

# **CPES Industry Consortium Associate Member Agreement**

The purpose of this Agreement is to establish close cooperation and information/technology transfer between \_\_\_\_\_ (hereinafter MEMBER) and the Center for Power Electronics Systems (hereinafter CPES) at Virginia Polytechnic Institute and State University (Virginia Tech), a non-profit educational institution and state agency of the Commonwealth of Virginia (hereinafter "UNIVERSITY"). Under the terms of this Agreement, MEMBER joins the CPES Industry Consortium as **Associate Member**. This agreement is made as of \_\_\_\_\_ (hereinafter "Effective Date").

## **ARTICLE 1 - DEFINITIONS**

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

- 1.1 **"Affiliate"** means, with respect to any CPES Industry Consortium member, any parent company and any company at least fifty percent (50%) of whose stock, having the right to vote for or appoint directors, is, now or hereafter, owned or controlled directly or indirectly through one or more intermediaries by the CPES Industry Consortium member or a parent company of the CPES Industry Consortium member.
- 1.2 **"CPES Program"** is the set of activities and objectives described in the Strategic Plan for the Center for Power Electronics Systems (CPES) and those activities established in collaboration with the CPES advisory boards, and under the direction of CPES Director.
- 1.3 **"CPES Principal Member"** shall mean those CPES Industry Consortium members who have paid thirty thousand (\$30,000) dollars in annual fees.
- 1.4 **"CPES Principal Plus Member"** shall mean those CPES Principal members who have paid an additional annual fee of \$20,000 above their regular membership for a total annual contribution of \$50,000.
- 1.5 **"CPES Associate Member"** shall mean those CPES Industry Consortium members who have paid the CPES annual membership fee of \$15,000.
- 1.6 **"CPES Full Member"** shall mean CPES Principal Members, Principal Plus Members, and Associate Members.
- 1.7 **"CPES Affiliate Member"** shall mean those CPES Industry Consortium members whose membership contribution is either less than \$10,000 in cash or in the form of in-kind contributions.
- 1.8 **"CPES Core Research"** is the research conducted within the CPES Program which is sponsored by the CPES Industry Consortium membership fees.
- 1.9 **"CPES Non-Core Research"** is the research that is not directly supported by the CPES Industry Consortium membership fees. The research is relevant to the CPES Strategic Plan. The work may be sponsored by UNIVERSITY, industries, or government agencies, with projects directly funded to CPES. CPES Non-Core Research will be regulated by separate contracts and administered through UNIVERSITY'S Office of Sponsored Programs. This Agreement does not pertain to the CPES Non-Core Research.
- 1.10 **"Industrial Background Technology"** shall be those patents or copyrights owned by a CPES Principal Member or Principal Plus Member for which a license is required to conduct research in the CPES Core Research program or to practice Subject Property Rights.
- 1.11 **"Industry Advisory Board" or "IAB"** means the group which is composed of one representative for each CPES Principal Member or Principal Plus Member and a number of representatives elected among the Associate Members. The number of representatives for Associate Members will be equal to 20% of the total number of Associate Members, or the total number of Principal/Principal Plus members minus one (1), whichever is smaller. Each representative will have one vote. Each elected representative will serve a two-year term.
- 1.12 **"Technology Transfer Activities"** consist of activities that promote the use of technology derived from the CPES Core Research program. These activities include university and industry demonstrative

**hardware prototypes** (instead of testbed programs); publications; conferences; seminars; workshops; short courses; technology transfer networks; development of undergraduate, graduate, and continuing education training programs. These activities may also include joint projects with industry, as well as other activities conducted as CPES Non-Core Research as deemed appropriate.

## **ARTICLE 2 - CPES RESEARCH AND TECHNOLOGY TRANSFER ADMINISTRATION**

- 2.1 UNIVERSITY shall use its best efforts to organize, direct, and administer the CPES Program in accordance with the terms and conditions of this Agreement. UNIVERSITY shall include the terms of this Agreement in any subcontracts for research to be conducted under the auspices of CPES Core Research.
- 2.2 The CPES Director will manage the overall activities of CPES; will work with the IAB to develop strategic plans and to formulate the CPES Core Research program; will establish the operating and research budget of CPES Core Research with the advice of the IAB; and will direct the CPES Industrial Collaboration program.
- 2.3 The CPES Director will appoint the Industrial Collaboration Program Director who will manage the day-to-day Technology Transfer Activities; will assist the CPES Director and Chair-IAB in coordinating the work of IAB; will establish the operating budget for the Technology Transfer Activities; and will administer and promote the CPES Industry Consortium.
- 2.4 The IAB shall meet at least annually to review and make recommendations on all aspects of the CPES Program.

## **ARTICLE 3 - MEMBER BENEFITS**

- 3.1 Reports, papers, theses, and dissertations produced as the result of CPES Core Research program will be made available free of charge to all CPES Industry Full Members in a timely manner via the CPES password-protected website.
- 3.2 CPES will organize an annual conference to present previous year's research results. Conference registration will be free for CPES Industry Consortium Members.
- 3.3 Full Members will have access to and participation in all CPES Education, Industrial Collaboration, and Outreach programs, which includes Industrial Residence, Industrial Fellowships, Summer Internships, Graduate Co-op, Faculty Research Leave, short courses, annual conferences, and other distance learning opportunities. They may participate in CPES Professional short courses at a significant discount.
- 3.4 Representatives of UNIVERSITY may meet with representatives of the CPES Full Members at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, of the CPES Program. CPES Director and the Industrial Collaboration Program Director will assist in these communications and undertake such other duties in consultation with the IAB.
- 3.5 CPES Full Members will have direct and continuous links with CPES faculty and their well-trained graduate and undergraduate students for future employment.
- 3.6 MEMBER recognizes that publication is a necessary and integral part of UNIVERSITY'S research policy. Researchers engaged in the CPES Program shall be permitted to present the methods and results of the CPES Core Research program at symposia, national or regional professional meetings, and in journals, theses and dissertations.

## **ARTICLE 4 - COSTS AND BILLINGS**

- 4.1 The annual fee for CPES Associate Members is fifteen thousand dollars (\$15,000) and shall be considered unrestricted cash.
- 4.2 UNIVERSITY shall submit an initial invoice to the MEMBER for the payment of the first year annual fee within thirty (30) days after this Agreement becomes effective. For the subsequent years, UNIVERSITY shall provide the MEMBER with an invoice sixty (60) days prior to the Agreement anniversary date. Invoices will be due and payable thirty (30) days after the MEMBER's receipt thereof.

- 4.3 The CPES Finance Director shall maintain all membership fees in a separate account and shall expend such funds for IPPF fees, wages, supplies, equipment, travel, and other operating expenses in connection with the Center's program. The title to all equipment purchased for the CPES Program, or equipment provided as part of in-kind contributions, shall reside with UNIVERSITY.

#### **ARTICLE 5 – TERM, TERMINATION, AND OTHER CONDITIONS**

- 5.1 The term of this Agreement shall begin on the Effective Date, as specified in the first paragraph of this Agreement, shall run for a period of one year, and shall automatically renew for additional one-year terms until such time as MEMBER cancels its membership in accordance with Section 5.2.
- 5.2 As a reminder, CPES will send renewal invoices to MEMBER at least two months prior to each anniversary of the membership period listed in the first paragraph of this Agreement. MEMBER may withdraw from the CPES Industry Consortium at any time prior to the end of the current term by giving UNIVERSITY written notice to that effect at least two months prior to the end of the current term. In that case, MEMBER will not be obligated to make membership fee payments for the following years.
- 5.3 In the event that any party commits a material breach or default in any of the terms or conditions of this Agreement, and that party fails to remedy that default or breach within sixty (60) days after receipt of notice from another party, the party giving notice may, at its option terminate the Agreement effective within another sixty (60)-day period. The provisions of Articles 6 and 7 of this Agreement will survive any withdrawal for cause, but only with respect to portions of the CPES Program results completed prior to the withdrawal.
- 5.4 In any event, early withdrawal will not entitle the MEMBER for refund on a pro-rata basis, unless the CPES Program is terminated at which time all memberships will terminate.

#### **ARTICLE 6 - RELATIONSHIP OF PARTIES**

- 6.1 Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing. Neither party shall use any other party's name in any advertising promotional or sales literature without the prior written consent of the party whose name is used.
- 6.2 Nothing contained in this Agreement shall be construed as establishing, nor is it any party's intent to establish, a partnership or any joint obligations between UNIVERSITY and MEMBER. Each party hereto retains the right to conduct its own business as it sees fit. Further, nothing contained herein shall be interpreted or construed as precluding the MEMBER from carrying out its own independent research directed towards the objectives of the CPES Program, and no other CPES Member shall have any rights whatsoever with respect to the results thereof.

#### **ARTICLE 7 - WARRANTY AND LIABILITY**

- 7.1 UNIVERSITY warrants and represents that UNIVERSITY has adequate liability self-insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by UNIVERSITY. UNIVERSITY has no liability insurance policy as such that can extend protection to any other person.
- 7.2 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.
- 7.3 UNIVERSITY warrants that it has the rights to perform the CPES Program.

#### **ARTICLE 8 - MISCELLANEOUS**

- 8.1 To the extent this Agreement is covered by Executive Order 11246, as amended, and its implementing regulations, the Equal Opportunity Clause set forth in Section 202 of such Order is hereby incorporated by reference.
- 8.2 This Agreement may be assigned by either party to any of its Affiliates or to a successor to the Member, but may not otherwise be assigned without the party's prior written consent which will not be unreasonably withheld.

- 8.3 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition or any other term or condition by the other party.
- 8.4 Each clause of this Agreement is a distinct and severable clause, and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby.
- 8.5 This Agreement shall be governed by the laws of the Commonwealth of Virginia without regard to Virginia law regarding choice of law or other conflict of laws.
- 8.6 This Agreement sets forth the entire understanding between UNIVERSITY and MEMBER with respect to the CPES Program, and supersedes, cancels, and merges all prior or contemporaneous communications, negotiations, understandings, 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.
- 8.7 It is understood that all parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data or source code, collectively hereafter referred to as "Items." Each party is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical data subject to such export controls, the disclosing party shall notify receiving party's contracting representative in writing of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any research requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.

In consideration of the foregoing terms and conditions, UNIVERSITY and the MEMBER have executed this Agreement in duplicate, originals of which shall be of equal dignity.

**MEMBER**

By: \_\_\_\_\_  
 Typed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**CENTER FOR POWER ELECTRONICS SYSTEMS**

By: \_\_\_\_\_  
 Typed Name:   Dushan Boroyevich    
 Title:   Director, Center for Power Electronics Systems    
 Date: \_\_\_\_\_

**VIRGINIA TECH**

By: \_\_\_\_\_  
 Typed Name:   Julia Ross    
 Title:   Dean, College of Engineering    
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Typed Name:   Linda R. Bucy    
 Title:   Assistant VP, Interim Director of Sponsored Programs    
 Date: \_\_\_\_\_