INDUSTRY LIAISON PROGRAM MEMBERSHIP AGREEMENT

Form A – for interactions with INDUSTRY FULL or PARTIAL MEMBERS.
(Not for academic or government participants)

This MEMBERSHIP AGREEMENT (hereinafter the “Agreement”) with the Center for Advanced Materials and Nanotechnology (hereinafter “CAMN”) at Lehigh University, effective as of the ___ day of ____________, 20___ (hereinafter the “Effective Date”), is by and between LEHIGH UNIVERSITY, a Pennsylvania non-profit corporation (hereinafter referred to as “University”) and ______________________ (hereinafter referred to as “Member”), a ___Corporation ___LLC ___Partnership ___Sole Proprietorship ___Other registered, incorporated, or located in the state of _________________, in ________________(Country).

The work taking place using University facilities will be performed by: _____ Member only _______ University only _______ both Member and University personnel.

University agrees to provide Member with: ____ facility and equipment access ____ training and support ____ equipment operation and data____ processed materials.

University is a tax-exempt institution of higher education. The CAMN operates to further the University’s mission of education, research, and advancement and dissemination of knowledge. The objectives of the CAMN are to identify, promote and engage in strategic areas of research and education in advanced materials and nanotechnology that meet the needs of industry, government and students. This is accomplished through collaborations, partnerships, and access to expertise, facilities, and educational programs.

The CAMN Industry Liaison Program (hereinafter “ILP”) provides a mechanism and resources to establish connections with external partners to foster collaborative opportunities, develop and commercialize technologies, solve problems, and exchange ideas. The ILP also supports student learning through participation in projects, internships and employment opportunities.

This agreement covers access to University facilities for material synthesis, testing, or analysis work, and applies if the Member is a business entity that desires to establish a Membership in the ILP for the purpose of supporting the core mission of the CAMN. University research facilities and equipment are non-profit, tax-exempt resources and are therefore not available for direct use or rental by Member for mercantile purposes. For businesses, equipment use and labor rates for Members are lower than for non-members, and there is an annual member fee. The work may be done in University facilities by the Member, or University may perform the work for the Member. The work plan is specified by the Member so intellectual property (“IP”) rights are not addressed in this Agreement. If generation of IP or publishable data by the University is anticipated, this agreement must not be used; instead, the project must be conducted through University’s Office of Research and Sponsored Programs under a separately negotiated agreement.

WITNESSETH:

WHEREAS, the Member will be a full or partial member of the CAMN ILP and have access to the benefits of such membership; and
WHEREAS, Member may, from time to time, require research or testing that will further the educational and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt educational institution, and may derive benefits for both Member and University through research findings, inventions, and/or discoveries;

WHEREAS, this Membership Agreement and any associated Research and Testing Scope of Work attached hereto as Appendices, and incorporated herein, will describe each project performed, hereinafter referred to as “Project”;

NOW, THEREFORE, in consideration of the promises, the mutual covenants herein contained and intending to be legally bound, the parties hereto agree to the following:

ARTICLE 1 – ILP MEMBERSHIP BENEFITS

Member shall receive the following benefits:

1) Access to faculty, staff, and qualified students, including opportunities to discuss Project approaches and results, ongoing and future CAMN research.
2) Access to contacts or collaboration with resources and other Research Centers at Lehigh University.
3) Use of CAMN equipment and facilities at reduced rates.
4) Invitation to periodic meetings, workshops, seminars, etc.
5) Sustaining Membership in the Lehigh Emerging Technologies Network (LETN)
6) For Full Members only - discount of fifty percent (50%) for University’s annual microscopy short course for one week per year for one employee of Member.

ARTICLE 2 – TERMS AND FEES

A. EFFECTIVE DATE, TERM, and RENEWALS

ILP Membership shall commence upon signing this Agreement and payment of all membership fees. The Agreement term is one year, beginning on the Effective Date and will automatically renew unless terminated or modified by the parties in accordance with Article 10.

B. ANNUAL MEMBERSHIP FEES

1) A membership Fee of $10,000 for full membership or $3,000 for partial membership will be invoiced upon Member’s submission of this signed Agreement and is not refundable, except as stated in Article 10, or if written cancellation is received within three (3) business days of Member signature date.

2) A Partial Member may upgrade to Full Membership at any time by paying the full member fee, prorated to time remaining under this agreement term.

C. BILLING AND PAYMENTS

1) In addition to the membership fee, Member shall pay for labor and equipment usage at rates published on http://www.lehigh.edu/nano/userates.html.

2) Member shall be invoiced quarterly from the Effective Date for Project activities, with payment
due 30 days after receipt of invoices, payable by check to “Lehigh University” sent to: Bursar’s Office, Lehigh University, 27 Memorial Drive West, Bethlehem, PA 18015, Attention: Accounts Receivable.

3) Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by either party, Member shall pay all costs and non-cancellable commitments incurred by University through and including the date of termination as provided in Article 10.

4) Any sums due and owed by Member to University shall bear interest at the rate of 18% per annum from the date due until paid. Member shall be liable for any and all costs and expenses incurred by University in enforcing this Agreement.

ARTICLE 3 – RESEARCH AND TESTING

A. CONDUCT OF RESEARCH

1) University shall use reasonable efforts to commence the Project promptly after the Effective Date and to conduct the Project substantially in accordance with the terms and conditions of this Agreement and Appendix A. Member acknowledges that University must conduct the Project in a manner consistent with University’s educational and research missions.

2) Member shall promptly provide University with such information or documents of whatever form or nature, or undertake such actions as University may reasonably require in order to conduct the Project.

B. SAFETY AND TRAINING

Member assumes primary responsibility for the personal safety of its employees/agents. Member will operate all University instruments and equipment in a safe and professional manner, consistent with any operating instructions and laboratory rules that are communicated. The Member represents that its employees’ and agents’ knowledge of the facilities is adequate to permit the safe pursuit of the work for the Project. University shall have the right to prohibit use by any employee or agent of Member if University, in its sole discretion, believes that Member has breached this representation. If deemed necessary by University, or requested by Member, training on laboratory equipment will be provided by University at rates published at http://www.lehigh.edu/nano/userates.html.

C. UNIVERSITY PROPERTY

Member shall be responsible for any damage to or loss or theft of University’s property that is attributable to Member’s use of facilities or equipment, reasonable wear and tear excepted.

ARTICLE 4 – INTELLECTUAL PROPERTY, RESEARCH DATA, AND PUBLICATIONS

Under this Agreement, University’s role is limited to training, operational assistance, production of material according to the specifications of Member, testing, and/or analysis. Therefore, University has no interest in ownership of intellectual property that may emerge directly from the Project activities or deliverables produced. Research data will be owned by Member. In addition, the University does not require publication rights related to the Project activities or deliverables produced.

ARTICLE 5 – PUBLICITY AND USE OF NAME

Member shall not use the name of University or any member of University's Project staff in any publicity, advertising or news release without the prior written approval of the University’s Director of the Office of Research and Sponsored Programs and the Vice President for University Relations or their authorized
designees. Likewise, the University shall not use the name of Member or any member of Member's Project staff, in any publicity, advertising or news release without the prior written approval of Member, except that University may include Member’s corporate name and/or logo in publications or reports that include lists of CAMN collaborations or participants.

ARTICLE 6 – CONFIDENTIALITY

Any confidential or proprietary information exchanged between University and Member shall be governed by a separate University-approved confidentiality agreement.

ARTICLE 7 – PROJECT REPORTS

If University is performing work under this Agreement, Project reports will be provided by University to Member if required, as set forth in Appendix A and incorporated by reference.

ARTICLE 8 – DISCLAIMER OF WARRANTIES; INDEMNIFICATION

A. DISCLAIMER OF WARRANTIES

Any and all results of the Project, reports, or other materials provided by University under this Agreement are provided on an “AS IS” basis. University makes no warranties of any kind, express or implied, as to any matter whatsoever, including, without limitation, warranties with respect to the merchantability or fitness for a particular purpose of the project results, reports, or any other materials. University makes no warranties of any kind with respect to freedom from patent, trademark, copyright or trade secret infringement arising from the use of the project results, reports, or other materials provided hereunder. University shall not be liable for any direct, indirect, consequential, punitive or other damages suffered by Sponsor or any other party resulting from the Project or the use of any Project results, reports, or other materials.

B. INDEMNIFICATION

Except to the extent caused by the sole negligence of any of the Indemnified Persons (as hereinafter defined), Member shall defend, indemnify and hold harmless University, its trustees, officers, faculty, students, employees, subsidiaries, affiliates and agents (hereinafter referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including without limitation attorneys' fees), which the Indemnified Persons may hereafter incur or be required to pay as a result of: (a) Member's use of the results of Project or any reports or other materials; or (b) any breach of this Agreement; or (c) any act or omission of Member, its employees, subsidiaries, affiliates, contractors, licensees or agents. University shall notify Member upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and University shall cooperate with Member as reasonable in the defense or settlement thereof at Member’s request and expense.

ARTICLE 9 – INSURANCE

A. REQUIRED COVERAGE

Member shall carry the following insurance coverage with companies licensed to do insurance business in the Commonwealth of Pennsylvania and acceptable to University:

1) **Commercial General Liability,** including Contractual Liability and Completed
Operations/Products Liability coverage, at the minimum limit of $1,000,000 per project/ per occurrence (depending on degree of risk, other limits may be appropriate) and $2,000,000 aggregate.

2) **Automobile Liability** for Member-owned vehicles at $1,000,000 per occurrence (if Member will be performing or overseeing Project activity on University property).

3) **Workers' Compensation** at statutory limits and Employer's Liability coverage at a minimum limit of $1,000,000 (if Member will be performing or observing Project activity on University property). **NOTE:** Worker's Compensation may be waived if Participant submits a letter stating that their business is a sole proprietorship with the owner as the sole employee.

4) **Professional Liability** – Whenever work under this Agreement involves professional services excluded from the Member’s Commercial General Liability Insurance and/or it is standard practice in Member’s profession to do so (e.g., Architectural, Engineering, Medical, Internet/Information Technology, etc.), Member shall carry Professional Liability Insurance and/or Technology Errors and Omissions Insurance to protect the Participant and University from any liability arising out of the professional obligations performed pursuant to the agreement. Member shall evidence Professional Liability Insurance and/or Technology Errors and Omissions Insurance with a limit of not less than $1,000,000 per occurrence and $3,000,000 aggregate (retroactive date prior to work, and extended reporting period of 36 months.

5) **Pollution Liability** – The University may require this coverage whenever material or activity under this Agreement involves pollution risk to the environment. This coverage is to include sudden and gradual coverage for third-party liability including defense costs and completed operations.

6) All policies of insurance described above shall be on a primary basis non-contributory with any other insurance coverages and/or self-insurance carried by the University.

7) If the nature and/or scope of the Project justify it, University may require Member to provide evidence of higher coverage limits. The procuring of insurance required under this article shall not relieve Member of any obligation or liability assumed under this Agreement nor of any obligation or liability imposed by operation of law.

**B. PROOF OF INSURANCE**

If Member is performing all or part of the work on University property, or if otherwise requested by University, Member shall furnish University with proof of insurance, satisfactory to University in its sole discretion, prior to the commencement of the Project. Such proof shall be evidenced by duly authenticated certificates of insurance, delivered to University, which shall show the insurance type, amount, class of operations covered, effective dates, and dates of expiration of policies. Such certificates shall:

1) Name the University as an Additional Insured on all such policies except Workers’ Compensation and Professional Liability.

2) Contain the following statement or its substantial equivalent: “Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.”
Self-insured Sponsors shall provide above proof of insurance directly, or through their claims payer. Failure of Member to comply with insurance requirements, or to secure endorsements on insurance policies, or to provide proof of insurance shall not limit or relieve the Member from any of its obligations under the Agreement, including Article 9 Insurance and Article 8.B. Indemnification.

ARTICLE 10 – TERMINATION

A. EFFECTIVE DATE, TERMINATION

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

B. EVENT OF BREACH OR DEFAULT

In the event that either party hereto shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within twenty (20) days (except with respect to a default or breach relating to the insurance requirements of Article 9 hereof, for which the cure period shall be one (1) business day) after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.

C. TERMINATION PRIOR TO COMPLETION

In the event of termination of this Agreement prior to the completion of the Agreement Term, whether for breach or for any other reason whatsoever, University shall be entitled to retain from the payments made by Member prior to termination University’s reasonable costs of concluding work in progress on the Project. Allowable costs include, without limitation, all costs or non-cancellable commitments incurred prior to the receipt, or issuance, by University of the notice of termination. In the event of termination, University shall submit a final report of all costs incurred and all funds received under this Agreement within sixty (60) days after the effective termination date. The report shall be accompanied by a check in the amount of any excess of funds advanced over costs and allowable commitments incurred. In case of a deficit of funds, Member shall pay University the amount needed to cover costs and allowable commitments incurred by University under this Agreement.

D. RIGHTS AND OBLIGATIONS SURVIVE TERMINATION

Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. Furthermore, no termination or expiration of this Agreement, however effectuated, shall release the parties hereto from their respective rights and obligations under Articles 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, and 18, which such Articles shall survive in their entirety any termination or expiration of this Agreement.

ARTICLE 11 – INDEPENDENT CONTRACTOR

In the conduct of the Project hereunder, University shall be deemed to be and shall be an independent contractor. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.

ARTICLE 12 – COMPLIANCE WITH LAWS AND POLICIES
Member shall comply with all laws, regulations and other legal requirements applicable to Member in connection with this Agreement, including but not limited to any legal requirements applicable to Member’s use of the results of the Project or any reports or other materials and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

In the event the Member intends to disclose to the University technology or technical data subject to control under the Commerce Control List of the Export Administration Regulations, 15 CFR 730-774, or the U.S. Munitions List of the International Traffic in Arms Regulations, 22 CFR 120-130, (collectively, “export controls regulations”), the Member will inform the University, in writing, prior to disclosing any such technology or data of its intention to do so and provide sufficient information (e.g., ECCNs, USML categories/articles) to allow the University to comply with any applicable export controls, provided the University agrees to accept any such technology or data.

ARTICLE 13 – GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of the courts in Northampton County, Pennsylvania or the federal courts located within the Eastern District of Pennsylvania with respect to any and all disputes concerning the subject of this Agreement.

ARTICLE 14 – NOTICES

Notices hereunder shall be deemed made if given in writing and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

If to Member:

If to University: Center for Advanced Materials and Nanotechnology
Attn: Administrative Manager
Lehigh University
Whitaker Laboratory
5 E. Packer Avenue
Bethlehem, PA 18015

With copies to: Office of Research and Sponsored Programs
Attn: Director
Lehigh University
526 Brodhead Avenue
Bethlehem, PA 18015

Office of the General Counsel
Lehigh University
27 Memorial Drive West
Bethlehem, PA 18015
ARTICLE 15 – FORCE MAJEURE

In the event that either party is unable, wholly or in part, to carry out its obligations under this Agreement by reason of acts of God or public enemy, wars, insurrections, civil disturbances, epidemics, labor disputes, failure of government approval, accidents, failure of utilities, material shortages, fires, storms, floods and any other causes, whether of the kind enumerated herein or otherwise, not within the control of the party unable to perform, then the obligations of this Agreement shall be suspended during the reasonable continuance of any inability so caused.

ARTICLE 16 – NONDISCRIMINATION

University and Member shall not discriminate against any person or group based on age, color, disability, gender identity or expression, genetic information, marital or familial status, national or ethnic origin, race, religion, sex, sexual orientation, or veteran status.

ARTICLE 17 – ASSIGNMENT

This Agreement shall not be assigned by either party without the prior written consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.

ARTICLE 18 – AGREEMENT MODIFICATION

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and signed by a duly authorized representative of each party hereto.

ARTICLE 19 – PRIORITY

Notwithstanding anything to the contrary contained herein, in the event that the terms of this document conflict with the terms of any Research and Testing Scope of Work or Sponsored Research Agreement, as documented in writing by a duly authorized representative of the University, the terms of any such agreement will take precedence over any conflicting terms contained herein.

ARTICLE 20 – ENTIRE AGREEMENT

This Agreement and any appendices attached hereto constitute and expresses the entire agreement of the parties hereto with reference to the subject matter hereof, with all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto having been herein merged into this Agreement.

In the event a purchase order is issued by Member under this Agreement and such purchase order contains standardized terms and conditions, the terms and conditions of this Agreement shall supersede and replace all such purchase order standardized terms and conditions.

ARTICLE 21 – SIGNATURES AND COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile or electronic copy of this Agreement, including the signature page hereto, shall be deemed an original.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, each by its duly authorized representative, to be effective as of the Effective Date defined herein.

**MEMBER:**

______________________________

By:______________________________

Title:_____________________________

Date:_____________________________

**LEHIGH UNIVERSITY:**

______________________________

By:______________________________

Title:_____________________________

Date:_____________________________
### APPENDIX A – Page 1 of 2

*Please enter all applicable information. If multiple projects, Appendices A1, A2…, etc. may be created*

**LEHIGH UNIVERSITY**
**CENTER FOR ADVANCED MATERIALS AND NANOTECHNOLOGY**
**INDUSTRY LIAISON PROGRAM**

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### LEHIGH UNIVERSITY CONTACTS

| Address:                | CAMN  
|                        | Lehigh University  
|                        | 5 E. Packer Ave  
|                        | Bethlehem, PA 18015  |
| Name:                   | Gene Lucadamo  |
| Title:                  | Industrial Liaison Officer  |
| Telephone:              | 610-758-4855  |
| E-Mail:                 | eal7@lehigh.edu  |

| Name:                   | Katrina Kraft  |
| Title:                  | Administrative Manager  |
| Telephone:              | 610-758-3863  |
| E-Mail:                 | kmk207@lehigh.edu  |

| Other:                  |                                      |
| Title:                  |                                      |
| Telephone:              |                                      |
| E-Mail:                 |                                      |
APPENDIX A - Page 2 of 2

A. CONTRACT NUMBER (to be entered by CAMN): CAMN - _______________

B. CONTRACT EFFECTIVE / EXPIRATION DATES: ________________ to ________________

C. FULL MEMBER ($10,000/yr) ____ PARTIAL MEMBER ($3,000/yr) ____
   Non-Member ____ Academic ____ Government ____

D. CONFIDENTIALITY AGREEMENT REQUIRED? YES ___ NO ___
   EXECUTED? YES ___ NO ___
   MUTUAL ___ ONE-WAY ___

E. BRIEF DESCRIPTION OF WORK AND OBJECTIVES (to identify Project for record purposes only)

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

F. MAIN EQUIPMENT, INSTRUMENTS, OR FACILITIES REQUIRED (IF KNOWN)

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

G. WORK WILL BE PERFORMED BY: UNIVERSITY ___ PARTICIPANT ___ BOTH ___
   Name of Student (for payroll purposes - student must be vetted by K. Kraft prior to the start of work) and Participant Equipment Users:

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

H. COST ESTIMATE OR SPENDING LIMITS, IF ANY

______________________________________________________________________________________
______________________________________________________________________________________

I. REPORTING OR MEETING REQUIREMENTS, IF ANY

______________________________________________________________________________________
______________________________________________________________________________________

J. OTHER COMMENTS OR INSTRUCTIONS

______________________________________________________________________________________
______________________________________________________________________________________

K. CAN PROJECT ACTIVITIES EXPOSE PERSONNEL TO THE FOLLOWING?

Radioactive material? ___No ___Yes SPECIFY OR COMMENT _______________
Infectious agents, including human blood or tissue? ___No ___Yes _______________
Human carcinogens? ___No ___Yes _______________
In-vitro formation of recombinant DNA? ___No ___Yes _______________
Other potentially hazardous materials? ___No ___Yes _______________