

CLEMSON ADVANCED CAPACITOR CONSORTIUM

MEMBERSHIP AGREEMENT

THIS AGREEMENT is made this _____ day of _____, by and between _____, (hereinafter referred to as "PARTICIPANT"), and Clemson University, Office for Sponsored Programs, Box 345702, Clemson, S.C. 29634-5702, an Institution of Higher Education of the State of South Carolina (hereinafter referred to as "UNIVERSITY").

WHEREAS, the parties to this Agreement join together in cooperative effort to support research leading to the development of new design or modeling techniques for improving the performance of electronic systems and the research program contemplated by this Agreement is of mutual interest and benefit to UNIVERSITY and PARTICIPANT, will further the instructional and research objectives of UNIVERSITY in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for both PARTICIPANT and UNIVERSITY through inventions, improvements, and/or discoveries;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to the following:

Article 1 - Definitions

As used herein, the following terms shall have the following meanings:

- 1.1 "Project" shall mean research performed at Clemson University with the goal of developing new capacitor models, materials, designs or applications.
- 1.2 "Participant Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which are conceived and/or made by one or more employees of PARTICIPANT.
- 1.3 "University Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which are conceived and/or made by one or more employees of UNIVERSITY.
- 1.4 "CACC" is the Clemson Advanced Capacitor Consortium operated by certain faculty and students at Clemson University.

Article 2 - Participation in this Project

- 2.1 Any corporation, agency, or laboratory may become a Full Research Partner, consistent with applicable state and federal laws and statutes.
- 2.2 PARTICIPANT agrees to contribute _____ to CACC and thereby becomes a Full Research Partner. (A contribution of \$65,000 or more annually is required to become a Full Research Partner.) Checks for payment of membership fees must be made on or before the beginning of each year of participation. Checks should be made out to Clemson University Research Foundation and mailed to:

Lynn R. Kunkle
Office of Sponsored Programs
300 Brackett Hall
Clemson University
Clemson, SC 29634

PARTICIPANT may terminate this agreement by giving CACC 30 days written notice prior to the termination date thereby surrendering all of its rights hereunder.

- 2.3 UNIVERSITY reserves the right to waive all or part of the required contribution for any corporation, agency, or laboratory that sponsors related or overlapping research under a separate research contract normally carrying the standard overhead rate at CACC or that donates equipment of equal or greater value than the amount of the

required contribution.

- 2.4 There will be an Industrial Advisory Board composed of all Full Research Partners. Full Research Partners will be voting members of this board. Meetings of the Industrial Advisory Board will be held annually at Clemson University. The Industrial Advisory Board will make recommendations concerning the direction of research.

Article 3 - Publications

- 3.1 Researchers at CACC shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of Project provided, however, that PARTICIPANT shall have been furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

Article 4 - Intellectual Property

- 4.1 All rights and title to University Intellectual Property under Project shall belong to UNIVERSITY.
- 4.2 All rights and title to Participant Intellectual Property shall belong to PARTICIPANT. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this Agreement.
- 4.3 Participant and University shall share rights and title to inventions, improvements and/or discoveries which are conceived or made jointly by employees of Participant and University.
- 4.4 Participants shall be granted a nonexclusive, royalty-free license to University Intellectual Property conceived and/or reduced to practice during the period of their respective participation and that is disclosed on the University's Invention Disclosure Form to the University's office that is responsible for the receipt of such disclosures. To maintain this license, Participant agrees to pay its proportionate share of the patent expenses incurred for the filing and maintenance of a patent for such invention. Participant shall have thirty (30) days from notice of invention by UNIVERSITY to Participant to request that a patent application be filed. The terms and conditions of the license agreement shall be negotiated as an agreement separate and apart from this agreement.
- 4.5 If PARTICIPANT elects not to exercise its option as described in 4.2 or decides to discontinue the financial support of the prosecution or maintenance of the protection, UNIVERSITY shall be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at UNIVERSITY'S sole expense. Participant shall relinquish all right and license to those inventions that it elects to not exercise its option.
- 4.6 University grants to Participant a nonexclusive, nontransferable, royalty-free right to use any discoveries or information contained in research reports that are not disclosed as described in 4.4 above for its own purposes.

Article 5 - Term and Termination

- 5.1 This Agreement shall become effective upon the date first hereinabove written and shall continue in effect until the end of the year for which the last membership contribution was paid by PARTICIPANT unless sooner terminated in accordance with the provisions of Article 2.2.
- 5.2 In the event that PARTICIPANT shall commit any breach of or default in any of the terms and conditions of this Agreement, and also shall fail to remedy such default or breach within thirty (30) days after receipt of written notice thereof from UNIVERSITY, UNIVERSITY 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 PARTICIPANT to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 5.3 In the event that UNIVERSITY shall commit any breach of or default in any of the terms and conditions of this Agreement, and also shall fail to remedy such default or breach within thirty (30) days after receipt of written notice thereof from PARTICIPANT, PARTICIPANT 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

UNIVERSITY to such effect, and such termination shall be effective as of the date of the receipt of such notice.

- 5.4 Termination of this Agreement by any party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of the Agreement. No termination of this Agreement, however effectuated, shall affect the PARTICIPANT's rights and duties under Article 4 hereof, or release the parties hereto from their rights and obligations under Articles 2, 4, and 6.

Article 6 - Independent Contractor

6.1 In the performance of all service hereunder:

- 6.1.1 UNIVERSITY shall be deemed to be and shall be an independent contractor and, as such, UNIVERSITY shall not be entitled to any benefits applicable to employees of PARTICIPANT.
- 6.1.2 None of the parties to this Agreement are authorized or empowered to act as an agent for any other party for any purpose and shall not on behalf of another party enter into any contract, warranty, or representation as to any matter. No party shall be bound by the acts or conduct of another.

Article 7 - Indemnity

- 7.1 PARTICIPANT agrees to indemnify, hold harmless and defend the UNIVERSITY, officers, directors, employees, faculty members, students and agents, against any and all claims for death, illness, personal injury, property damage, improper business practices, and economic loss of any kind whatsoever arising out of the manufacture, use, importation, offer for sale and sale of licensed University Intellectual Property by PARTICIPANT, its distributors, customers or anyone acting on its behalf, except for liability arising out of the UNIVERSITY's misconduct.

Article 8 – Warranty Disclaimer

- 8.1 All research results, including but not limited to any equipment, prototypes, and/or products of any nature whatsoever, arising out of or in connection with this agreement are not commercial items intended for use or sale as and shall be provided “as is” without warranty of any kind either express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose. University shall not be liable for any direct, indirect, consequential, special or other damages suffered by Participant or other third parties as a result of Sponsor’s use of the research results in the design, development, and/or manufacture of products or services offered for sale or sold by Participant in the commercial market

Article 9 - Insurance

- 9.1 UNIVERSITY warrants and represents that UNIVERSITY has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by UNIVERSITY, and UNIVERSITY has no liability insurance policy as such that can extend protection to any other person.
- 9.2 Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

Article 10 - Governing Law

- 10.1 This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

Article 11 - Assignment

- 11.1 This Agreement shall not be assigned by any party without the prior written consent of the parties hereto.

Article 12 - Agreement Modification

- 12.1 Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in

writing and approved by mutual agreement of authorized representatives of the parties hereto.

Article 13 - Notices

13.1 Notices, invoices, communications, and payments hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

PARTICIPANT:

UNIVERSITY: (Administration)

Lynn R. Kunkle
Office of Sponsored Programs
300 Brackett Hall
Clemson University
Clemson, SC 29634

UNIVERSITY: (Technical)

Prof. Todd Hubing
310 Fluor Daniel Bldg.
Clemson University
Clemson, SC 29634 USA

Agreed to:

PARTICIPANT

By:
Title:

Date

UNIVERSITY

By: Christian E.G. Przirembel
Title: Vice President for Research and Economic Development

Date