

Membership Agreement

National Science Foundation Industry/Engineering Research Center for
Revolutionizing Metallic Biomaterials

This Membership Agreement is effective as of the _____ day of _____, 2010 by and between _____ (hereinafter called "UNIVERSITY") and _____ (hereinafter called "COMPANY") ("Membership Agreement").

WHEREAS, the North Carolina Agricultural & Technical State University ("NCAT"), the University of Pittsburgh – Of the Commonwealth System of Higher Education ("UPITT") and the University of Cincinnati ("UC") (hereinafter collectively called the "Collaborating Universities") have entered into a Memorandum of Understanding ("Agreement"), a copy of which is attached hereto, in a cooperative effort to establish and support the CENTER, and the CENTER intends to maintain a mechanism whereby the CENTER environment can be used to perform research for the CENTER at NCAT, UPITT, or UC and future universities in the areas of Biodegradable Metals, Biofunctional Surface Modifications, Sensing and Actuation, and Controlled Release; and

WHEREAS, UNIVERSITY represents that it has the power and authority granted in the terms and conditions set forth in the Agreement between the Collaborating Universities to undertake, along with the other Collaborating Universities, the commitments made to COMPANY herein.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

- A. UNIVERSITY asserts that the CENTER will be operated by certain faculty and staff at the Collaborating Universities, and such faculty, staff and students COLLABORATING UNIVERSITIES may perform research projects at the CENTER. For the first five (5) years from the Effective Date of the Agreement, the CENTER will be supported jointly by industrial firms, federal laboratories, and the National Science Foundation (NSF). It is possible that the CENTER may receive support from NSF for an additional five (5) years.
- 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 on terms and conditions other than those in this Membership Agreement upon approval by the Collaborating Universities and two-thirds of the Industrial Advisory Board ("IAB").

- C. COMPANY agrees to contribute as a (Basic, Silver or Gold; choose one) member in the amount of _____ in support of the CENTER, and thereby become a sponsor. Payment of these membership fees shall be made to Engineering Research Center for Revolutionizing Biomaterials, in a lump sum effective _____ or in four equal quarterly installments payable on January 1, April 1, July 1, and October 1, of each year of sponsorship. Checks from COMPANY should be mailed to: Engineering Research Center for Revolutionizing Biomaterials, North Carolina A & T State University, 1601 East Market Street, Greensboro, NC 27411. Because research of the type to be done by 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 (3) years. However, COMPANY may terminate this Membership Agreement at any time by giving UNIVERSITY ninety (90) days' written notice prior to the termination date.
- D. UNIVERSITY asserts that the results of CENTER research will be made available to COMPANY for research purposes through one of the Collaborating Universities.
- E. UNIVERSITY asserts that organization and operation of the CENTER will be specified by CENTER bylaws that are under development. The bylaws, when adopted by the IAB, will become part of this Membership Agreement.
- F. The IAB will be composed of one representative from each Gold member and two at-large Silver members. Each Gold member COMPANY shall have the right to appoint a representative to the IAB. The IAB shall make recommendations on: (a) the research projects to be carried out by the CENTER; (b) the apportionment of resources to such research projects; and (c) changes in the bylaws. The operation of the IAB will be as specified in the bylaws.
- G. COMPANY understands that the Collaborating Universities reserve the right to publish in scientific or engineering journals the results of any research performed by CENTER.
- H. During the term of this Membership Agreement, UNIVERSITY asserts that the COMPANY shall have a non-exclusive, royalty-free license to use the CENTER tools for internal use when they are available. UNIVERSITY shall ensure that the Collaborating Universities grant such rights to COMPANY when necessary.
- I. All intellectual property created in the course of research conducted by the CENTER shall belong to the creating party or parties. Collaborating Universities, pursuant to Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, will have ownership of all patents they developed from this work, subject to "march-in" rights as set forth in this Act. Copyright registration may be obtained for copyrightable materials developed by CENTER. COMPANY shall be entitled to a nonexclusive, royalty-free license to all patents or copyrights

developed by CENTER during its period of membership, provided COMPANY pays its pro rata share of reasonable costs of protecting the intellectual property, including patent filing, prosecution and maintenance. Companies that were members at the time of disclosure of the intellectual property and wish to exercise rights to a royalty-free, non-exclusive license agreement for any patented or copyrighted intellectual property shall notify CENTER in writing within sixty (60) days of receiving notice that the intellectual property is available for license, and the companies shall pay all allocated costs of obtaining patent or copyright protection. COMPANY shall have the right to sublicense to its subsidiaries and affiliates. If only one company seeks a license with respect to a particular tool, that company may negotiate with CENTER for an exclusive, royalty-bearing license to market the tool, subject to the license grant to COMPANY set forth above in Paragraph H. COMPANY shall have the right to enhance and to re-market enhanced or unenhanced software with royalties due to CENTER to be negotiated. COMPANY'S license rights shall survive termination of this Membership Agreement or termination of COMPANY's membership.

- J. No party is assuming any liability for the actions or omissions of any other party. To the extent allowed by law, each party will be responsible for its own and assume its own liability, for injury, damage or cost based upon injury or death to persons, or loss of, damage to, or loss of use of property that arises out of the performance of this Membership Agreement to the extent that such claims, liability, damage, cost or expense results from the negligence of such party's agents or employees.

UNIVERSITY

COMPANY

By: _____

Name: Celestine Ntuen, Ph.D.

Title: Interim Vice Chancellor for Research &
Economic Development

Date: _____

By: _____

Name:

Title:

Date: _____