

CENTER FOR RESEARCH AND EDUCATION IN WIND (CREW)

A Center of the Colorado Renewable Energy Collaboratory

MEMBERSHIP AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2009, by the Regents of the University of Colorado (“CU”), a body corporate, on behalf of the University of Colorado at Boulder contracting on behalf of the Center for Research and Education in Wind (“CREW”), a Center of the Colorado Renewable Energy Collaboratory (“CREC”) and its Participating Institutions:

Alliance for Sustainable Energy, LLC, Management and Operating Contractor for the National Renewable Energy Laboratory (“NREL”),

Board of Governors of the Colorado State University System acting by and through Colorado State University (“CSU”),

Trustees of the Colorado School of Mines for and of behalf of the Colorado School of Mines (“CSM”),
and

_____ (“Sponsoring Member”).

CREW anticipates that there will be Associate Institutions such as NOAA and NCAR that will participate in collaboration with the Participating Institutions.

WHEREAS, the parties to this Agreement intend to join together in a collaborative effort to support CREW, which is dedicated to advancing research, education, and training in the area of wind energy systems, and

WHEREAS, to accomplish this objective, the Participating Institutions will make available their research resources and capabilities for **Shared Research** and **Sponsored Research** projects, and

WHEREAS, the areas of CREW research will include turbine modeling, electrical systems, control of wind energy systems, turbine testing, atmospheric sciences, and other research areas,

NOW THEREFORE, for the mutual benefit, each to the other, the parties hereto agree to the following terms and conditions:

A. OPERATION AND ORGANIZATION OF CREW

1. The organization and operation of CREW will be in accordance with the CREW By-Laws incorporated herein by reference and attached hereto as Exhibit A.
2. CREW will be supported jointly by its Participating Institutions, Sponsoring Members, the State of Colorado, and other sources of funding as they become available.
3. This Membership Agreement establishes a process for the identification, selection, development, implementation, and funding of pre-competitive research projects (“**Shared Research**”).

4. Sponsor-specific research projects may be performed under separate **Sponsored Research Agreements**.
5. The main areas of activity by CREW will be as follows:

(a) ***Shared Research Program***

Shared Research refers to research projects funded through the resources of CREW, inclusive of annual membership fees, State of Colorado matching funds, operations fees from Sponsored Research Agreements, and other sources. Typically, Shared Research projects will be highly innovative pilot projects. The results of Shared Research are shared through non-confidential summaries with all Sponsoring Members. Intellectual property generated from Shared Research is available for licensing to those Members agreeing to reimburse the costs of protecting the intellectual property. In addition, research results generated by CREW Research Fellows shall be considered Shared Research results.

Periodically, no less than annually, CREW will issue a call for research proposals. Such calls for proposal will specify the requirements for that submission. It is anticipated that award amounts will fall within the range of \$50,000 to \$100,000. Proposals will be submitted to CREW administrative offices. Once accumulated, the proposals will be provided to the Sponsoring Members for review and recommendation to the Center Advisory Board Steering Committee (CABSC). The CABSC will review the recommendations of the Sponsoring Members and prioritize projects for consideration by the Center Executive Board (CEB). The CEB is responsible for making final funding decisions.

Periodically, preferably annually, CREW may issue a call for CREW Research Fellowships. Such calls will specify the requirements for that application. Applications will be submitted to CREW administrative offices. Once accumulated, the proposals will be provided to the Sponsoring Members for review and recommendation to the CABSC. The CABSC will review the recommendations of the CAB and prioritize applications for consideration by the CEB. The CEB is responsible for making final funding decisions. In addition, each Participating Institution may use its institutional resources to support separate Research Fellowships at that institution.

The CREW Investigators shall make annual reports to the Sponsoring Members on all CREW supported Shared Research projects. Sponsoring Members may make unrestricted use of the research results and intellectual property generated by CREW supported Shared Research projects, subject to the terms and conditions of ownership and licensing of inventions and copyrights stated below.

(b) ***Sponsored Research Program***

Sponsoring Members may elect to enter into a Master **Sponsored Research Agreement** (or individual Sponsored Research Agreement) with CREW for the purpose of funding directed research projects. Sponsored Research Projects may include basic or applied research, but will focus on the specific needs of the Sponsoring Member. Under such an Agreement, the Sponsoring Member will issue a request for proposals to the CREW Executive Board (CEB). Site Directors on the CEB will be responsible for circulating the Request for Proposals (RFP) to CREW Investigators at their respective Institutions and facilitating the development of collaborative project teams to respond to each RFP. Proposals from these teams will be submitted to the CEB for review and approval. Once the review is completed, the CEB will submit successful proposals to the Sponsoring Member. The Sponsoring Member will evaluate, select the proposals to be funded, and issue Research Project orders for the work.

Upon receipt of the Research Project orders, Sponsor funding will be distributed from the lead institution to each of the successful project teams. In the event multiple Participating Institutions are collaborating on a project, one Principal Investigator will be designated as the Project Director and will be responsible for ensuring that all deliverables are met.

The cost of the project to the Sponsoring Member will be the sum of the direct costs, applicable indirect costs at 51.5%, or another rate as agreed upon from time to time, and a 10% fee to be calculated on the sum of the direct and indirect costs.

Intellectual Property relating to Sponsored Research projects will be managed as provided for within the respective Master Sponsored Research Agreement, but will include options for non-exclusive and exclusive licenses.

B. TERM AND TERMINATION OF AGREEMENT

1. The term of a Sponsoring Member's participation shall be for two (2) years, and is renewed automatically at the end of each term for an additional two-year period, unless such Sponsoring Member submits a notice of non-renewal to CREW at least three (3) months prior to the end of each two-year cycle. The dues for new members joining CREW anytime during a two-year cycle will be prorated to the end of that cycle.
2. Each Sponsoring Member's Payment for their first year shall be due within thirty (30) days of the date of full execution of this Agreement. The payment will be prorated based upon the CREW's fiscal year starting date of __July 1__. Payment for the second year of this Agreement shall be due on __July 1__ of such second year.
3. Early withdrawal will not entitle the Sponsoring Member to a refund on a pro-rata basis unless the withdrawal is due to a breach or default of another party. The party who committed the breach will not be entitled to any refund.
4. Membership fees are subject to change at the beginning of each calendar-year consistent with the process described in CREW's By-Laws. Such increase or decrease shall not exceed 10% in any given year. Notwithstanding any other provision in this Membership Agreement, an entity that becomes a Member on or prior to __July 1__, will be designated a Founding Member and its Annual Membership Fee will not change during the first five (5) consecutive years of membership in CREW.

C. MEMBERSHIP STATUS AND FEES

1. Any private or public entity may become a Sponsoring Member upon the invitation of the CREW Executive Board, full execution of the Membership Agreement, and payment of an annual fee.
2. The Annual Membership Fee shall be \$50,000 for large organizations with 500 or more employees and \$10,000 for small businesses with fewer than 500 employees across all business units, affiliates, and subsidiaries. The term "Affiliate" shall mean any company in which the Sponsoring Member has direct or indirect beneficial ownership of fifty-one percent (51%) or more of the stock entitled to vote in the election of directors, or if there is no such stock, fifty-one percent (51%) or more of the ownership interest in such company.
3. If a Sponsoring Member enters into a **Sponsored Research** agreement through CREW, such Sponsoring Member shall pay CREW an Operations Fee equaling 10% of the research cost for such Sponsored Research. Any Operations Fee(s) paid may be used by such Sponsoring Member

to offset Annual Membership Fees due in the subsequent year. In any given year, the Operations Fee charged under any Sponsored Research agreement shall not exceed \$300,000. Such Operations Fee payments shall be made to CU on behalf of CREW.

4. Annual Membership Fees and Operations Fees should be made by the Sponsoring Members to the University of Colorado at Boulder on behalf of CREW.

D. RIGHTS OF SPONSORING MEMBERS

1. Each Sponsoring Member shall be entitled to one representative to the CREW Advisory Board (“CAB”) as established by the By-Laws. The representatives to the CAB shall be entitled to vote on certain CREW matters described in the By-Laws, including the election of a CAB Steering Committee.
2. The CREW Investigators shall make annual reports to the CAB on all CREW supported **Shared Research** projects. Sponsoring Members may make unrestricted use of the research results and intellectual property generated by CREW supported Shared Research projects, subject to the terms and conditions of ownership and licensing of inventions and copyrights stated in Paragraph F.
3. The Sponsoring Members shall be invited to and may participate in CREW Annual Meetings, and member-only communications (e.g., member-only sections of a CREW website), which will among other things include descriptions of past, on-going and/or proposed **Shared Research** projects.
4. Sponsoring Members may sponsor CREW Research Fellows to conduct research related to **Shared Research** projects for an annual fellow fee of \$75,000 for the first Research Fellow, and \$100,000 for each additional Fellow. In return for sponsoring such Fellow, the Sponsoring Member is provided an opportunity to participate in the selection of the Fellow and the area of study.
5. Sponsoring Members and Participating Institutions may mutually agree upon provisions governing the exchange of visiting research personnel. Such agreements will be separate from this Membership Agreement.

E. PUBLICATIONS AND CONFIDENTIALITY

1. The Participating Institutions reserve the right to publish non-confidential and non-proprietary results first generated from the **Shared Research** performed by their CREW Investigators through CREW. Manuscripts shall be submitted to Sponsoring Members for review at least thirty (30) days prior to submission for publication. During the thirty (30)-day period following receipt of the manuscript, a request by one or more of the Sponsoring Members to delay submission for a period not to exceed one hundred and eighty (180) days in total may be granted for the purposes of protecting potentially patentable intellectual property. Requests must be in writing and provide sufficient justification for the delay.

CREW does not anticipate that confidential or proprietary information will be provided from one party to another for a **Shared Research** project, however if such information is provided, then it shall be deleted from materials intended for publication. The terms of this paragraph shall survive expiration or termination of the research project for which such information was provided for a period of five (5) years.

Terms governing publication under **Sponsored Research** Agreements will be defined in each Agreement or Research Project order.

CREW, CREW Investigators and any Sponsoring Member Investigators shall be appropriately acknowledged on all publications.

2. The Participating Institutions reserve the right to present non-confidential and non-proprietary results first generated from the **Shared Research** performed by their faculty members through CREW at professional venues. Abstracts for presentations shall be submitted to Sponsoring Members at least sixty (60) days prior to the public presentation. During the fifteen (15)-day period following receipt of the abstract, a request by one or more of the Sponsoring Members to review the detailed presentation materials for an additional thirty (30) days may be granted for the purpose of protecting potentially patentable intellectual property. Requests must be in writing and provide sufficient justification for the delay.

At the request of a Sponsoring Member, proprietary information provided by such Sponsoring Member will be deleted from materials intended for presentation. The terms of this paragraph shall survive expiration or termination of the research project for a period of five (5) years.

Terms governing presentations under **Sponsored Research** Agreements will be defined in each agreement or Research Project order.

CREW, CREW Investigators and any Sponsoring Member Investigators shall be appropriately acknowledged in all presentations.

3. Confidential Information (“Information”) provided to CREW Investigators or Sponsoring Members shall mean all proprietary information provided by one party to another and clearly identified as confidential by the transmitting party at the time of disclosure. In order to be considered confidential, information disclosed orally or in any other transitory medium must be identified to the recipient as confidential at the time of disclosure and reduced to writing within thirty (30) days after such disclosure. Specifically excepted from this definition is all information: (a) known by the receiving party at the time of disclosure; (b) publicly disclosed except by breach of this Agreement; (c) rightfully received by the receiving party from a third party without an express obligation of confidence; (d) independently developed by the employees or agents of either party without any use of Information provided by the other party; or (e) required by law or regulation to be disclosed provided that the disclosing party in due time is given notice of such requirement in order for the disclosing party to seek to obtain protective order.
4. All Parties shall vigilantly protect the Information disclosed to them for a period of five (5) years from the termination of the research project, and no such disclosure shall be made without the disclosing Party’s written permission. All written documents containing Information and other material in tangible form received by the Parties under these Agreements shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing Party upon request, except one copy may be retained for archival purposes. Sponsor acknowledges that University is subject to the Colorado Public Records Act (C.R.S. §§ 24-72-201 et seq.). All plans and reports marked “Confidential” shall be treated by University as confidential to the extent permitted under this Agreement, §§ 24-72-204, and applicable law.

F. OWNERSHIP AND LICENSING OF INVENTIONS

1. Intellectual Property developed under Master **Sponsored Research** Agreements shall be governed as specified therein.

2. Intellectual Property developed from CREW-sponsored **Shared Research** projects shall be governed as specified herein.
3. Intellectual Property includes the following items if they arise under this CREW Membership Agreement:
 - a) any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, which is or may be patentable under the patent laws of the United States (“Inventions”);
 - b) original works of authorship fixed in a tangible medium of expression, excluding theses and dissertations, (“Works”); and
 - c) data, test results, and laboratory notebook entries developed or made as a result of the Project (“Data”).
4. Ownership of Intellectual Property shall follow U.S. Copyright and Patent law. Title to all Intellectual Property from Shared Research projects shall reside with the Participating Institution(s) creating such Intellectual Property.
5. The Participating Institution(s) shall notify all Sponsoring Members of the creation of any Intellectual Property under a Shared Research project through a Non-Confidential Summary.
6. Sponsoring Members may elect in writing within sixty (60) days of receipt of a Non-Confidential Summary (“Option Period”) that it desires to obtain a non-exclusive, paid-up, worldwide, royalty-free license to Intellectual Property for research, development and/or commercial use as specified in the Non-Confidential Summary at which time CREW or the Participating Institution shall make such grant. The use may be made by Sponsoring Member or any entity in which Sponsoring Member has a controlling interest or at least 51% ownership interest (“Affiliates”), or agents acting on behalf of Sponsoring Member, but there shall be no right to sublicense such grant to third parties other than as provided herein. The grant of such rights is based on compliance with the terms of this Agreement. Upon electing the License, Sponsoring Member agrees, as payment for such License, to pay a pro-rata share of actual costs to acquire the Intellectual Property. For avoidance of doubt, the Non-Confidential Summary shall contain the Intellectual Property to be licensed and the estimated cost for acquisition of rights in the Intellectual Property including the cost per territory of such acquisition of rights outside the U.S., if requested by Sponsoring Member. Each Sponsoring Member shall pay a pro-rata amount of such costs depending on the number of Sponsoring Members electing to accept such a grant. Any Sponsoring Member may terminate its License at any time upon a thirty (30)-day notice to CREW, thereby relieving that Sponsoring Member from its responsibility to pay for any patent costs accrued after such termination.
7. The Participating Institution(s) shall have sole responsibility for the preparation, filing, prosecution, maintenance, and enforcement of patents related to Inventions, unless otherwise agreed by the parties in writing. The Participating Institution(s) responsible for the preparation, filing, prosecution, maintenance, and enforcement of patents related to Inventions shall allow Sponsoring Members electing to take a License under Paragraph 6 opportunities to provide advice, input and comment on the preparation, filing, prosecution and registration of any such patent application, and agrees to consult with such Sponsoring Member(s) regarding the pursuit of foreign patent coverage.
8. If no Sponsoring Member exercises its option rights during the Option Period, then all Sponsoring Members’ rights in the subject Intellectual Property shall terminate, and the Participating Institution(s) will be free to license such Intellectual Property to third parties. In the event that a Sponsoring Member exercises its option rights during the Option Period and the parties fail to sign a license agreement within a Negotiation Period of one hundred twenty (120) days from the end of the Option Period, then such Sponsoring Member’s rights in the subject Intellectual Property shall terminate, the Sponsoring Member shall have no obligation to pay a pro-rata share for costs to acquire Intellectual Property that are incurred after the Option Period and Negotiation Period, and

the Participating Institution(s) will be free to license such Intellectual Property to third parties. The Negotiation Period may be extended at the discretion of the negotiating parties.

9. Private or public entities joining the CREW as Sponsoring Members following the inception of the CREW shall not be entitled to rights under Section F for Intellectual Property disclosed prior to their respective dates of membership.

G. ADDITIONAL TERMS AND CONDITIONS

1. This Agreement is governed by the laws of the State of Colorado. If any provision of this Agreement is held unenforceable, the remaining portions shall remain in full force and effect.
2. Sponsoring Members agree not to use the name or trademarks of Colorado School of Mines, Colorado State University, the National Renewable Energy Lab, the University of Colorado, or of any Associate Institutions in any advertising or publicity without the express written permission of the specific institution. CREW and the Participating Institutions agree not to use the name or trademarks of a Sponsoring Member in any advertising or publicity without the express written permission of such Sponsoring Member.

The foregoing notwithstanding, Sponsoring Members and Participating Institutions may use Sponsoring Members name as a named reference.

3. This Agreement may be assigned by a Sponsoring Member to any of its Affiliates, or successors in interest, but may not otherwise be assigned without the CREW Executive Board's written consent, which will not be unreasonably withheld.
4. Each of the Participating Institutions for itself represents that it has adequate liability insurance, which may include self-insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by such Institution. Participating Institutions have no liability insurance policy as such that can extend protection to any other person.
5. 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, but only to the extent that such liability is established by the law, including the laws of governmental and sovereign immunity.
6. All notification required by this Membership Agreement shall be executed in writing by the parties hereto and shall be directed to the following individuals:

For the University ---

For the Sponsoring Member ---

Original to:

Randall W. Draper, Director
Office of Contracts and Grants
3100 Marine Street
Room 481
572 UCB
University of Colorado
Boulder, CO 80309-0572

Copy to:

Copy to:

Professor Lucy Pao

- 8. This Agreement sets forth the entire understanding between Participating Institutions and Sponsoring Member with respect to the CREW Program, and supersedes, cancels, and merges all prior or contemporaneous communications, negotiations, understanding, and agreements relating thereto. No changes, alterations, or modifications to this Agreement will be effective unless in writing and signed by the authorized representatives of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

THE UNIVERSITY OF COLORADO on behalf of CREW and its Participating Institutions

SPONSORING MEMBER

By: _____

By: _____

Name

Name

Title

Title

Date

Date