIVERSITY reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum.

COMPANY shall indemnify and hold harmless UNIVERSITY, its regents, officers, agents and employees from any liability or loss resulting from judgments or claims against them arising out of the activities to be carried out pursuant to the obligations of this Agreement or the use by COMPANY of the results of basic or applied research, provided, however, that the following is excluded from COMPANY's obligation to indemnify and hold harmless:

- (a) The negligent failure of UNIVERSITY to comply with any applicable governmental requirements; or
- (b) The negligence or willful malfeasance by a trustee, officer, agent or employee of UNIVERSITY.

**Section 15. Limitation of Remedies.** THE OBLIGATIONS OF UNIVERSITY ARE SET FORTH IN THIS AGREEMENT AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**Section 16. Partnership Not Intended.** Any language herein that tends to indicate the formation of any partnership, joint venture or any other form of legal entity between or among COMPANY and UNIVERSITY has been for convenience only.

**Section 17. Notices.** All notices required or desirable hereunder shall be given by first class certified mail, postage prepaid, to the following addresses or such other address as shall be designated in writing by the Parties from time to time:

<u>UNIVERSITY</u> Rosemary H. Ruff, Director Research Support and Sponsored Programs 120 Ozark Hall Fayetteville, AR 72701	<u>COMPANY</u>
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**Section 18. Miscellaneous Provisions.**

- a. This Agreement supersedes all prior discussions and agreements between the Parties with respect to all matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein. No representation, promise or inducement not contained herein shall be binding on any Party hereto. Neither Party has relied on any representation, promise or inducement not contained herein. This Agreement shall not be modified or amended except by instrument in writing signed by or on behalf of the Parties hereto.
- b. Unless expressly stated elsewhere herein to the contrary, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and not restrictive of those given by law.
- c. Section headings have been inserted herein for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Agreement.
- d. Time is and shall be of the essence of this Agreement.
- e. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- f. No failure of the Parties to exercise any power given to either of them hereunder or to insist upon strict compliance by either of them at variance with the terms hereof shall constitute a waiver of either of their rights to demand exact compliance with the terms hereof.
- g. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.
- h. It is expressly understood by the Parties that all research activities of CENTER may be assigned to UNIVERSITY. Except as otherwise agreed herein, this Agreement may not be assigned by either Party without the prior written consent of the other.
- i. In the interpretation of this Agreement, unless the context requires, words importing the singular or plural number shall be deemed to import the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other bodies and vice versa.
- j. In the event that any of the terms, provisions, or covenants contained in this Agreement are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions or covenants not held to be partially or wholly invalid or unenforceable.

k. Neither Party shall be held in breach of this Agreement for any reason for acts or omissions caused by any Act of God or other cause beyond the control of the Parties, including, but not limited to, fire, floods, labor disputes, or other unforeseen circumstances.

**COMPANY**

**BOARD OF TRUSTEES**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Printed name: Rosemary H. Ruff  
Title: Director, Research Support and  
Sponsored Programs

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_