

IUCRC WHIP Membership Agreement for Industry Partners

This Agreement is made this day of (to be filled in by company), 2021 by and between the following UNIVERSITY SITES:

- a) Texas Tech University (hereinafter "TTU")
- b) The Florida International University Board of Trustees (hereinafter "FIU")

and "*to be filled in by company*" (hereinafter called "COMPANY") for the Center comprising and acting through the Center for Wind Hazard and Infrastructure Performance (WHIP), which is defined as all *Wind Hazard and Infrastructure Performance (WHIP)* Research Sites funded by the Industry/University Cooperative Research Center Program of the National Science Foundation.

WHEREAS, the UNIVERSITY SITES have established an Industry/University Cooperative Research Center for *Wind Hazard and Infrastructure Performance (WHIP)* (hereinafter called "CENTER") and the parties to this Agreement intend to join together in a cooperative effort to support the CENTER to maintain a mechanism whereby the UNIVERSITY SITE environment can be used to perform research to provide sustained and coordinated funding opportunities to multidisciplinary teams of researchers and practitioners for enhancing our nation's capacity to manage the risk of future windstorms, the parties hereby agree to the following terms and conditions:

- A. CENTER will be operated by certain faculty, staff, and students at the UNIVERSITY SITES. For the first five years, the CENTER will be supported jointly by industrial firms, Federal Laboratories, the National Science Foundation (NSF), the State, and the UNIVERSITY SITES. It is possible that the UNIVERSITY SITES 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 member of the CENTER, consistent with applicable state and federal laws and statutes.
CENTER may only identify COMPANY as a participant in the WHIP Center.
- C. COMPANY agrees to contribute \$50,000 annually in support of the CENTER and thereby becomes a full member with one vote on the CENTER's Industrial Advisory Board (IAB) pursuant to the CENTER Bylaws. Payment of these membership fees shall be made to the UNIVERSITY SITE as a lump sum effective March 1, 2021. Checks from COMPANY should be mailed to the institution indicated in the invoice. 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 two years. However, the COMPANY may terminate this Agreement by giving TTU and FIU 90-days written notice prior to the termination date.

- D. There will be an Industrial Advisory Board composed of one representative from each CENTER member. This board makes 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.
- E. UNIVERSITY SITES reserve the right to publish in scientific or engineering journals the results of any research funded by the 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 ninety (90) days from the date of submission of the proposed publication to COMPANY, provided that COMPANY makes a written request and justification to the applicable UNIVERSITY SITE(s) for such delay within thirty (30) 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 the UNIVERSITY SITE(s) that generated the invention(s). Said UNIVERSITY SITE(s), 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 SITES agree that all such CENTER members are entitled to a nonexclusive royalty-free license to patent rights derived from CENTER funded research. 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 patent application and maintenance costs.
- H. After a period of one year after the UNIVERSITY SITE has filed a patent application, if only one COMPANY has requested a license, that COMPANY may negotiate an exclusive royalty bearing license and have the right to sublicense the patent rights to third parties.
- I. Copyright registration shall be obtained by UNIVERSITY SITE for software funded by CENTER. COMPANY shall be entitled to a nonexclusive, royalty-free license to all registered software. COMPANY will have the right to enhance and to re-market enhanced or unenhanced software with royalties due to UNIVERSITY SITE to be negotiated, based on the worth of the initial software, but not to exceed 10% of a fair sale price of the enhanced software product sold or licensed by COMPANY.
- J. Any royalties and fees received by a UNIVERSITY SITE under this Agreement, over and above expenses incurred, will be distributed 75% to the UNIVERSITY SITE and 25% to the CENTER, or 100% to the UNIVERSITY SITE in the event that CENTER is no longer in operation. UNIVERSITY SITE shall distribute to their inventor(s) from their proceeds in accordance with the UNIVERSITY SITE's policy.

- K. With respect to any information or materials supplied by one party to another under the CENTER, no warranty or representation of any kind is made, given, or implied as to the sufficiency or fitness for purpose nor, as to the absence of any infringement of any proprietary rights of third parties. The recipient party shall in all cases be entirely and solely liable for the use to which it puts such information and materials. Any item, information, services, or technology provided by a party hereunder is provided on an “as is” basis without warranty of any kind.

Except where this exclusion or restriction of liability would be void or ineffective under applicable law, no party, its affiliates and their respective directors, officers, employees and agents shall be liable to another party or its affiliates or any director, officer, employee or agent of such party or its affiliates, for any incidental, punitive, exemplary, consequential or special damages that arise out of, relate to, or are otherwise attributable to any act of any party, or of any other participant, group of participants resulting from their lawful activities with the CENTER.

- L. If a UNIVERSITY SITE is the defendant in a suit, the choice of law, venue, and jurisdiction shall be in the UNIVERSITY SITE’s home state. No UNIVERSITY SITE can be subject to another state’s jurisdiction through counterclaim or joinder unless that UNIVERSITY SITE voluntarily submits to another state’s jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers duly authorized as of the date and year written below.

COMPANY:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Texas Tech University:

**The Florida International University
Board of Trustees**

BY: _____

BY: _____

NAME: Cui Romo
TITLE: Associate Director
Office of Research Services

NAME: _____
TITLE: _____

DATE: _____

DATE: _____

Updated in Article C on 11/19/2020