



Center for Engineering Logistics and Distribution

DRAFT

Bylaws of the Center for Engineering Logistics and Distribution

**A National Science Foundation
Industry/University Cooperative Research Center**

January 2005

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PREFACE

The Center for Engineering Logistics and Distribution (CELDi) is a collaboratory of universities and industry, established to provide integrated solutions to logistics problems through modeling, analysis and intelligent-systems technologies. This partnership between academic institutions and industry represents the effective integration of private and public sectors to enhance the United States' competitive edge in the global market place. CELDi is managed by a Director with the assistance of an Executive Committee (EC). CELDi operates with funds provided by the member universities, the National Science Foundation (NSF), and industrial and governmental organizations. CELDi activities include collaboration in joint research projects, multi-site seminars, and participation in a multi-site National Science Foundation Industry/University Cooperative Research Center (I/UCRC). Representation of industrial member of CELDi occurs through an Industrial Advisory Board (IAB). The IAB and the EC have established these Bylaws to operate CELDi efficiently and consistently.

ARTICLE 1 - Membership

1.1 Universities

University Members are those universities that have been designated by NSF as CELDi I/UCRC sites and have signed the Consortium Administration Agreement (Appendix A).

1.2 Industries

Industrial membership in CELDi is through an Membership Participation Agreement (Appendix B) between each member and the partnering CELDi University.

1.2.1 Full Membership

Full members pay the full membership fee specified in the Membership Participation Agreement, and have the rights and responsibilities specified therein and in these Bylaws. For each membership, 1 vote is granted on the Industrial Advisory Board, not to exceed a maximum of ___ votes, regardless of the research funding provided.

1.2.2 Associate Membership

Associate member is an industry membership category open to organizations with 50 or fewer employees. Associate members pay a membership fee equal to half of that of a full member. Otherwise, they have the same rights and responsibilities as full members.

1.2.3 Affiliate Membership

Affiliate Membership is offered to companies that desire an official association with CELDi and would benefit from CELDi research but cannot generate the funds necessary for a focused research project. Affiliate Membership offers the sponsor the opportunity to share in research findings through published technical reports, attend the annual forum to view active research, and attend workshops exclusively for CELDi members. They have the right to attend IAB meetings, but do not have the right to vote on policy and funding matters before the IAB. Affiliate members are exempt from the Membership Participation Agreement and membership fees collected may not contribute toward the NSF annual required membership.

ARTICLE 2 - Organization and Management

2.1 Lead University

The official administrative headquarters for CELDi resides at the Lead University, the University of Arkansas. The Lead University through the Director is responsible for the administrative and financial management of all CELDi activities. All or portions of this responsibility may be delegated or subcontracted to one or more other CELDi member universities when approved by the Executive Committee.

2.2 Director

The Director is located at the Lead University. The Director may be renamed at the Lead University with the consensus of the EC.

2.2.1 Responsibilities

The Director is responsible for the overall management of CELDi and is the chair of the Executive Committee. A primary responsibility of the Director is to represent CELDi before its membership as a whole. The Director is also responsible for recruiting and supervising CELDi staff, ensuring efficient operation of CELDi, and creating and maintaining a collaborative infrastructure, and providing vision and representing the EC before the IAB. The Director is responsible for coordinating the assessment of CELDi's quality through feedback from the Industrial Advisory Board and the Evaluator(s).

2.2.2 Responsibilities Regarding Allocation of Research Funds

The Director makes the final allocation of basic research funds to member universities. In doing so, the Director considers the recommendations of the Executive Committee and the Industrial Advisory Board, among other factors the Director deem appropriate in assuring that CELDi's mission is achieved.

2.2.3 Interim Director

The Director may appoint an Interim Director from among members of the Executive Committee. An Interim Director may serve for a period of up to one year.

2.3 Site Directors

Each CELDi member university must appoint a local Site Director for that university. A Site Director is appointed by an appropriate academic administrator (e.g., the Dean of Engineering) at the member university, with the concurrence of the CELDi Director, for a renewable five-year term. The Director serves as the Site Director of the Lead University.

2.4 Executive Committee

The Executive Committee (EC) is comprised of the Center Director and Site Directors of member universities. Associate Directors of member universities and, if applicable, the Executive Director may (at the discretion of the Director) serve as non-voting ex-officio members.

2.4.1 Responsibility and Authority

The EC works with the IAB to provide guidance on strategy, policies and procedures for CELDi, to ensure compliance with established policies and procedures, and to maintain efficient day-to-day operations at the university sites.

2.4.2 Chair

The EC is chaired by the CELDi Director or the Director's designee.

2.4.3 Quorum

A meeting quorum is three-fourths (3/4) of all EC members (excluding ex-officio members).

2.4.4 Decision-Making Method

All issues are resolved by consensus whenever possible or by a three-fourths majority of those university members attending or participating in a meeting when a formal vote is taken.

2.4.5 Allocation of Research Funds

Upon review of the IAB's funding recommendations (as described in Article 2.5), the EC recommends to the Director the final allocation of funds to member universities.

2.5 Industrial Advisory Board

The Industrial Advisory Board (IAB) is comprised of one official liaison from each industrial member. The IAB's primary responsibilities are to recommend and, when appropriate, set policy with respect to the Center's focus and direction. The IAB meets at least twice per year.

2.5.1 Officers

The officers of the IAB are the Chair and Vice-Chair. Nominations are received from the Director, EC, and the IAB prior to the Spring Meeting. The election of officers occurs at the Spring IAB meeting for a two-year term. Should the Chair resign, the Vice Chair becomes Chair until the next regularly scheduled election.

2.5.2 Liaison

Each IAB member designates a liaison who serves as the lead contact between CELDi and the member. The liaison facilitates effective communication between CELDi and the member organization.

2.5.3 Proxies

The liaison is expected to be that member's primary representative at IAB meetings. In the event that the liaison is unable to attend, the liaison (or an official of the member organization) designates by proxy another individual to serve as the representative. The proxy is provided to the Director in advance of the meeting. The designated individual may be from the member organization, from another IAB member, or the Director. A proxy is assumed for another person from the same organization unless a proxy is submitted in writing by the organization.

2.5.4 Quorum

The quorum for an IAB meeting is two-thirds (2/3) of the voting IAB members; that is, Affiliate Members are not counted in determining a quorum. Official IAB actions require a simple majority of votes cast in person or by proxy .

2.6 Executive Director

The Executive Director is appointed by and reports to the CELDi Director and has the general duties described below. The Executive Director (ED) serves as an effective liaison between CELDi, the Director, the various site directors, member companies, and funding agencies. The ED's duties include serving as the principle CELDi liaison to members. The ED assists members in identifying research and education needs, by communicating those needs to CELDi, and by increasing member and student involvement in CELDi. The ED also facilitates information sharing and reporting on research and education activities, and supports communication between industry and students. The ED works with the CELDi Program Coordinator in planning IAB meetings, facilitates monthly EC teleconference, serves as ex-officio member of EC, bi-monthly visit to Lead University, and is responsible for maintenance of CELDi standard operating procedures and bylaws.

2.7 Stem Areas

The research areas of CELDi are identified by four primary Stem Areas. Each area is comprised of university researchers and industrial representatives. A committee representing each area will be established to facilitate new project formulation and in project funding recommendations. The Stem Committees coordinate industry input in developing research plans, defining research areas of interest, preparing research project solicitations and reviewing proposed projects. They also inform the Industrial Advisory Board on technical issues related to new and on-going projects, and facilitate industry's interaction with researchers. The Stem Committee chairs are appointed by the EC.

ARTICLE 3 - Publications and Intellectual Property

Standard technical reports are published and distributed to industrial members by CELDi. They may be available in standard paper format or electronically over the Internet by

accessing a web site maintained by CELDi. Intellectual property rights are in accordance with the Consortium Administration Agreement and Member Participation Agreements.

ARTICLE 4 - Changes to the Bylaws and the Industrial Membership Agreement

The Bylaws may be amended as necessary to accomplish CELDi's objectives. Proposed bylaw changes are approved by the Executive Committee and the IAB. Approval of a bylaw by the IAB requires a quorum and approval by at least two-thirds (2/3) of the voting IAB members present (in person or by proxy).

Appendix A

Consortium Administration Agreement

Appendix B

Membership Participation Agreement

**CENTER FOR ENGINEERING LOGISTICS AND
DISTRIBUTION (CELDi)
CONSORTIUM ADMINISTRATION AGREEMENT**

THIS AGREEMENT, made and entered into on this ____ day of _____, 2002, by and among the Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas-Fayetteville Campus, the Board of Regents of the University of Oklahoma, the University of Louisville and Oklahoma State University (hereinafter collectively called "Center Universities");

WITNESSETH THAT:

WHEREAS, the intent of this agreement is to provide for the operation of a program (hereinafter called the "Program") of research at the Center Universities to be called the *Center for Engineering Logistics and Distribution* (hereinafter called "Center");

WHEREAS, the University of Arkansas has agreed to participate as Lead University (hereinafter called "Lead Univerity") in research conducted by Center;

WHEREAS, the University of Oklahoma-Norman Campus, the University of Louisville and Oklahoma State University have agreed to participate as Partner Universities (hereinafter collectively called "Partner Universities") in the research conducted by the Center;

WHEREAS, it is the intent of the Center Universities to invite members from industry and government (hereinafter called "Industrial Members") for the Program;

WHEREAS, the purpose of the Center is to conduct research, stimulate industrial innovation, provide Industrial Members with an enhanced understanding and capability in the field of engineering logistics and distribution and related technologies, and to promote the education of new and current practitioners of the art and science of engineering logistics and distribution;

WHEREAS, the Program is of mutual interest and benefit to Center Universities, to Industrial Members individually and/or Industrial Members severally; and

WHEREAS, Industrial Members wish to join in support of the Program under the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows.

1. GENERAL PROVISIONS

- 1.1. This Agreement shall consist of this Consortium Administrative Agreement and the Membership Participation Agreement attached hereto and incorporated herein as Exhibit A.
- 1.2. The period of this Agreement is specified as a period of one year effective June 1, 2002 ending May 31, 2003, unless sooner terminated in accordance with the provisions herein.
- 1.3. The cost of the operation of the Program shall be funded by membership fees from Industrial Members, grants from external sponsors such as the National Science Foundation (NSF) and other funds that may be received from time to time.
- 1.4. Program research shall be conducted at the campuses of the Center Universities and at such other locations as is desirable for the performance of work and is subject to appropriate Facilities and Administrative (F&A) costs.

- 1.5. Program research shall be conducted by Center Universities on a best efforts basis, and the Center Universities make no guarantees or warranties about the usefulness or commercialability of such research.
- 1.6. Program research involving two or more Center Universities shall be administered in accordance with subcontract(s) between or among the Center Universities involved.
- 1.7. All capital equipment, which is defined as any equipment item having a purchase price of Five Thousand Dollars (\$5000) or more and a useful life of one (1) year or more, purchased for use in connection with the research Program described herein, shall become the property of the Center University purchasing the equipment and title thereto shall vest therein. Title to equipment furnished by an Industrial Member to a Partner University, if any, shall remain with the Industrial Member.

2. GOVERNANCE

- 2.1. Center Universities will provide [INSERT NAMES OF DIRECTORS] as Directors for the Program who will have responsibility for oversight of the Program, approval of the research agenda, establishment of membership fees, and operation of the Center. Should one or all of the Directors leave the Center Universities or need to be replaced for any reason, suitable replacements shall be nominated by the Center University and agreed upon by the parties or the Consortium may be terminated by mutual agreement of the Center Universities. Directors will meet biannually during the spring and fall semesters with the location rotated among the campuses.
- 2.2. Each Center University must maintain their status as a Center University funded by the National Science Foundation.
- 2.3. Each Center University must maintain appropriate electronic/video conferencing capabilities.
- 2.4. The Industry Advisory Board is comprised of one representative from each Industrial Member. The Industry Advisory Board shall make recommendations on the research agenda and the operation of the Center.
- 2.5. The Academic Policy Committee, comprised of the Vice Presidents of Research or equivalent representatives for Center Universities, shall govern all issues related to academic policy of the Center.
- 2.6. Directors will prepare written annual reports on the progress of the Program at their individual institutions on the NSF schedule. The Lead University will prepare a consolidated annual report and distribute two copies of each report to each Industrial Member and Partner University. These reports shall contain all significant results of the work to date of the Center and meet reporting requirements of any Center sponsor.
- 2.7. Each Center University will recruit and retain Industrial Members as research partners. Such funds shall be treated as individual research projects in support of the Program at that Center University and funds shall be administered and maintained by the Center University in accordance with cost accounting principles and sponsor requirements, including federal and/or state sponsor imposed requirements. Center Universities will report all such funds to the Lead University for inclusion in Program Information.

3. INDUSTRIAL MEMBERS

- 3.1. Two levels of annually renewable Industrial Memberships are available: Full Member

and Associate Member. Costs, rights and privileges of each membership category are outlined in Exhibit A.

- 3.2. Membership fees are established by the Directors of the Center with input from the Industry Advisory Board. Initial Membership Fees are set at \$50,000 for Full Members and \$25,000 for Associate Members. Industrial Members shall receive notice of any increase in annual contribution at least six (6) months before any proposed change. An Industrial Member may elect to sponsor an applied research project mutually defined by the Center Universities, a basic research project selected by the Industry Advisory Board or a combination of applied and basic research project with allocation split as directed by the Member.
- 3.3. Any industrial company, agency or organization is eligible to become an Industrial Member of the Center, consistent with applicable state and federal laws and statutes. Membership is subject to the approval of the Directors of the Center, and payment of applicable fees.
- 3.4. Industrial Members and Center Universities shall be provided with a list of all Industrial Members and shall consent to the distribution of its name, address and contact information.
- 3.5. An Industry Advisory Board is comprised of one representative from each Industrial Member. This Board shall meet biannually in conjunction with the Center Directors' meeting to consult with the Directors, review program progress and make recommendations about the research agenda and the operation of the Center. Members of the Advisory Board are responsible for expenses incurred in attending this meeting.
- 3.6. Except as may be required by law, any and all knowledge, know-how, practices, processes, or other information (hereinafter referred to as "Confidential Information") disclosed or submitted in writing or in other tangible form which is clearly and conspicuously marked "Confidential Information" by Industrial Members to Center Universities shall be submitted to the appropriate Center University Director named above and for a period of five (5) years from the date of disclosure, maintained by Center University in strict confidence and shall not be disclosed to any party outside the Center. Center University may disclose Confidential Information to employees requiring access for the purpose of this Agreement; provided however, that prior to making any such disclosure, the employee shall be apprised of the duty to maintain Confidential Information in confidence and not to use Confidential Information for any purpose other than in accordance with the terms and conditions of this Agreement.
- 3.7. Nothing contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any part of Confidential Information which at the time of its receipt:
 - a) is not disclosed in writing or reduced to writing and conspicuously marked as Confidential Information within thirty (30) days of disclosure; or
 - b) is generally available to the public, or thereafter becomes available to the public through no act of the Center University; or
 - c) is documented to be independently known by Center University prior to receipt thereof, or made available to the Center University as a matter of lawful right by a third party; or

- d) is independently developed by an employee or student of the Center University who does not have access to this research Program; or
- e) is required to be disclosed by law or court order.

4. PROGRAM INFORMATION

“Program Information” shall mean research reports, oral presentations, and other documents created under Program. Center Universities shall provide Program Information to Industrial Members in accordance with Center policy and procedure. Program Information shall be maintained and conspicuously marked as Confidential Information until released to the public by Center Universities.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 “Invention” shall mean any discovery, concept or idea whether or not patentable or copyrightable, which (i) arises out of Program or work performed pursuant to the obligations of this Agreement; (ii) is conceived and reduced to practice during the term of the Agreement as defined in Section 1.2 hereinabove; and (iii) includes but is not limited to processes, methods, software, formulae, mask works, techniques, compositions of matter, devices, and improvements thereof and know-how relating thereto.

5.2 “Joint Inventions” shall mean Invention(s) made jointly by employees or agents of a Center University and employees or agents of one or more other Center Universities.

5.3 Any Invention made during the Program shall belong to the Center University(ies) which employ(s) the inventor(s). An Invention is “made during the Program” if it arises from work performed pursuant to a project conducted under this Agreement and is conceived and reduced to practice, actively or constructively, during the term of the Agreement. The Federal and State Governments shall have rights in accordance with agreements with entities of the Government. Individual Center Universities shall negotiate the Governmental rights so as not to limit the rights of any Center University. Intellectual property rights in agreements with the federal government shall be governed by 37CFR401.

5.4 Should an Invention be solely created by an individual Center University, that Invention shall belong to that Center University. Administration of the rights and licenses thereof shall be conducted in accordance with that Center University’s policies. That Center University shall disclose the Invention to the Center promptly upon its being reported to the Center University by the Principal Investigator. The Center University shall provide bi-annual reports to the Center with regards to the administration of the Invention. Center Universities thereof are hereby granted a royalty-free, nonexclusive, nontransferable right and license to Inventions for non-commercial, educational and research purposes.

5.5 Joint Inventions shall be jointly owned by the Center Universities involved. Administration of Joint Inventions shall be in accordance with the subcontract between or among the Center Universities involved. The subcontract shall address the administration and handling of Joint Inventions including the issues of percentages of ownership and responsibilities of costs. The Center University acting as prime contractor (hereinafter called “Prime University”) shall disclose the Invention to the Center promptly upon its being reported to the Partner University by the Principal Investigator. The Prime University shall provide bi-annual reports to the Center with regards to the

administration of the Invention. Center Universities thereof are hereby granted a royalty-free, nonexclusive, nontransferable right and license to Inventions for non-commercial, educational and research purposes.

5.6 Industrial Members shall have rights in Program Information and Inventions or Joint Invention produced by the Center. Industrial Members shall have rights to Inventions as detailed in the Membership Participation Agreement or an equivalent agreement. In contracts/agreements other than the Membership Participation Agreement, rights to Inventions or Joint Inventions shall be negotiated so as not to limit the rights of any Center University or the Federal Government.

6. NOTICES

Notices, invoices, communications and payments shall be submitted to the offices identified below. Contractual notices and communications hereunder shall be deemed made as of the date of mailing if given by overnight courier service or by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice or communication at the address given below, or such other address as may hereafter be designated by notice in writing.

University of Arkansas

Administrative

Rosemary Ruff, Director
Research and Sponsored Programs
University of Arkansas
120 Ozark Hall
Fayetteville, AR 72701
Phone (479) 575-3152

Technical:

John R. English, Department Head
Industrial Engineering Department
University of Arkansas
BELL 4207
Fayetteville, AR 72701 Phone (479) 575-6029
email: jre@uark.edu

University of Louisville

Administrative:

Lisa Braden
Office of Grants Administration
University of Louisville
312 Abell Administration
Louisville, KY 40292
Phone (502) 852-8362
email: lisa.braden@louisville.edu

Technical:

John S. Usher, Professor
Industrial Engineering Department
Speed Scientific School
University of Louisville
Louisville, KY 40292
email: usher@louisville.edu

University of Oklahoma

Administrative:

Andrea Deaton, Sponsored Programs Coordinator
Office of Research Administration

University of Oklahoma
1000 Asp Avenue
Norman, OK 73019
Phone: (405) 325-1646
email: adeaton@ou.edu

Technical:

B. Mustafa Pulat, Professor
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Norman, OK 73019-1022
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Administrative:

Suzette Lavoie
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201 Advanced Technology Research Center
Stillwater, OK 74078-5018
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Technical:

Ricki G. Ingalls, Associate Professor

Oklahoma State University

College of Engineering, Architecture and Technology
322 Engineering North
Stillwater, OK 74078-5018
Phone (405) 744-6055
email: ingalls@okstate.edu

7. TERMINATION

- 7.1 Any party to this Agreement may terminate this Agreement at any time by giving not less than sixty (60) days prior written notice to the other Center Universities.
- 7.2 In the event that a Center University shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy the default or breach within ninety (90) days after receipt of written notice thereof from the Partner University, the Partner University 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 written notice of termination in accordance with Section 6 to the defaulting party and the termination shall be effective as of the date of the receipt of the notice.
- 7.3 Termination of this Agreement by a Partner University for any reason shall not affect the rights and obligations of the other Partner Universities or those accrued prior to the effective date of termination of this Agreement. The rights and duties of Sections 4 and 5 and Paragraph 8.4 of this Agreement shall survive termination.

8. MISCELLANEOUS PROVISIONS

- 8.1. This contract may be extended, renewed, or otherwise amended at any time by the mutual written consent of the parties hereto, and upon written notice to the other Center Universities, so long as any such extension, renewal, or other amendment does not infringe upon nor abrogate the rights of other Center Universities under their several contracts.
- 8.2. Parties to this agreement shall attempt to resolve their disputes amicably through their representatives. Should the parties be unable to resolve between themselves any dispute arising from any of the provisions within this contract, each party shall have recourse under the law.
- 8.3. In the conduct of the research Program under this Agreement, Center Universities are acting in the capacity of an independent contractor, and no party shall by reason of this Agreement be obligated to defend, assume the cost of defense, hold harmless, or indemnify any other from any liability to third parties for loss of or damage to property, death, or bodily injury arising out of or connected with the research under this Agreement.
- 8.4. No party to this Agreement may use the name of any other in news releases, publicity, advertising, or product promotion without the prior written permission of the other.
- 8.5. Section headings have been inserted herein for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Agreement.
- 8.6. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute on and the same instrument.
- 8.7. In the interpretation of this Agreement, unless the context requires, words importing the singular or plural number shall be deemed to import the plural and singular number respectively.
- 8.8. This contract constitutes the entire agreement between the parties and supersedes all previous agreements and understandings relating to the work to be performed.
- 8.9. In the event that any of the terms, provisions, or covenants contained in this Agreement are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants not held to be partially or wholly invalid or unenforceable.
- 8.10 Parties shall not be held in breach of this Agreement for any reason for acts or omissions caused by any Act of God or other cause beyond the control of the Parties, including, but not limited to, fire, floods, labor disputes, or other unforeseen circumstances.

This document to be updated
to include additional CELDi
partnering universities.

APPENDIX B

SAMPLE

**CENTER FOR ENGINEERING LOGISTICS AND DISTRIBUTION (CELDi)
MEMBERSHIP PARTICIPATION AGREEMENT**

This Agreement made this _____ day of _____, 200____, by and between, _____ hereinafter referred to as “University”, and _____, a corporation duly organized under the laws of the state of _____ and having a place of business in _____ (hereinafter referred to as “Industrial Member”), each or both of which shall be referred to hereinafter as “Party” or “Parties” respectively.

WHEREAS, the signatories to this Agreement, together with the signatories of other Agreements of like tenor, intend to join together in a cooperative effort to sponsor the “Center for Engineering Logistics and Distribution (CELDi)” (hereinafter referred to as “Center”) located at the University of Arkansas (hereinafter referred to as “Lead University”), and other universities (hereinafter referred to as “Partner Universities”) which have agreed to participate in Center Programs; and

WHEREAS, the University of Arkansas has agreed to participate as Lead University in the research conducted by the Center; and

WHEREAS, the Board of Regents of the University of Oklahoma – Norman Campus, the University of Louisville and Oklahoma State University have agreed to participate as Partner Universities in the research conducted by the Center; and

WHEREAS, the Industrial Member desires to support research in the area of logistics and distribution through membership in the Center, by affiliation with the University.

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

1. Definitions. For the purposes of this Agreement:
 - a. “Partner University” shall mean a college or university which has agreed to partner with Lead University to conduct research on Center programs.
 - b. The term “Center Universities” refers collectively to the Lead and Partner Universities.
 - c. “Industrial Member” shall mean an industrial company, agency or organization that has agreed to sponsor the research activities of the Center by affiliating with one of the Center Universities and has executed a Membership Participation Agreement.
 - d. “Invention” shall mean any discovery, concept or idea whether or not patentable or copyrightable, which (i) arises out of work performed pursuant to the obligations of this Agreement; (ii) is conceived and reduced to practice during the term of the Agreement as defined in Section 10 hereinabove; and (iii) includes but is not limited to processes, methods, software, formulae, mask works, techniques, compositions of matter, devices, and improvements thereof and know-how relating thereto.

- e. "Program Information" shall mean research reports, oral presentations, and other documents created under this Agreement.
 - f. "Internal Use" shall mean the use of an Invention or the use of Program Information for internal, non-commercial purposes in the course of a Member's normal business activities.
2. Center Purpose. The purpose of the Center is to conduct research, stimulate industrial innovation, provide Industrial Members with an enhanced understanding and capability in the field of engineering logistics and distribution and related technologies, and to promote the education of new and current practitioners of the art and science of engineering logistics and distribution.
 3. Center Reporting. University shall provide Program Information to Industrial Member in accordance with Center policy and procedure. Program Information shall be Confidential Information (as hereinafter defined) until released to the public by Center Universities.
 4. Eligibility for Industrial Membership. Any industrial company, agency or organization is eligible to become an Industrial Member of the Center, consistent with applicable state and federal laws and statutes. Membership is subject to the approval of the Directors of the Center.
 5. Source of Funding. The cost of operation of the Center's programs shall be funded by (i) membership fees from Industrial Members, (ii) grants from the National Science Foundation (hereinafter referred to as "NSF"), and (iii) other funds that may be received from time to time.
 6. Research on Best Efforts. The research conducted by Center Universities shall be on a best efforts basis, and the Center Universities make no guarantees or warranties about the usefulness or commercialability of such research. It is agreed that operation of the Center shall continue only so long as there remains adequate resources from membership fees and NSF grants to support the operation of the Center.
 7. Location of Research Activities. Center program research shall be conducted at the campuses of the Center Universities and at such other locations as is desirable for the performance of the work.
 8. Industry Advisory Board. The Industry Advisory Board is comprised of one representative from each Industrial Member. The Industry Advisory Board shall make recommendations on (a) the research agenda and (b) the operation of the Center.
 9. Academic Policy Committee. The Academic Policy Committee is comprised of the Vice Presidents for Research, or equivalent, for Center Universities.
 10. Membership Fees. The undersigned Industrial Member shall pay an annual membership fee in accordance with the following schedule:

Selection

Full Member	\$50,000.00	
Associate Member	\$25,000.00	

Said membership fee may be paid (i) annually on or before October 1 of each year or (ii) as mutually agreed to between the Industrial Member and a Center University commencing _____, 200__. Payment of membership fees shall be made to University. Membership fees for subsequent years will be established by the Center with input from the Industry Advisory Board. Industrial Members shall receive notice of any increase in annual contribution at least six (6) months before any proposed change. An Industrial Member may elect to sponsor (a) an applied research project mutually defined with Center Universities, (b) a basic research project selected by the Industry Advisory Board, or (c) a combination of applied and basic research project with allocation split as directed by the Industrial Member. Industrial Member's approval of an applied research project shall be evidenced by the Industrial Member's signature on the Center University's proposal.

11. Membership Year. The undersigned Industrial Member agrees to maintain membership for a minimum twelve (12) month term commencing _____, 200_____, and ending _____, 200__. The Agreement may be renewed upon the written consent of the Industrial Member and acceptance by University.
12. Termination. Industrial Member may terminate this Agreement at any time by giving not less than thirty (30) days prior written notice to University. In the event of early termination, University agrees to take all reasonable steps to minimize termination costs, and Industrial Member agrees to pay University for all reasonable expenditures, non-cancelable commitments, and phase-out costs incurred. Should the University wish to terminate this Agreement, it may do so by giving the Industrial Member written notice of termination thirty (30) days in advance of termination. Any surplus membership fees that may exist upon termination by University shall be refunded to the Industrial Member on a pro rata basis. Should the Industrial Member fail to pay its membership fees in a timely manner, the University may immediately terminate such membership. If the University terminates the Agreement due to the Industrial Member's failure to pay its membership fee, the internal license granted to Industrial Member for Invention(s) shall be revoked.
13. Survivorship. The provisions of Sections 14, 15, 16, 17, 18 and 19 shall survive any expiration or termination of this Agreement.
14. Publication. University shall have the right at its discretion to release information or to publish any material resulting from the project. However, proprietary material provided to University by Industrial Member shall not be published without the written consent of the Industrial Member. University shall give Industrial Member the option of being acknowledged in such publication for its sponsorship of the project. University will furnish Industrial Member with a draft copy of any proposed publication sixty (60) days in advance of proposed publication date. Industrial Member must respond in writing within the 60 day time frame or the University will be free to publish the material. Industrial Member agrees to limit circulation and use of such materials to internal distributions within the Industrial Member's organization and agrees that such distribution will be solely for the purposes of review and comment unless otherwise agreed in writing by University. Industrial Member may request University delay the publishing of such proposed publication for a maximum of an additional ninety (90) days so that the University can file appropriate patent applications for any Inventions described therein. Such delay shall

not, however, be imposed on the filing or publication of any student thesis or dissertation.

15. Inventions and Patents. Any Invention made during a basic or applied research project by University shall belong to the University(ies) that employ(s) the inventor(s). An Invention is “made during a basic or applied research project” if it arises from work performed pursuant to a basic or applied research project conducted under this Agreement and is conceived and reduced to practice, actively or constructively, during the term of the Agreement.
16. Grant of Rights. University hereby grants to Member for Internal Use only a non-exclusive, royalty-free license to Program Information and patented or non-patented Inventions created under this Agreement. All Center Universities shall have a nonexclusive, nontransferable right and license to Invention(s) for non-commercial, educational and research purposes. Governmental entities shall have rights to the Invention(s) for internal, governmental use according to 37CFR401. Administration of the rights and licenses thereof shall be conducted in accordance with the University’s policies.
17. Confidentiality. The Parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose proprietary information (hereinafter referred to as “Confidential Information”) to each other. Each Party will use reasonable efforts to prevent the disclosure of any of the Party’s Confidential Information to third parties for a period of five (5) years from receipt thereof, provided that the recipient Party’s obligation hereunder shall not apply to information that:
 - a. is not disclosed in writing or reduced to writing and conspicuously marked as Confidential Information within thirty (30) days of disclosure;
 - b. is already in the recipient Party’s possession at the time of disclosure thereof;
 - c. is or later becomes part of the public domain through no fault of the recipient disclosing Party;
 - d. is received from a third party having no obligations of confidentiality to the disclosing Party;
 - e. has been independently developed by an employee of recipient Party that has not had access directly or indirectly to Confidential Information, and recipient Party can substantiate any claim of independent development by written evidence; or
 - f. is required by law or regulation to be disclosed.

Prior to disclosure of Confidential Information to University by Member, Member shall notify University of its intent to disclose Confidential Information, and University shall have the right to decline disclosure of said information. Said Confidential Information shall be sent only to University and clearly and conspicuously marked as “Confidential Information”

Each party to this Agreement agrees to treat Confidential Information received from the other with the same degree of care with which it treats its own Confidential Information.

18. Disputes. Except for the right of any Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all

claims, disputes or controversies arising under, out of, or in connection with the Agreement which the Parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. The Party raising such dispute shall promptly advise the other Party of such claim, dispute or controversy in a written statement which describes in reasonable detail the nature of such dispute. By not later than fifteen (15) business days after the recipient has received such notice of dispute, each Party shall have selected for itself a representative who shall have the authority to bind such Party, and shall additionally have advised the other Party in writing of the name and title of such representative. By not later than thirty (30) business days after such notice of dispute, the Party against whom the dispute shall be raised shall select a mediation firm and such representatives shall schedule a date with such firm for a mediation hearing. The Parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the Parties have not been able to resolve the dispute within thirty (30) business days after such mediation hearing, the Parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the State of _____ or in the United States District Court of _____ (or for) the _____, or the _____ State Claims Commission, to whose jurisdiction for such purposes the Parties each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this Section shall be construed to waive any rights or timely performance of any obligations existing under this Agreement or the sovereign immunity of the University.

19. Other Research Activities. Nothing contained herein shall be interpreted to preclude University or Partner Universities from undertaking efforts of a same or similar type to those performed under this Agreement either for third parties or for internal utilization. Members shall not have any license rights in any results of such research.
20. Use of Names. No advertising or publicity matter having or containing any reference to the Center Universities or any of their respective divisions, units or affiliated institutions shall be made use of by the Industrial Member or anyone in the Industrial Member's behalf unless and until the same has first been submitted to and received the approval of the Center Universities. Industrial Member shall not release material containing the name of a Center University or any of its employees without prior written approval by an authorized representative of the Center University, and said approval shall not be unreasonably withheld.
21. Indemnification. Under _____ law the University of _____ may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages. However, with respect to loss, expense, damage, liability, claims or demands either at law or in equity, for actual or alleged patent, trademark, copyright or other property right infringement arising from the work performed under this Agreement by the University and its employees or agents, the University agrees with Industrial Member that: (a) it will cooperate with Industrial Member in the defense of any action or claim brought against Industrial Member seeking the foregoing damages or relief; (b) it will in good faith cooperate with Industrial Member should Industrial Member present any claims of the foregoing nature against University to the Claims Commission of the State of _____ (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite

said hearing; provided, however, the University reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

Industrial Member shall indemnify and hold harmless University, their regents, officers, agents and employees from any liability or loss resulting from judgments or claims against them arising out of the activities to be carried out pursuant to the obligations of this Agreement or the use by Industrial Member of the results of basic or applied research, provided, however, that the following is excluded from Industrial Member's obligation to indemnify and hold harmless:

- a. The negligent failure of University to comply with any applicable governmental requirements; or
- b. The negligence or willful malfeasance by a trustee, officer, agent or employee of University.

22. Limitation of Remedies. THE OBLIGATIONS OF UNIVERSITY ARE SET FORTH IN THIS AGREEMENT AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

23. Partnership Not Intended. Any language herein that tends to indicate the formation of any partnership, joint venture or any other form of legal entity between or among the Industrial Member and University has been for convenience only. The Industrial Member has jointly sponsored research to be conducted by the Center. The Center is not a legal entity. Center Universities may subcontract research work to Center Universities and Center Universities may subcontract all or part of such research work to other universities. Although, the Industrial Member may share in research results funded in whole or in part with membership fees, no partnership, joint venture or any other form of legal entity is intended to be formed between or among any Industrial Member.

24. Notices. All notices acquired or desirable hereunder shall be given by first class certified mail, postage prepaid, to the following addresses or such other address as shall be designated in writing by the Parties from time to time:

For University:

Technical Matters:

Administrative Matters:

For Industrial Member:

25. Miscellaneous Provisions:

- a. This Agreement supersedes all prior discussions and agreements between the Parties with respect to all matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein. No representation, promise or inducement not contained herein shall be binding on any Party hereto. Neither Party has relied on any representation, promise or inducement not contained herein. This Agreement shall not be modified or amended except by instrument in writing signed by or on behalf of the Parties hereto.
- b. Unless expressly stated elsewhere herein to the contrary, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and not restrictive of those given by law.
- c. Section headings have been inserted herein for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Agreement.
- d. Time is and shall be of the essence of this Agreement.
- e. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- f. No failure of the Parties to exercise any power given to either of them hereunder or to insist upon strict compliance by either of them at variance with the terms hereof shall constitute a waiver of either of their rights to demand exact compliance with the terms hereof.
- g. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.
- h. It is expressly understood by the Parties that all research activities of Center may be assigned to Center Universities. Except as otherwise agreed herein, this Agreement may not be assigned by either Party without the prior written consent of the other.
- i. In the interpretation of this Agreement, unless the context requires, words importing the singular or plural number shall be deemed to import the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other bodies and vice versa.
- j. In the event that any of the terms, provisions, or covenants contained in this Agreement are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions or covenants not held to be partially or wholly invalid or unenforceable.
- k. Neither Party shall be held in breach of this Agreement for any reason for acts or omissions caused by any Act of God or other cause beyond the control of the Parties, including, but not limited to, fire, floods, labor disputes, or other unforeseen circumstances.

26. Center Universities reserve the right to recruit and execute agreements similar to this Agreement with additional Industrial Members. Such agreements may be made for the purpose of providing funding, or replacing a Member which has terminated its agreement, or to enhance the Center by obtaining additional funding. All Industrial Members shall have the same right to reports, licenses and other project materials, except as otherwise provided for herein. Each Industrial Member shall be provided with a list of all Industrial Members.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

(INDUSTRIAL MEMBER)

(UNIVERSITY)

By _____

By _____

Typed Name _____

Typed Name _____

Title _____

Title _____

Date Signed _____

Date Signed _____