



Attachment 5-B - NSF's Cooperative Agreement Program Terms and Conditions on Industrial Collaboration in ERCs

1. The ERC's industrial/practitioner partnership program will be governed by an ERC-wide membership agreement, including a uniform IP policy for ERC-generated IP at the lead and each of the ERC's partner universities. The membership agreement defines the scope and function of the ERC's partnership with industry/practitioner organizations, the types of membership such as full, affiliate, contributing, etc, the respective membership fees, and the ERC's Intellectual Property (IP) policy. The ERC has developed an IP policy that facilitates the roles of industrial partners in Gen-3 ERCs and is flexible in recognizing IP jointly developed by faculty in different universities or that developed by joint industry and university research.
2. Foreign firms may be members of the ERC as long as they participate in accordance with the same membership agreement as U.S. firms do. Domestic and foreign member firms/practitioner organizations will contribute financially to the ERC and will have first rights of refusal for ERC-generated Intellectual property (IP), according to the terms of the agreement.
3. The ERC will function with an Industrial Advisory Board (IAB) involving all of its Industry/practitioner members. The IAB will meet at least twice a year, carry out an annual analysis of the ERC's strengths, weaknesses, opportunities and threats to survival (a SWOT analysis), and participate in the annual NSF review of the ERC's performance and plans. During the meeting with the NSF site visit team, the Chair of the IAB will present the IAB's SWOT analysis to the review team and discuss the findings. The SWOT will be updated annually and progress of the ERC in addressing the SWOT will be discussed with the NSF site visit team as well. The Chair and the IAB members also will discuss the annual SWOT analysis with the ERC Director and the ERC Leadership team to determine appropriate future strategies to deal with the weaknesses and threats.
4. Industrial consortia may join the ERC, but benefits of membership do not accrue to firms that are consortia members, unless they are also paying membership fees to the ERC as members separate from the consortia
5. Throughout the course of the ERC's funding by NSF, the Center shall continue to develop and refine its technology transfer and innovation strategy and its Intellectual Property policy, the latter in accordance with NSF's Intellectual Property guidelines (NSF Award and Administration Guide, Chapter VI.D., "Intellectual Property") and the Awardee's policies.
6. Industrial membership fees are treated as Program Income, and must be allocated for use for Center purposes. Industrial membership fees that are not expended in the year in which they are received must be placed in a Center account and reported to NSF and industry as 'unexpended funds' that are held in reserve for future use. Progress reports on the expenditure of these funds should be included in the Center's annual report and reported to IAB during the IAB meetings. Industrial members may provide additional support for activities such as sponsored research projects, equipment donations, intellectual property donations, or educational grants.
7. Costs for organizing meetings with industry members will be borne by the ERC or the participants through a registration fee, as deemed appropriate. Costs for attending these meetings by industry members will be borne by their organizations.
8. All ERCs will have member firms engaged in translational research through sponsored projects, and small firms carrying out translational research supported by funds from the ERC Program's Translational Research Fund or other non-ERC, non-university sources for ERC-generated Intellectual Property (IP) that member firms do not license.
9. In addition, as a Gen-3 ERC, the ERC will develop and nurture the innovation ecosystem for the purposes of accelerating the translation of knowledge into innovation, by:
 - i. Stimulating member firms to support sponsored projects for the purposes of translating ERC-generated IP to commercialization;
 - ii. Forming collaborations with small firms for the purpose of translating ERC-generated IP to the marketplace, if member firms do not license the IP—(This should be done via licensing IP, knowledge transfer to the firm, and/or securing translational research funds to accelerate commercialization of the technology by the small business in partnership with the ERC. Translational research funds could be secured from the ERC Translational Research Fund and/or from funding from other non-ERC/non-university sources);
 - iii. Building partnerships with federal, state, or local government programs designed to develop entrepreneurs, support start-up firms, and otherwise speed the translation of ERC-generated knowledge and technology



- into practice and products; and
- iv. Leveraging technology commercialization opportunities offered by the federal Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) programs. The ERC will include analyses to determine the most effective methodologies to use to achieve these innovation goals through these types of partnerships.
 - v. In reference to 9(ii) above, ERCs will classify their IP generated from research under the scope of the ERC's strategic plan as core IP (IP resulting from center-controlled unrestricted funds) and Project IP (IP resulting from restricted funds that flow through the center or flow directly to a PI). For Core IP and Project IP, the member firms / practitioner organizations or the sponsoring firm/practitioner organization, respectively, will be offered the first option to negotiate a license. If there is no license forthcoming in either case, the IP can be offered to a small firm and a partnership formed between that firm and ERC faculty to carry out translational research to accelerate product development. Support for a translational research project to accelerate product development can be sought from NSF through the ERC Translational Research Fund; in that case, the small firm would be the submitting organization, with a subaward to the ERC faculty. In addition, in that case, the university must screen the project for ERC faculty, Industrial Liaison Officers (ILO) and/or ERC Executive Management personnel conflicts of interest. When conflicts are disclosed for any of the above three categories of personnel, the university impacted must develop a conflict management plan for each disclosure.
 - vi. In the case of a conflict, there will be a conflict of interest management plan. Progress and impacts of the project would be reported in the ERC's annual report. Because NSF would support such a project as an associated project outside the center's core funds, any additional IP developed from that project would not revert to the university or member firms.

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