

## Power Management Consortium (PMC)

### Membership Agreement

This Agreement is made the \_\_\_ day of \_\_\_\_\_, 2006 by and between North Carolina State University at Raleigh, NC (hereinafter called "**University**") and \_\_\_\_\_ (hereinafter called "**Company**").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support the Power Management Consortium (**PMC**) at **University** to leverage resources and expertise to develop and demonstrate key power management technologies for future generations of microprocessors and battery powered portable devices, to foster interactions between industry, government, and university researchers, and to facilitate further research cooperation between the parties.

Company joins PMC as  **Principal Member**  
 **Associate Member**

NOW, therefore, for the mutual benefits and considerations each to the other, the parties hereto agree to the following terms and conditions:

#### A. PMC OPERATION

1. **PMC** will be a fully integrated **University** program administered by **University** through the College of Engineering and operated with the support of **University** and members of the **PMC**.
2. **University** will be operated in accordance with the Semiconductor Power Electronics Center (**SPEC**) Bylaws, which are incorporated herein by reference and which may be amended in accordance with the provisions set forth in the **SPEC** Bylaws.

#### B. DEFINITIONS

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

1. "**PMC Research Program**" is the set of activities and objectives described in a Statement of Work (SOW) approved by the **PMC** Industrial Advisory Board (**IAB**), funded by the **PMC** membership fees, and directed by **PMC** Director.
2. "**PMC Inventions**" shall mean inventions made or conceived in the performance of the **PMC Research Program** by the **University**.
3. "**PMC Principal Member**" shall mean those **Companies** who have paid thirty thousand (\$30,000) dollars in annual fees.
4. "**PMC Associate Member**" shall mean those **Companies** who have paid the ten thousand (\$10,000) dollars in annual fees.

5. **"PMC Member"** shall mean **PMC Principal Member** or **PMC Associate Member**.
6. **"Technology Transfer Activities"** consist of activities that promote the use of technology derived from the **PMC Research Program**. These activities include university and industry field demonstrative programs; publications; seminars; workshops; short courses; technology transfer networks. These activities also include joint projects with industry.
7. **"IAB"** means the Industrial Advisory Board which is composed of one representative from each **PMC Principal Member**.
8. **"Affiliate"** shall mean (1) any corporation or other legal entity owning, directly or indirectly, fifty percent (50%) or more of the voting capital shares of that **PMC Member**; (2) any corporation or other legal entity fifty percent (50%) or more of the voting capital shares (or equivalent control) of which is owned, directly or indirectly, by that **PMC Member**; or (3) any corporation or other legal entity fifty percent (50%) or more of the voting capital shares (or equivalent control) of which is owned, directly or indirectly, by a corporation or other legal entity owning, directly or indirectly, fifty percent (50%) or more of the voting capital shares of that **PMC Member**.

### C. PMC INTELLECTUAL PROPERTY

1. Rights to inventions, improvements, and discoveries, whether or not patentable or copyrightable, relating to the **PMC Research Program** made solely by employees of **University** shall belong to the **University**.
2. Any invention or discovery made or conceived in the performance of the **PMC Research Program** jointly by employees of the **University** and employees of **PMC Member** shall be deemed a joint invention. The ownership of the patent will be according to U.S. patent law and the respective parties will decide who will be responsible for the prosecution of the patent and commercialization.
3. Rights to inventions, improvements, and discoveries, whether or not patentable or copyrightable, relating to the **PMC Research Program** made solely by employees of **PMC Member** shall belong to **PMC Member**. Such inventions, improvements, and discoveries shall not be subject to the terms and conditions of this Agreement.
4. **PMC Principal Members**
  - a. All **PMC Inventions** will be immediately disclosed to all **PMC Principal Members** for review, provided a non-disclosure agreement is on file.
  - b. Within 60-days of the above notification, **PMC Principal Members** must notify the university in writing if they are willing to participate in the protection of the **PMC Inventions**. By agreeing to protect the **PMC Inventions**, the **PMC Principal Member** agrees to reimburse the **University's** out-of-pocket costs for the prosecution, filing, and maintenance of any patent application(s), equally sharing among all **PMC Principal Members** that elect to participate.
  - c. Those **PMC Principal Members** that elect to participate will automatically be granted a non-transferable, non-exclusive, royalty-free license to make, have

made, and use the **PMC Inventions** for their own internal research and evaluation purposes (but not for sale).

- d. **University** will file patent application(s) on the patentable **PMC Inventions** that at least one **PMC Principal Member** elects to protect.
- e. **PMC Principal Members** participating in the costs of filing, prosecuting and maintaining a patent application (hereinafter "**Participating Members**") shall have the first option for a period of six (6) months after filing of the patent application to negotiate a royalty-bearing license to make, have made, use and sell products or processes for commercial purposes including the right to sublicense, said license to be exclusive among those **Participating Members** electing to license the technology (hereinafter a "**Limited Exclusive License**") and to be upon the same terms and conditions in respect of each of them. **PMC Associate Members**

#### 5. **PMC Associate Members**

- a. **PMC Inventions** that no **PMC Principal Member** elects to protect will be immediately disclosed to all **PMC Associate Members** for review, provided a non-disclosure agreement is on file.
- b. Within 60-days of the above notification, **PMC Associate Member** must notify the **University** in writing if they are willing to participate in the protection of the **PMC Inventions**. By agreeing to protect the **PMC Inventions**, the company agrees to reimburse the **University's** out-of-pocket costs for the prosecution, filing, and maintenance of any patent application(s), equally sharing among all **PMC Associate Members** that elect to participate.
- c. The **PMC Associate Members** that elect to participate will automatically be granted a non-transferable, non-exclusive, royalty free license to make, have made and use the **PMC Inventions** for their own internal research and evaluation (but not for sale).
- d. **University** will file patent application(s) on the patentable **PMC Inventions** that at least one **PMC Associate Member** elects to protect.
- e. **PMC Associate Members** participating in the costs of filing, prosecuting and maintaining a patent application (hereinafter "**Participating Members**") shall have an option for a period of six (6) months after filing of the patent application to negotiate a royalty-bearing license to make, have made, use and sell products or processes for commercial purposes including the right to sublicense, said license to be exclusive among those **Participating Members** electing to license the technology (hereinafter a "**Limited Exclusive License**") and to be upon the same terms and conditions in respect of each of them.

#### 6. **Publications**

**PPMC Members** recognize that publication is a necessary and integral part of **University** research policy. Researchers engaged in the **PMC Research Program** shall have the right to present the methods and results of the **PMC Research Program** at symposia, national or regional professional meetings, and in journals, theses and dissertations. In cases where the respective **PMC**

researchers believe that potentially patentable technology has resulted from the **PMC Research Program**, **PMC IAB** shall be furnished copies of these proposed publication(s) for review. **PMC IAB** shall have one month after receipt of said copies to object to such proposed publication because there is patentable subject matter which needs protection. If **PMC IAB** makes no objection within one month after receipt, or indicates that there is no objection, the researcher is free to publish the material. In the event that a **PMC IAB** member's objection relates to patentable subject matter that the **PMC IAB** determines should be pursued, the **PMC IAB** will inform **PMC Director** and the researcher shall refrain from making such publication or presentation for a reasonable time, not to exceed sixty days from the date **PMC IAB** notifies **University** and furnishes copies in order for **University** to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

## 7. Copyrights

Copyrighted works produced by **University** during the course of the **PMC Research Program** will be owned by **University**. During the term of their membership, the **PMC Members** will be granted a license to said copyrighted works for their own internal non-commercial use only, with the rights to sub-license said license to their **Affiliates** for their internal non-commercial use only. Copyrights to software developed by the **PMC** will belong to **University**. During the term of their membership, the **PMC Members** will be granted a license for internal use only. The **PMC Members** will have the right to sub-license the software to their **Affiliates** also for internal use only. If **PMC Members** would like to use **University's** copyrighted works or software as part of a commercial product, the **PMC Members** will have the option to negotiate a royalty and/or fee bearing license with **University** for commercial use.

## D. COSTS AND BILLINGS

1. **University** shall submit an initial invoice to the **Company** for the payment of the first year annual fee within thirty (30) days after this Agreement becomes effective. For the subsequent years, **University** shall invoice thirty (30) days prior to the Agreement anniversary date. Invoices will be due and payable thirty (30) days after the **Company's** receipt thereof.
2. **University** shall maintain all **PMC** membership fees in a separate account and shall expend such funds for wages, supplies, equipment, travel, and other operating expenses in connection with the **PMC Research Program**. The title to all equipment purchased for the **PMC Research Program**, or equipment provided as part of in-kind contributions, shall reside at the **University**.
3. Starting January 1, 2006 **PMC** membership dues will be billed on the calendar year basis (January 1 through December 31)

## E. TERM AND TERMINATION

1. Consistent with long-term funding commitment to **PMC**, the **PMC Member** agrees to join with the intention of remaining a dues paying member for at least three (3) years (January 1, 2006 – December 31, 2008).
2. **PMC Member** agrees to pay nonrefundable annual membership dues of \$ \_\_\_\_\_, which will be paid on or before January 1 of each calendar year and thereby become a **Member** entitled to the privileges detailed in this Membership Agreement and the **PMC Bylaws**. Amount of dues for a partial year of membership will be pro-rated.
3. **PMC Member** may withdraw from the **PMC** at any time prior to termination of this Agreement by giving **University** written notice to that effect four months prior to the Agreement anniversary date. Following receipt of such notice, **PMC Member** will not be obligated to make membership fee payments for the remaining years.

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## F. RELATIONSHIP OF PARTIES

1. Neither party shall have the authority to make any statements, representations or commitments of any kind, nor to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.
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 **PMC 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 **PMC Member** or **University** from carrying out its own independent research directed towards the objectives of the **PMC Research Program**, and no other **PMC Member** shall have any rights whatsoever with respect to the results thereof.

## G. LIABILITY

1. 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.
2. **University** represents that it has the right to perform the **PMC Research Program** and to grant **PMC Member** the licenses and rights set forth herein.
3. Except as stated in paragraph G.1, **PMC Member** acknowledges that the **PMC Research Program** results will be provided to **PMC Member** on an "AS IS" basis for use by **PMC Member**, its **Affiliates**, and any third party to which **PMC Member** or its **PMC Affiliates** may extend the right to use the **PMC Research Program** results at **PMC Member** sole risk and responsibility. Further, **PMC Member** agrees to defend, indemnify, and hold **University** harmless against all claims, demands, losses, damages, causes of action, and other liabilities of every kind (whether based in contract, tort, or other legal theory) by all parties for personal injury, death, or property damage or loss which arises out of or results from any use of the **PMC Research Program** results by **PMC Member** or its

Affiliates, or any third party to which **PMC Member** or its **Affiliates** may extend the right to use the **PMC Research Program** results, even if such claims, demands, losses, damages, causes of action, and other liabilities result, in whole or in part, from the negligence of any other **PMC Member**.

#### H. MISCELLANEOUS

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.
2. This Agreement may be assigned by either party to any of its **Affiliates**, but may not otherwise be assigned without the party's prior written consent which will not be unreasonably withheld.
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.
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.
5. This Agreement sets forth the entire understanding between **University** and **Company** with respect to the **PMC Research 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.

#### I. GOVERNING LAW

This Agreement shall in all respects be exclusively governed by and interpreted according to the substantive laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first hereinabove written.

**North Carolina State University**

**Company**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_