

**Draft Membership Agreement for Industrial Partners
for The Center for Hierarchical Emergent Materials**

This Agreement is made.....this day of by and between the University of Cincinnati/Michigan/Delaware (hereinafter called "University") and ... (hereinafter called "Company") for the Center comprising and acting through The Center for Hierarchical Emergent Materials (hereinafter called "CENTER"), which is defined as all CENTER Research Sites funded by the Industry/University Cooperative Research Center Program of the National Science Foundation.

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Research Center for Hierarchical Emergent Materials at the UNIVERSITY to maintain a mechanism whereby the UNIVERSITY environment can be used to perform research to advance our understanding of complex hierarchical emergent materials. The parties hereby agree to the following terms and conditions:

A. CENTER will be operated by certain faculty, staff and students at the UNIVERSITY. For the first five years, the CENTER will be supported jointly by industrial firms, Federal laboratories, the National Science Foundation (NSF), the States of Ohio and Michigan, and the UNIVERSITY. It is possible that the UNIVERSITY may receive support from NSF for an additional ten 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.

C. COMPANY agrees to contribute \$65,000 annually in support of the CENTER and thereby becomes a member. Payment of these membership fees shall be made to the University of Cincinnati or Michigan as a lump sum effective____; or in four equal quarterly installments on _____, _____, _____ and _____ of each year of sponsorship. Checks from COMPANY should be mailed to _____ and made payable to _____. 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 with full voting rights for at least two years. However, COMPANY may terminate this Agreement by giving UNIVERSITY 90 days written notice prior to the termination date.

D. There will be an Industrial Advisory Board composed of one representative from each member. This board makes recommendations on (a) the research projects to be carried out by CENTER (b) the apportionment of resources to these research projects, and (c) changes in the bylaws.

E. UNIVERSITY reserves the right to publish in scientific or engineering journals the results of any research performed by CENTER. COMPANY, however, shall have the opportunity to review any paper or presentation containing results of the research program of CENTER prior to publication of the paper, and shall have the right to request a delay in publication for a period not to exceed 1 year from the date of submission to COMPANY, for proprietary reasons, provided that COMPANY makes a written request and justification for such delay within 45 days from the date the proposed publication is submitted by certified mail to COMPANY.

F. All patents derived from inventions conceived or first actually reduced to practice in the course

of research conducted by the CENTER shall belong to UNIVERSITY. 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 this work, subject to "march-in" rights as set forth in this Act.

G. UNIVERSITY agrees that all such CENTER sponsors are entitled to a nonexclusive royalty-free license. COMPANY will have the right to sublicense its subsidiaries and affiliates. COMPANIES that wish to exercise rights to a royalty-free license agree to pay for the costs of patent application.

H. If only one COMPANY seeks a license, that COMPANY may obtain an exclusive fee-bearing license through one of its agents. COMPANY has the right to sublicense its subsidiaries and affiliates.

I. Copyright registration shall be obtained for software developed by CENTER. COMPANY shall be entitled to a nonexclusive, royalty-free license to all software developed by CENTER. COMPANY will have the right to enhance and to re-market enhanced or unenhanced software with royalties due to CENTER to be negotiated, based on the worth of the initial software, but not to exceed ___% of a fair sale price of the enhanced software product sold or licensed by COMPANY.

J. Any royalties and fees received by UNIVERSITY under this Agreement, over and above expenses incurred, will be distributed as follows: (1) ___% to inventor, or in accordance with UNIVERSITY royalty sharing schedule, (2) ___% to the University of ___, and (3) ___% to the CENTER operating account, or to the College of ___ in the event that CENTER is no longer in operation.

K. Neither party is assuming any liability for the actions or omissions of the other party. Each party will indemnify and hold the other party harmless against all claims, liability, 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 agreement to the extent that such claims, liability, damage, cost or expense results from the negligence of a party's agents or employees.