

# MEMBERSHIP AGREEMENT

## Friction Stir Processing Industry/University Cooperative Research Center

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the University Consortium (hereinafter referred to as CONSORTIUM) comprising and acting through the following UNIVERSITY AFFILIATES:

- (a) South Dakota School of Mines and Technology, Rapid City SD
- (b) Brigham Young University, Provo UT
- (c) University of South Carolina Research Foundation, Columbia SC, and
- (d) University of North Texas, Denton TX
- (e) Wichita State University, Wichita, KS

And \_\_\_\_\_ (hereinafter called "COMPANY").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Research Center for Friction Stir Processing (hereinafter called "CENTER") by the CONSORTIUM to maintain a mechanism whereby the university environment can be used to perform research to advance, develop and promote research into the principles and technology of Friction Stir Processing science and engineering through research, development, education, and technology exchange among academic, industry, and government entities.

The parties hereby agree to the following terms and conditions:

A. CENTER will be operated by certain faculty, staff and students at the UNIVERSITY AFFILIATE level. For the first five years, the CENTER will be supported jointly by industrial firms, Federal laboratories, the National Science Foundation (NSF), and the UNIVERSITY AFFILIATES.

The current CENTER director is:

Dr. Tracy W. Nelson, Brigham Young University.

The current CONSORTIUM AFFILIATE Directors and Principal Investigators are:

Dr. Carl D. Sorensen, Brigham Young University

Dr. Anthony Reynolds, University of South Carolina Research Foundation

Dr. Rajiv Mishra, University of North Texas

Dr. Michael West: South Dakota School of Mines and Technology

Dr. Dwight Burford, Wichita State University

Approved 15 July 2011

B. 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. Federal Research and Development organizations and Government-owned Contractor Operated laboratories may become sponsors of the CENTER with greater rights than those specified in this agreement only upon unanimous approval by the CONSORTIUM and upon approval of two-thirds of the Industrial Advisory Board (as defined in section E. below). The COMPANY shall designate a UNIVERSITY AFFILIATE as its principal point of contact.

C. COMPANY agrees to contribute \$35,000 annually in support of the CENTER and thereby becomes a member. Payment of these membership fees shall be made as a lump sum effective \_\_\_\_\_; or in four equal quarterly installments of \$8,750 on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ of each year of sponsorship. Checks from COMPANY should be mailed to the UNIVERSITY AFFILIATE Site Director and made payable to the UNIVERSITY AFFILIATE. 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 three years. However, COMPANY may terminate this Agreement by giving the UNIVERSITY AFFILIATE 90 day written notice prior to the termination date.

The results of CENTER research will be made equally available to all sponsoring COMPANIES. Ownership of patents and copyrights that result from CENTER research will remain with the UNIVERSITY AFFILIATE that generated the patent or copyright rights, as per the terms of this Agreement.

D. The organization and operation of the CENTER will be specified by CENTER bylaws that will be adopted at the first Industrial Advisory Board meeting. The bylaws, when adopted, will become part of this Agreement.

E. There will be an Industrial Advisory Board composed of one representative from each COMPANY member. The Advisory Board will meet twice annually and the CONSORTIUM will report its research results and make recommendations for future work. This board will make recommendations on (a) the research projects to be carried out by the CENTER (b) the apportionment of resources to these research projects, and (c) changes in the bylaws. The operation of this board is specified in the bylaws.

F. The CONSORTIUM reserves the right to publish in scientific or engineering journals and/or present in professional meetings the results of any research performed by CENTER. The UNIVERSITY AFFILIATE will submit any proposed publication or presentation to each COMPANY, containing results of the research program of the CENTER. COMPANY shall have the right to request a delay in publication for a period not exceeding ninety (90) days from the date of submission to COMPANY, for proprietary reasons, provided that COMPANY makes a written request and justification for such delay within thirty (30) days from the date the proposed publication or presentation is submitted by certified mail to COMPANY.

G. All patents derived from inventions conceived or first actually reduced to practice in the course of research conducted by a UNIVERSITY AFFILIATE shall belong to the UNIVERSITY AFFILIATE that generated the invention(s). Said UNIVERSITY AFFILIATE 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 this work, subject to "march-in" rights as set forth in this Act. COMPANIES that wish to exercise rights to a royalty-free nonexclusive license agree to pay their respective portion of the costs associated with application for and maintenance of the patent. CONSORTIUM agrees that all such CENTER sponsors in good standing at the time of disclosure are entitled to said nonexclusive royalty-free license. COMPANY will have the right to sublicense the intellectual property of the patents to its subsidiaries and affiliates but will not have the right to sublicense other entities. If only one COMPANY seeks a license, that COMPANY may obtain an exclusive, fee-bearing license from the UNIVERSITY AFFILIATE that owns the patent rights.

H. Copyright registration and ownership shall be obtained by the UNIVERSITY AFFILIATES having ownership of software developed through the CENTER. The UNIVERSITY AFFILIATE will grant COMPANIES that are CENTER sponsors in good standing at the time of disclosure and request a license, a royalty-free nonexclusive license. COMPANY will have the right to sublicense its subsidiaries and affiliates for internal use of the software, but will not have the right to sublicense other entities. COMPANY will have the right to enhance and to re-market enhanced or un-enhanced software provided the COMPANY negotiates in good faith a royalty-bearing license agreement with the UNIVERSITY AFFILIATE, which royalty shall be based on the worth of the initial software and a fair sale price of the enhanced or un-enhanced software product sold or licensed by COMPANY. If only one COMPANY seeks a license, that COMPANY may negotiate an exclusive, royalty-bearing license from the UNIVERSITY AFFILIATE that owns the copyright rights.

I. If no COMPANY desires a license to CENTER patents or software, the UNIVERSITY AFFILIATE that generated the patents or software shall be free to grant fee-bearing licenses to said patents or software to third parties any time after six (6) months following notice to CENTER COMPANIES that the patents or software were available for licensing.

J. If CENTER COMPANIES elect to take nonexclusive licenses to patents or software under Paragraphs G or H, the UNIVERSITY AFFILIATE that generated the patents or software shall be free to grant royalty-bearing, nonexclusive licenses to third parties any time after twelve (12) months following notice to CENTER COMPANIES that the patents or software are available for licensing.

K. Any revenues received by a UNIVERSITY AFFILIATE shall be distributed according to the policy of said UNIVERSITY AFFILIATE.

L. No party is assuming any liability for the actions or omissions of any other party as a result of this Agreement. COMPANY will indemnify and hold UNIVERSITY AFFILIATES harmless against all claims, liability, injury, damages or costs, including reasonable attorney fees, based upon injury or death to persons, or loss of, damage to, or loss of use or property that arises out of

the performance of this Agreement to the extent that such claims, liability, damage, cost or expense results from the negligence of the COMPANY's agents or employees.

UNIVERSITY AFFILIATE

COMPANY

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

For \_\_\_\_\_

UNIVERSITY AFFILIATE