

**CMAT
INDUSTRY MEMBERSHIP AGREEMENT**

This agreement ("Agreement") is made by and between
GEORGIA TECH RESEARCH CORPORATION, a Georgia nonprofit
corporation having a business at 926 Dalney Street, Atlanta, Georgia 30332-
0420
(hereinafter referred to as "GTRC")

And

MEMBER NAME,
a [insert state] corporation, having a business at [address, city, state, zip]
(hereinafter referred to as "Member")

The purpose of this Agreement is to promote research and training in next generation cell manufacturing technologies (the "Research Area") and through interaction with industry to stimulate technological innovation through Membership in the Center for Cell Manufacturing Technologies (CMaT) (hereinafter referred to as "Center"). GTRC is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (Code) and is a supporting organization of the Georgia Institute of Technology ("GIT") under Section 509(a)(3) of the Code. Employees, independent contractors, subcontractors, consultants, and student assistants of GIT will perform the research and training activities of the Center. Accordingly, establishing and operating the Center furthers the tax-exempt charitable purposes of GTRC, which functions as an extension of GIT.

WHEREAS, in addition to GIT as Lead Institute, the Center is composed of the following Partner Universities: University of Georgia; University of Wisconsin-Madison; and the University of Puerto Rico at Mayaguez

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

- 1.0 The Center plans to conduct research focused on the Research Area and invite interested industry organizations to become members (hereinafter "Member(s)") and participate in the research activities conducted therein. The organization and operation of the Center together with terms and conditions of sponsorship are set forth in the Bylaws (which may be adopted from time to time).
- 2.0 Subject to the terms of this Agreement and the attached **Center Bylaws (Attachment B)** Member hereby joins the Center as of the Effective Date designated on the **Initiation and In-Kind Form** at **Attachment A**. Member shall be entitled to appropriate privileges defined as membership benefits in the Center Bylaws. Member agrees to support the research, training, and education programs of the Center through its membership

and by encouraging its employees to participate in Center activities, including research projects and IPAB meetings as described in Section 1.2 of the Bylaws.

- 3.0 Member agrees to the membership level selected in Attachment A and to pay the respective membership fees for each year of the Membership Period. The Membership Period shall begin on the Effective Date set forth in Attachment A following the execution of this Agreement below. Member may terminate membership in the Center by providing GTRC sixty (60) days written notice prior to the anniversary of the Effective Date. Each Member shall be liable for payment of dues through the anniversary of the Effective Date. This Agreement shall renew automatically each year via issuance and payment of invoice unless GTRC receives a written termination notice sixty (60) days prior to the anniversary date of this agreement.
- 4.0 GTRC shall invoice Member upon execution of this Agreement and automatically each year, ninety (90) days prior to the anniversary of the Effective Date of this agreement as set forth in Attachment A.
 - i. Member agrees to pay each cash invoice by or before the anniversary of the Effective Date (the "Due Date").
 - ii. For any in-kind contributions, either in lieu of or in addition to cash payment as the case may be, Member shall submit an acknowledgement of the intended contribution containing the required information as described in Attachment A by or before the anniversary of the Effective Date.
 - iii. Any invoice not paid within thirty (30) days of the Due Date will be considered delinquent and subject to a one and one-half percent (1.5%) per month fee for each month or fraction thereof, until the payment is received.
 - iv. GTRC reserves the right to suspend the privileges of Membership, as defined in the Bylaws, if Member fails to pay any GTRC invoice within the time specified.
- 5.0 GTRC, Center, and Member shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties. GTRC, Center and Member shall each be solely responsible for the conduct of their respective employees, agents and contractors in connection with the performance of their obligations hereunder.
- 6.0 Neither GTRC on behalf of Center nor Member shall have any right to assign this Agreement without the prior written consent of the other party. This Agreement and all of the terms and provisions hereof will be

binding upon, and will inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

7.0 It is understood that this Membership Agreement may be modified only under terms mutually agreed upon in a duly executed amendment to this Agreement. The Center Director reserves the right to modify the Bylaws as necessary from time to time following approval from the Partner Universities as specified in Section 6.3 of the Bylaws.

8.0 The parties hereto have caused this Agreement to be executed by duly authorized representatives on the date indicated below with the Effective Date of membership as indicated on Attachment A.

MEMBER

GEORGIA TECH RESEARCH CORPORATION

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Attachment A

CMAT

MEMBERSHIP AGREEMENT INITIATION AND IN-KIND FORM

MEMBER NAME:

EFFECTIVE DATE:

Select the desired Membership Level:

- Full Associate Affiliate Startup

In-Kind Membership dues consist of: (Please list personnel, equipment, etc)

Member Point of Contact for Agreement:

IPAB Representative Point of Contact:

Name:

Title:

Phone:

Email:

Address:

Upon execution of this membership agreement, GTRC will invoice Member for appropriate membership fees as applicable.

Payments are to be made to:

Georgia Tech Research Corporation, P. O. Box 100117, Atlanta, GA 30384-0117

Attachment B

GEORGIA TECH RESEARCH CORPORATION

Center for Cell Manufacturing Technologies (CMaT) BYLAWS

ARTICLE I MISSION AND ORGANIZATION

- 1.1 **Mission.** The Center for Cell Manufacturing Technologies (hereinafter "Center") has been established by the Georgia Institute of Technology to perform research in next generation cell manufacturing technologies (the "Research Area"), and to promote education and training in this area. The Center plans to conduct focused research in the Research Area and invite interested organizations to become members (hereinafter "Member(s)") and participate in the research activities conducted therein.

The Center is a multi-university, National Science Foundation funded Engineering Research Center ("NSF ERC") comprised of the University of Georgia, University of Wisconsin-Madison and the University of Puerto Rico-Mayaguez ("Partner Universities") and the Georgia Institute of Technology ("Lead Institute") plus Industry Members. These Bylaws in combination with the Industry Membership Agreement govern the organization and operation of the CMaT industry program.

- 1.2 **Organization.** The Director shall lead the Center with the advice of the Industry Members through an Industry and Practitioners Advisory Board ("IPAB") and a Partner University forum, whose purpose it will be to advise the Director on the direction of research and the operational policies of the Center. In addition, the Director will be assisted by the Deputy Director, and other faculty, staff and students as needed. The Director of the Center shall make the final selection of research projects and the manner of their performance.

ARTICLE II MEMBERS

- 2.1 **Eligibility and Admission of Members.** The Director of the Center shall determine eligibility for membership in accordance with the terms

and conditions of these Bylaws. An organization may become a Member of the Center upon nomination by the Center Director or an existing Member and fulfillment of applicable membership obligations. The Georgia Tech Research Corporation, a 501 (c) 3 not-for-profit supporting organization of the Lead Institution, Georgia Institute of Technology (GIT) (hereinafter "GTRC"), shall review requests for membership by non-U.S. corporations. Notwithstanding anything to the contrary contained herein, full and timely compliance with all applicable U.S. export laws and regulations explicitly condition all membership benefits.

2.2 Membership Levels. There are four levels of Industry Memberships available to companies. The membership fee may be paid in combinations of cash and in-kind contributions as further described at each level below. The Director, in its sole discretion shall be authorized to make reasonable exceptions to the combination of cash and in-kind contributions at each level under unique conditions and in the best interests of CMat.

<i>Membership Type</i>	Full (Tier 1)	Associate (Tier 2)	Affiliate (Tier 3)	Startup (Tier 4)
<i>Minimum Annual Contributions</i>	\$100,000 total (at least \$50,000 cash)	\$50,000 total (at least \$35,000 cash)	\$50,000 total (at least \$5,000 cash)	\$5,000 total (at least \$1,000 cash)

2.2.1 Membership fees shall generally be used in the support of Center Core Research and operations of the Center. For the purposes of these Bylaws and accompanying membership agreements, "Center Core Research" shall mean research projects that are funded by any combination of membership fees and/or the National Science Foundation grant (ERC award #EEC 1648035). Operations support from membership fees shall include without limitation reasonable travel, food, and beverage expenses related to meetings and conferences in accordance with Cost Accounting Standards and GIT policies, as may be amended from time to time. In addition, at their option, Members may enter into agreements with Georgia Tech, or any of the Partner Universities for specific non-Membership funded research projects. These "Directed Research" projects shall mean projects within the research area, but not part of the Center, the terms and conditions of which will be handled via a separate research agreement.

2.2.2 In-kind (non-cash) contributions may include personnel time, services, equipment or supplies. These contributions by all levels of Membership will be treated the same as cash and evaluated as such. The Director, in its sole discretion shall be authorized to approve and

accept the proposed in-kind contributions by determining whether such contribution would be in the best interests of CMaT.

- i. The contributing Industry Member will provide documentation of the value of services provided in the form of ongoing salary certification. Consultation services involving technical expertise may be applied toward in-kind accounting. Attendance at IPAB meetings and travel time are not attributable for purposes of in-kind accounting. Contributions of materials, supplies, software and equipment (and corresponding service agreements as applicable) shall be accompanied by appropriate documentation of their fair market value. All in-kind documentation requirements are further outlined in Attachment A.
- ii. Partner Universities directly receiving the Industry Member(s) in-kind contribution will conduct an evaluation of fair market value, as set forth in [2 CFR 200.306](#), for services, equipment, and supplies and submit a certification report, (form to be agreed upon by all Partner Universities and the Lead Institute), to the Center Director as soon as possible following the receipt of the contribution. In-kind contributions which exceed the annual Industry Membership fee may be recognized across more than one year, subject to pre-approval by the Director. The Partner University should submit an annual certification with the total value of the contribution and the amount to be recognized that year.
- iii. In-kind contributions made directly to the Lead Institute (Georgia Institute of Technology) will be evaluated according to appropriate Institute policies and fair market value and the Center will be responsible for tracking, administering, certifying and reporting all in-kind contributions. Center documentation certifying the fair market value of the non-cash contributions must be sent to the Office of Industry Engagement as soon as possible following the receipt of the contribution.

2.3 **Membership Benefits.** Every member is eligible to participate on the Industry and Practitioners Advisory Board as outlined in Article III, and every member is entitled to the intellectual property benefits as outlined in Article IV. Every member also has the following benefits: participation in CMaT projects to influence research directions; participation in education and diversity programs to shape the future of the cell manufacturing workforce; involvement in standards development; access to trainees at all levels for future hiring; opportunities to host student internships and apply for NSF funded internships; access to short courses and workshops; exposure to research results prior to publication; and logo on website.

There are four tiers of Industry Membership Benefits as further described at each level below. The Director, in its sole discretion shall be authorized to make reasonable exceptions to the member benefits, except Center IP benefits as outlined in Article IV, and minimum annual contributions that are in the best interests of CMaT.

- A. *Startup Member (Tier 4)*: This membership level is reserved for startup companies, typically with less than 30 employees and less than 6 million dollars in annual revenue. In addition to the above benefits, this level provides fourth priority (after Full Members, Associate Members, and Affiliate Members) to engage in proprietary sponsored research outside of the Center Membership, including translational research and product development utilizing CMaT infrastructure.
- B. *Affiliate Member (Tier 3)*: This membership level is intended for small companies who want to place their tools, equipment, or instruments in CMaT labs. In addition to the above benefits, this level provides third priority (after Full Members and Associate Members) to engage in proprietary sponsored research outside of the Center Membership, including translational research and product development utilizing CMaT infrastructure. Furthermore, this level provides opportunities to showcase how placed tools, equipment, and instruments are being used to advance CMaT objectives.
- C. *Associate Member (Tier 2)*: In addition to the above benefits, this level provides second priority (after Full Members) to engage in proprietary sponsored research outside of the Center Membership, including translational research and product development utilizing CMaT infrastructure. Furthermore, this level will be recognized at CMaT's annual retreat for contributing to seed research projects.
- D. *Full Member (Tier 1)*: In addition to the above benefits, Full Members have a priority option to exclusively commercially license Center IP subject to other Full Member participation and as further outlined in Article IV. Full Members also have first priority to engage in proprietary sponsored research outside of the Center Membership, including translational research and product development utilizing CMaT infrastructure. Furthermore, Full Members have the option to have a named student fellowship.

2.4 **Member Expectations.** All Industry Members shall endeavor to engage with one or more Center Core Research and/or education projects, thrust areas, testbeds, or identify other ways to routinely contribute industry perspectives to the Center's initiatives.

2.5 **Fulfillment of Membership Commitment.**

2.5.1 Membership shall be effective upon dues payment and execution of the membership agreement.

2.5.2 Members may renew their memberships on an annual basis, on or before the date on which the current membership term expires, upon receipt of their dues.

ARTICLE III INDUSTRY AND PRACTITIONERS ADVISORY BOARD

3.1 **Composition of IPAB.** The Center shall establish an IPAB consisting of one representative from each eligible Industry Member as defined by the membership levels in Clause 2.2. A majority vote of the Member representatives shall elect a Chair to lead the IPAB.

3.2 **Purpose of the IPAB.** The IPAB shall advise the Center on the direction of Center research, the allocation of resources to achieve the Center's mission, and the operational policies of the Center. The IPAB may create subcommittees as it deems necessary.

3.3 **Meetings of the IPAB.** The IPAB shall meet at least twice in each calendar year. The Center shall communicate the time and place of the regular meetings to each Member a reasonable time before each meeting.

3.4 **Quorum and Voting Rights.** At all meetings of the IPAB, a simple majority of the then current number of voting Members shall be necessary to constitute a quorum for the transaction of business. The act of the majority of the voting Members present at any meeting at which there is a quorum shall be the act of the IPAB, provided however, that any action or resolution that is opposed by a majority of all of the voting Members shall not be deemed taken by the IPAB.

ARTICLE IV INTELLECTUAL PROPERTY POLICY

4.1 **Center Intellectual Property Rights.** Center Intellectual Property shall include potentially patentable inventions, conceived in the course of performance of Center research projects supported by NSF ERC and/or membership dues, whether or not protectable by a patent.

All intellectual property that results from research funded by the Center and created solely by an inventor(s) of a Partner University or the Lead Institute (the "Owner"), will be owned solely by that inventor's home

institution, pursuant to chapter 18 of title 35 of the United States code, commonly called the Bayh-dole Act, subject to "march-in" rights as set form in the Act.

Intellectual property resulting from research funded by the Center and created by inventors from two or more Partner Universities and/or Lead Institute) will be owned jointly between the inventors' home institutions.

In support and furtherance of the Center's mission, all such Center Intellectual Property, including invention disclosures, filed and assigned patents, as well as copyrights, (excluding copyrights in academic works of authorship such as publications, theses, and dissertations) will be subject to the rights granted under the CMaT Bylaws and Industry membership agreement. Upon fulfillment of the obligations and rights under the CMaT Bylaws and Industry membership agreement, Center Intellectual Property may be marketed to industry at the discretion of the Owners, if permissible.

4.2 **Disclosure of Intellectual Property.**

The inventor(s) will disclose any invention created during research undertaken by the Center to the appropriate policy committee or technology transfer office of the institution with which the inventor is affiliated. That institution shall be responsible for managing the invention; for jointly created inventions from separate institutions, the institutions shall decide which institution will manage the invention. Within a reasonable time frame, all inventions shall be reported to the Center.

The Intellectual Property Policies of each of the Partner Universities and the Lead Institute in effect at the time an invention is disclosed shall govern the management of Intellectual Property created during research undertaken by the Center.

4.3 **Election of License, Payment of Patent Expenses.**

Invention Disclosures. For inventions, these rights apply if Member was a member on the date of invention disclosure submission to GTRC. Invention disclosures reported to the Center will initially be available for review by Center Members only. All Members, regardless of level, agree to keep any such disclosures confidential. Review of invention disclosures is first done by Full Members for 30 days, second by Associate Members for 30 days, third by Affiliate Members for 30 days, and finally by and Startup Members for 30 days. For each invention disclosure review, Members shall initially be sent a non-confidential disclosure, and

Members shall request a confidential disclosure if Member wants to learn more details about an invention. The option period noted in this Section 4.3 shall begin upon the first receipt of an invention disclosure, whether such invention disclosure is sent to Member is non-confidential or confidential. Should a Center Member(s) recommend an invention for patenting, the Owner of the invention must also concur with the recommendation. If a recommendation by a Member is approved to go forward, Member will have an option to negotiate a co-exclusive license with other Members of the same membership level. This option period will be granted to the Full Member for a time span of six (6) months, Associate Members for a time span of five (5) months, Affiliate Members for a time span of four (4) months, and Startup Members for a time span of three (3) months. After exercising an option, Members shall have a negotiation period of an additional ninety (90) days.

- 4.3.1 Full Member Licensing. Invention disclosures shall be provided to Full Members. Full Members will indicate within 30 days of receipt of an invention disclosure, their recommendation to patent the invention and shall work with the Owner of the invention for concurrence. If a recommendation by Full Members is approved to go forward, Full Members will have an option period of six (6) months to negotiate a co-exclusive license. Full Members will have 90 days after exercising an option to negotiate and execute a commercial license.
- 4.3.2 Associate Member Licensing. After the Full Member 30 day review period, invention disclosures shall be provided to Associate Members. Associate Members will indicate within 30 days of receipt of an invention disclosure, their recommendation to patent the invention and shall work with the Owner of the invention for concurrence. Associate Members will only be able to seek a commercial license if no Full Member executes a co-exclusive or exclusive license under the terms of this Article IV, or if all Full Members co-exclusive or exclusive licenses for an invention are subsequently terminated. Associate Members will notify invention Owner of their intention to seek a commercial license within 30 days of all Full Members declining their option, the expiration of the Full Member option period, or unsuccessful negotiations for a commercial license within the 90-day license negotiation period. Associate Members will subsequently have 90 days to negotiate and execute a commercial license.
- 4.3.3 Affiliate Member Licensing. After the Associate Member 30 day review period, invention disclosures shall be provided to Affiliate Members. Affiliate Members will indicate within 30 days of receipt of an invention disclosure, their recommendation to patent the invention and shall work with the Owner of the invention for concurrence. Affiliate

Members will only be able to seek a commercial license if no Full or Associate Member executes a co-exclusive or exclusive license under the terms of this Article IV, or if all Full and Associate Members co-exclusive or exclusive licenses for an invention are subsequently terminated. Affiliate Members will notify invention Owner of their intention to seek a commercial license within 30 days of all Full and Associate Members declining their option, the expiration of the Full and Associate Member option period, or unsuccessful negotiations for a commercial license within the 90-day license negotiation period. Affiliate Members will subsequently have 90 days to negotiate and execute a commercial license.

- 4.3.4 Startup Member Licensing. After the Affiliate Member 30 day review period, invention disclosures shall be provided to Startup Members. Startup Members will indicate within 30 days of receipt of an invention disclosure, their recommendation to patent the invention and shall work with the Owner of the invention for concurrence. Startup Members will only be able to seek a commercial license if no Full, Associate, or Affiliate Member executes a co-exclusive or exclusive license under the terms of this Article IV, or if all Full, Associate, and Affiliate Members co-exclusive or exclusive licenses for an invention are subsequently terminated. Startup Members will notify invention Owner of their intention to seek a commercial license within 30 days of all Full, Associate, and Affiliate Members declining their option, the expiration of the Full, Associate, and Affiliate Member option periods, or unsuccessful negotiations for a commercial license within the 90-day license negotiation period. Startup Members will subsequently have 90 days to negotiate and execute a commercial license.
- 4.3.5 Payment of Patent Expenses. With the concurrence of the invention Owner, a positive recommendation by a Member for patenting shall also be a commitment by that Member to pay for all (if only one member is interested) or a pro rata amount of any associated patent expenses (if more than one member is interested), and be an indication that the Member will take a non-commercial, non-exclusive, royalty-free (NERF) license for internal research & development purposes. Members, depending upon Membership Type, may seek a commercial license according to the CMat Bylaws and Industry membership agreement. Only those Members requesting foreign patent filings shall pay foreign patent costs (pro rata based on the number of Members involved for a given jurisdiction) and be entitled to receive a license to practice the invention(s) in such foreign jurisdiction. Membership dues and/or non-cash contributions cannot be used for the payment of patent costs. The appropriate technology transfer office for each of the Partner Universities and the Lead Institute, as appropriate, will file

patent applications on any Center disclosure or information recommended for patenting by Members.

- 4.4 **Licensing Terms.** Center Members may request a non-exclusive, royalty-free, non-transferable, research and development license to make, have made, and use in its own facilities any patented or patent pending inventions supported, in whole or in part, by dues-funded research projects reported to the Center upon payment of their proportional share of patent expenses. (See Section 4.9 for Commercial Licenses.) Any Member recommending patenting and electing a license under this section who later ceases to pay patent costs pursuant to Section 4.3 shall lose all rights granted under this license. Upon resignation of membership in the Center, Member shall lose all rights to any Intellectual Property resulting from Center research other than rights in those inventions for which Member took a license and for which Member continues to pay any and all applicable patent and/or licensing costs associated with such license and otherwise remains in good standing under the applicable license terms and conditions.
- 4.5 **Waiver of License Rights.** If an invention resulting from Center Research is not recommended for patenting or any other action by Industry Members as per Section 4.3, the Partner Universities and the Lead Institution with the concurrence of the invention Owner, can elect to pay for patent protection. Should this occur, all other Center Members not electing to pay for patent expenses will be deemed to have waived any rights to the invention. Other Center Members (University or Industry) may negotiate an exclusive or non-exclusive, royalty-bearing license with the invention Owner at its sole discretion. For jointly owned intellectual property, the Partner University and/or Lead Institution, as applicable, will decide on the division of any associated costs (e.g. patent expenses, technology/market evaluation, etc.) and revenues.
- 4.6 **License Eligibility.** In the event that some Member(s) elect to pay patent costs and take a non-commercial NERF license to an invention pursuant to Section 4.3, and at a later date a non-electing Member desires to take a license to the same invention, such Member can be granted a license upon payment of a fair and reasonable license fee and the prorated share of the patent costs to-date, payable to the appropriate entity managing the license (Partner University or Lead Institution). For clarity, such non-electing Member subsequently desiring to take a license could only seek a commercial license if no other Members have executed a commercial license according to the CMaT Bylaws and Industry membership agreement.
- 4.7 **Invention Commercial Licenses.** In the event that any Member has

an interest in commercialization of patented or patent-pending inventions that result from Center dues-funded research, and no other Member has elected to license, that Member may negotiate a royalty bearing and/or fee based license agreement with the entity managing the licensing (Partner University or the Lead Institution) upon notification to the Center Director and in accordance with the appropriate Intellectual Property Policy.

- 4.8 **Software Licenses.** Member shall be entitled to a non-exclusive, royalty-free, end-user license for internal use only to all software resulting from research funded by that Member. These rights do not include software resulting from research performed under contracts with individual Members or other third parties for specific research projects.
- 4.9 **Other Licenses.** In the event Member desires to commercialize unpatented Center Intellectual Property, including software, that is not subject to any non-disclosure terms and has not otherwise been published, the entity managing that intellectual property may negotiate in good faith a license and know how agreement with such Member in accordance with the appropriate Intellectual Property Policy.
- 4.10 **Licenses to Non-Members.** In the event a non-member Company requests a license from the Center to rights in Intellectual Property arising out of Center dues-funded research that is not subject to any non-disclosure terms and has not otherwise been exclusively licensed to a Member, the entity managing that intellectual property will have the right to negotiate a license with such non-member, subject to any existing Member rights, and on commercially reasonable terms.
- 4.11 **Title of Intellectual Property.** This provision does not apply to pre-existing intellectual property.
- 4.12 **Compliance with Bayh-Dole Act.** Center Members acknowledge and agree that the U.S. Government is granted a non-exclusive, nontransferable, paid-up, worldwide license to practice or to have practiced any Center Intellectual Property developed or resulting from federally funded research.
- 4.13 **Publication Rights.** Partner Universities and Lead Institution reserve the right to publish the results of Center research in scientific journals. However, prior to publication, any Member having rights pursuant to Section 4.4 shall have the opportunity to review any such article prior to submission for publication for the purpose of identifying Member confidential information present in the proposed publication or permit the

filing of patent applications on an invention made at or by the Center. Member shall have thirty (30) days from receipt of the proposed publication to request a delay of publication that was transmitted to Member. The delay period shall not exceed a total of sixty (60) days from Member's receipt of the publication. Should the proposed publication be a student thesis or dissertation, Member hereby agrees to use its commercially reasonable efforts to complete all reviews of material contained therein and any necessary patent application procedures evolving therefrom in such a manner as not to impede the students' completing their requirements for graduation or completion of a degree. Submission of information for publication will be permitted at any time following filing of a patent application.

ARTICLE V CONFIDENTIALITY

- 5.1 For the purpose of this section, "DISCLOSER" shall mean the party disclosing Proprietary Information, as defined herein, "RECIPIENT" shall mean the party receiving the same. DISCLOSER and RECIPIENT shall only refer to either a MEMBER or the CENTER.
- 5.2 As a member of the CENTER, MEMBER may receive certain technical data or information that is commercially valuable and not generally known in the industry belonging to GTRC and/or other MEMBERS (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information shall include confidential information or data disclosed to RECIPIENT in connection with this Agreement by either GTRC, the CENTER or by another MEMBER, including without limitation, scientific or technical information, design, process, procedure, formula, or improvement, creative works, data, data bases, product plans, strategies, forecasts, research procedures methodologies, protocols and development. Such information shall be considered Proprietary Information if, at the time of disclosure, it is clearly marked, by DISCLOSER with an appropriate stamp or legend as "Proprietary Information" or "Confidential". Such information, if disclosed in a Non-written or otherwise intangible format, will be considered Proprietary Information if the DISCLOSER informs RECIPIENT at the time of such disclosure that the information being disclosed is Proprietary Information and the DISCLOSER provides RECIPIENT with a writing that clearly identifies the nature and content of the disclosure within twenty (20) days of the disclosure.
- 5.3 Proprietary Information shall not include: (a) information that is already or becomes generally available to the public free from any confidentiality obligations through no breach of confidentiality obligation under this

Agreement by MEMBER; (b) is already known to MEMBER or CENTER at the time of disclosure by DISCLOSER; (c) such information is independently developed by MEMBER; (d) such information is received from a third party who had a lawful right to disclose it; (e) such information is disclosed to any third party by MEMBER OR CENTER without restriction as to further disclosure; (f) such information is disclosed to a third party with the written approval of DISCLOSER; or (g) such information is required to be disclosed pursuant to an order of a court of competent jurisdiction. MEMBER and Center agrees to maintain as confidential any Proprietary Information received and identified as Proprietary Information as set forth in Section 5.1, and to use the same degree of care MEMBER or CENTER would for its own Proprietary Information, but no less than reasonable care, to protect such Proprietary Information from disclosure to unauthorized third parties.

- 5.4 Because of the intended collaborative nature of the CENTER, MEMBERS should not provide any information they consider trade secret or otherwise financially sensitive, including marketing techniques procedures and materials, customer names and other information related to customers, pricelists, pricing policies and financial information.
- 5.5 This obligation of confidentiality shall terminate three (3) years from the date of disclosure.

ARTICLE VI GENERAL

- 6.1 **Notices.** Under the provisions of these Bylaws whenever notice is required to be given, such notice may be given in person, by telephone, e-mail, telecopy, or by mail or private courier, to Members at such address as appears on the records of the Center and GTRC at 926 Dalney Street, Atlanta, Georgia 30332-0415, Attn: Industry Engagement Executive Director. Written notice shall be deemed given at the time when the same shall be delivered, received, or properly mailed.
- 6.2 **No Effect on Non-Profit Status.** GTRC intends that these Bylaws comply with the requirements of Section 5.03 of IRS Revenue Procedure 97-14 (and interpretations thereof) dealing with cooperative research agreements and shall be interpreted in a manner consistent with such requirements. GTRC reserves the right to amend these Bylaws to the extent necessary to ensure GTRC's continued tax-exempt status or continued compliance with tax covenants made by GTRC in connection with the issuance of tax-exempt bonds, or to comply with

other laws or regulations.

- 6.3 **Amendments.** The Center, alone or upon the recommendation of its Membership, may propose amendments to these bylaws and/or such additional bylaws as it may deem necessary, which, upon written approval of GTRC and Partner Universities, shall govern the operation of the Center.
- 6.4 **Termination of Center.** In the event that either NSF or GTRC terminates this Center, Members may receive a prorated refund of any cash membership dues received after such termination.
- 6.5 **Indemnification.** The Parties understand and agree that any commercial license taken under the Membership will contain indemnification language substantially in the form of the following provision:
- “To the extent allowable by authorized law, Member agrees to and does hereby indemnify, hold harmless, and save from liability GTRC, Staff Members, the Center, Partner Universities and the Georgia Institute of Technology and the Board of Regents of the University System of Georgia, including their officers and employees, from and against any and all claims, demands, and actions arising out of or relating to Member's commercial use of reports, information, or technology licensed to Member under the Bylaws.”
- 6.6 **WARRANTY DISCLAIMER.** GTRC, THE CENTER, THE PARTNER UNIVERSITIES AND THE GEORGIA INSTITUTE OF TECHNOLOGY DISCLAIM ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES RESULTING THEREFROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, THE USE OF ANY OF THE INVENTIONS OR IP WILL NOT INFRINGE ANY RIGHTS OF THIRD PARTIES.

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