



## PowerAmerica™ Institute Bylaws

### I. PURPOSE

The purpose of PowerAmerica: The Next Generation Power Electronics Manufacturing Innovation Institute (“PowerAmerica” or “Institute”) is to support applied research, manufacturing, and other initiatives to accelerate the commercialization of wide bandgap semiconductor power electronics. The broader goal is to enhance economic development and security in the United States through revitalizing American manufacturing competitiveness. A core challenge to such revitalization is the development and scale-up of high volume and low cost manufactured materials, device designs, packaging and modules by Members for broad end-use system applicability. Meeting that challenge is the Institute’s focus.

The Institute and its members (hereinafter referred to individually as “Member” or collectively as “Members”) implement programs (i) enabling pre-competitive applied research and development projects that can support innovative products, (ii) defining policies and strategies for participation by a wide range of stakeholders, (iii) providing capabilities for, and collaboration in, an open work environment, (iv) providing for technical education and workforce development, and (v) leveraging relevant private and public sector resources to support focused pre-competitive projects leading to commercialization and sharing of proprietary information among Members developed as a result of such projects to increase individual company competitiveness.

These Bylaws establish the overall management of the Institute by an Executive Director with advisory input by a Member Advisory Committee. The Institute is a program of North Carolina State University.

The Institute has seven levels of membership: Full Sustaining Member, Full Member, Affiliate Member, Associate Member, Small Business Member, Academic/Non-Profit Member, and Federal Lab Member. The criteria for membership are described in Article IV below.

### II. MANAGEMENT

The Institute has an Executive Director, who reports to and shall be selected by North Carolina State University’s Chancellor, or the Chancellor’s designee in consultation with the Member Advisory Committee, and is responsible for day-to-day management of the Institute. The duties of the Executive Director include but are not limited to the following:

- i. manage the operations of the Institute, including hiring and retaining qualified staff;

- ii. prepare and provide to each Member and the Member Advisory Committee an annual report addressing: (i) the proposed and approved projects, (ii) the budget and performance against the same, (iii) the strategic plan and performance against the same, (iv) any revisions, or proposed revisions, to the strategic plan or these Bylaws, (v) the names of the Member Advisory Committee members and (vi) the identification of the Members and their status;
- iii. implement the strategic plan, which shall include annual operating plans and budgets. The strategic plan will generally identify the focus of proposed projects likely to be approved, the conduct of such projects, the dissemination of the results of such projects, the provision of education and training in the project results, and will include any other information deemed by the Executive Director to be necessary for the governance of the business affairs of the Institute;
- iv. review proposals received from any Member, decide what action if any to take in response to the proposals, and communicate such decisions back to the Member and, as appropriate, the Member Advisory Committee;
- v. arrange for an annual meeting to review the Institute. The Executive Director shall invite all Members to the meeting, advising them the location, date, and time of the meeting at least two (2) months prior to the same. At least two (2) weeks prior to the meeting, the Executive Director shall distribute a proposed meeting agenda;
- vi. present to the Member Advisory Committee any proposed revisions to these Bylaws for comment and approval;
- vii. appoint a Chief Technology Officer (“CTO”) and other staff as he/she deems appropriate to assist in carrying out the responsibilities of the Executive Director, within budgetary parameters;
- viii. manage Institute Intellectual Property;
- ix. maintain an online portal for project reporting;
- x. oversee and administer the Intellectual Property Protection Fund (defined below); and
- xi. submit the strategic plan, annual operating plans, Bylaws, membership agreement, and other governing documents and budgets, and any revisions to the foregoing to the Member Advisory Committee for approval.

### III. MEMBER ADVISORY COMMITTEE

The Member Advisory Committee consists of one representative from each of the Full Sustaining, Full, Affiliate, Associate, Small Business, and Academic/Non-Profit Members. Voting rights of each representative will be in proportion to the membership fees associated with the representative’s membership tier.

The Member Advisory Committee shall:

- i. attend and participate in annual review meetings;
- ii. contribute to and receive annual reports;
- iii. ensure that Member views are considered in decision making;
- iv. provide input to Institute roadmaps, strategic vision, and priorities listed in request for proposals;
- v. advise on criteria for new member admittance;
- vi. review and approve new membership applications;
- vii. provide input to the Executive Director on project selection;
- viii. submit proposals to the Executive Director regarding any aspect of the Institute's activities;
- ix. elect a chair and vice-chair for terms not to exceed one (1) year;
- x. approve the strategic plan, annual operating plans, Bylaws, membership agreement, other governing documents and budgets, and any revisions to the foregoing;
- xi. provide input on responses to any request from government agencies, unsolicited proposals to government agencies initiated by the Institute, and contract documents related to possible government funding of the Institute;
- xii. establish and conclude committees for specific purposes;
- xiii. elect three members to serve, in addition to the chair and vice chair, on an Executive Committee of the Member Advisory Committee. The Executive Committee shall interact with the Executive Director and other PowerAmerica staff members related to matters of the Institute in between meetings of the Member Advisory Committee.

Except as provided for in Article XIII, a quorum of Member Advisory Committee members shall be necessary to transact business, which shall be a majority of members based on the voting rights of each member.

#### IV. MEMBERSHIP

##### A. General

##### 1. Eligible Members and Membership Approval Process

Institute membership is open to all U.S. companies or other organizations (incorporated or formed under the laws of a State or territory of the United States and that maintain a manufacturing presence in the U.S.) that are engaged in, or provides goods, technology, or services for the design, development, use, or manufacture of wide bandgap semiconductors or related technology. Academic institutions, non-profit organizations, governmental agencies and other U.S. based entities committed in furthering technology related to wide bandgap semiconductors and power electronics are also eligible to be members of the Institute.

Foreign-owned or partially foreign-owned organizations with a U.S. presence that is engaged in, or provides goods, technology, or services for the design, development, use, or manufacture of wide bandgap semiconductors or related technology may, with the approval of the

Member Advisory Committee, be eligible for membership when the organization's participation in the Institute would be in the economic interest of the United States and aligned with the vision and mission of the Institute.

To be considered for membership admission, applicants must submit satisfactory evidence that they meet the qualifications of membership as set forth above and that their business objectives and conduct are consistent with the goals and purposes of the Institute. Membership shall be contingent on a favorable vote on the membership application by the Membership Advisory Committee.

## 2. Membership Fees

Membership fees and benefits vary with the membership tier at which the member joined as set forth in the Membership Agreement. Membership fees may be amended from time-to-time in the interest of sustaining the Institute. Changes to membership fees shall take effect on the date established by the Member Advisory Committee but no sooner than six (6) months after the Member Advisory Committee's decision. Membership fees are nonrefundable. The Institute will utilize membership fees in furtherance of the operation and general interest of the Institute. A Member may increase its membership level by paying the difference between the previous level and the new level, with the effective date of the new level of membership being the date of receipt of payment of the difference. However, when Institute Intellectual Property, as defined below, has been licensed non-exclusively, organizations not Members at the time the Intellectual Property was Invented or first produced may be granted the same rights as Members to the Intellectual Property only after becoming a Member and paying a fee, in addition to the membership fee, as set forth by the Institute and approved by the Member Advisory Committee.

## 3. Withdrawal From Membership

A Member may withdraw from the Institute by providing written notice as set forth in the Membership Agreement. A withdrawing Member shall be bound by the Confidentiality and nondisclosure obligations set forth in Article VII, shall have no further right to share in the research results subsequently generated under the Institute or in any resulting Institute Intellectual Property, and is liable for its own continuing contractual obligations under any Institute documents to which it is a signatory. The withdrawing Member will retain prior granted internal-use licenses to Institute Intellectual Property. However, any license granted under the provisions VI.H.2.b ("Commercial Licensing of Institute Intellectual Property, Member Initiated Projects, Commercial License") will automatically terminate.

## V. INSTITUTE RESEARCH AND PERFORMANCE OF WORK

Institute Research programs, as defined below, are supported by cost shares, membership dues from Institute Members and external funding including government funding. The results of all research programs are shared with all Members. Access to this information is restricted to PowerAmerica Members, but may be placed in the public domain, including through presentations at industry conferences, publications, poster presentations, software, and patent disclosures in

accordance with Article VIII, “Publication Policy,” below.

All PowerAmerica activities must be performed in the United States and no PowerAmerica funds may be spent outside the U.S. This requirement is applicable to the Institute, its Members, sub-recipients, contractors and others performing work funded by the Institute. This requirement does not apply to the purchase of supplies and equipment; however, the Members should make every effort to purchase supplies and equipment produced within the United States.

## VI. INTELLECTUAL PROPERTY

### A. Scope and Purpose

- i. The following is the Intellectual Property Management Plan (“IP Plan”) of the Institute that governs the treatment of Intellectual Property and the rights between the Institute and its Members;
- ii. The purpose of the IP Plan is to promote the rapid commercialization of intellectual property developed by the Institute and encourage membership and participation in the Institute; and
- iii. If membership terminates for any reason, Members will retain ownership of their sole and joint inventions made in the course of performance of Institute Research and as stated in this Article VI.

### B. Definitions

The following definitions are for the purpose of interpreting these Bylaws in establishing rights among Institute Members.

**“Background Intellectual Property”** means any intellectual property invented or produced prior to commencement of, or generated outside of, Institute Research, including Intellectual Property Invented or produced prior to commencement of, or generated outside of, Institute Research.

**“Industry Member”** shall mean an organization that: (a) executes the “PowerAmerica Membership Agreement” with North Carolina State University, (b) is eligible for membership under these Bylaws, (c) is current on the applicable Membership fees, and (d) is not a University Member.

**“Industry-owned Intellectual Property”** means all Intellectual Property Invented or first produced solely by Industry Member personnel in the performance of Institute Research.

**“Institute Research”** means any research, development, or demonstration activities funded in whole or in part with Institute funds, whether membership fees, cost share, program income, or external funding including government funding.

**“Institute Initiated Projects”** means projects funded without membership dues, usage fees, device bank purchases, registration fees or other income received from Institute activities but are conducted with government funding and cost share from the performing organization(s).

**“Institute Intellectual Property”** means and includes all Intellectual Property Invented or first produced in the performance of any Institute Research; in the case of copyright, Institute Intellectual Property includes copyrightable works first reduced to tangible form in the performance of Institute Research.

**“Intellectual Property”** means all forms of intellectual property under the laws of any state or country, including but not limited to, inventions (whether or not patentable), patentable plants, works of authorship (whether or not copyrightable), mask works, plant varieties, Know-How, trademarks, service marks, trade dress, designs, and trade secrets, and all means patents, patent applications, plant variety rights, copyrights and mask work rights (registered and unregistered), design rights (registered and unregistered), rights in trademarks, service marks, and trade dress, and trade secret rights, anywhere in the world, thereon or thereto. Inventorship will be determined in accordance with Title 35 of the United States Code (US Patent Law).

**“Invented”** means conceived and actually or constructively reduced to practice.

**“Jointly owned University Intellectual Property”** means all Intellectual Property Invented or first produced jointly by University Member personnel in the performance of Institute Research. For the purpose of clarity, Jointly owned University Intellectual Property does not include Industry-owned Intellectual Property.

**“Know-How”** means any unpatented methods, techniques, processes, technical information, specifications, recipes, formulae, designs, plans, documentation, drawings, and research data which is: (a) created in the performance of Institute Research, (b) is not included in any patent or patent application made in conjunction with Institute Research, and (c) which is limited to the information provided to Members at the time the license granted in Section VI H.2., below. Know-How does not include any inventions, technology, materials, methods, compounds process, designs, or other information that (i) are patented, (ii) that are patentable but unpatented, or (iii) which patents are pending. Further, Know-How does not include any inventions, technology, materials, methods, compounds process, designs, or other information or methods or any uses of any of the foregoing that the Member cannot provide to other Members because of other legal obligations of the Member, such as those arising out of sponsored research, clinical research, material transfer, license, option to license, confidentiality, or other agreements.

**“Member Initiated Projects”** means projects funded by Institute income received from membership fees, usage fees, device bank purchases, registration fees, or other Institute income sources, with or without government funding.

**“Tier 1 Member”** means a Full Sustaining Member.

**“Tier 2 Member”** means a Full Member.

**“Tier 3 Member”** means an Affiliate Member.

**“Tier 4 Member”** means an Associate Member.

**“Tier 5 Member”** means a Small Business Member, which constitutes a company with fewer than 250 employees, including employees of a parent company that is the majority owner. However, the employees of a parent company and other subsidiaries can, by vote of the Member Advisory Committee, be excluded from determining the 250 criteria if: (i) the company seeking membership has a name and/or branding that is distinct from the parent or other subsidiaries and (ii) the company’s sales are primarily external with respect to the parent or other subsidiaries.

**“Tier 6 Member”** means an Academic/Non-Profit Member.

**“University Member”** includes Academic/Non-Profit Members and Federal Lab Members.

**"University-owned Institute Intellectual Property"** means all Intellectual Property Invented or produced solely by North Carolina State University personnel, University Member personnel, or both in the performance of any Institute Research.

#### C. Other Projects

It is also possible for a Member or Members to fund projects that are not “Institute Research” pursuant to a sponsored research agreement with North Carolina State University or another Member. The terms of the sponsored research agreement will be set forth in the agreement and, unless otherwise agreed by the parties, neither the Institute nor any non-party Member will have any rights in the results of the research. The results of this research will be available to Institute Members on terms set forth in the sponsored research agreement. If such sponsored research is performed at North Carolina State University, such research will carry F&A rates and other terms, including intellectual property and licensing rights, customary for sponsored research agreements at North Carolina State University.

#### D. Background Intellectual Property

Each Member shall retain all rights, including ownership, to its Background Intellectual Property. The decision to make available Background Intellectual Property for use in Institute Research is at the sole discretion of each Member. No license or rights are granted to any Background Intellectual Property under these Bylaws.

#### E. Intellectual Property Protection Fund

The Institute will establish an Intellectual Property Protection Fund (IPPF) as a resource to be used to secure and/or maintain protection associated with the most promising Institute Intellectual Property. The Executive Director, with the consent of the Membership Advisory Committee, has the authority to commit funds for this purpose in amounts approved by the Member Advisory Committee. In the event that a University Member is successful in entering into a license or license option pursuant to the licensing provisions of H.2.a., the owning Member will require the licensee to reimburse those costs paid by the IPPF and will refund those funds to the IPPF.

F. Title to Institute Intellectual Property

- i. Each Member shall retain title to Institute Intellectual Property invented, authored, created or developed solely by its employees, individual contract workers, and agents.
- ii. Members shall be joint owners of Institute Intellectual Property that is developed jointly by those Members, subject to any separate agreement between those Members as to enforcement, licensing, patent prosecution costs, and government fees. Each owner shall have an undivided interest in the jointly owned Institute Intellectual Property.
- iii. Intellectual Property created by employees of Federal Lab Members will be subject to their respective Management and Operating (M&O) contract terms and conditions between the Federal Lab Member and contracting federal agency with respect to ownership of inventions made by their employees. The M&O contract generally provides that the laboratory contractor has the right to elect to retain title to inventions made by their lab employees.

G. Disclosure of Institute Intellectual Property

- i. Within sixty (60) days after a Member becomes aware of Institute Intellectual Property, the Member will disclose the Institute Intellectual Property in writing to the Institute Chief Technology Officer (CTO) by submission of a confidential process designed for this purpose. In the event that the disclosure includes at least one University Member inventor, the disclosure will be forwarded simultaneously to the University Member's technology transfer office responsible for administering the Intellectual Property. The CTO will review the disclosure and forward the disclosure, if not already forwarded, to the Member's office responsible for administering the Intellectual Property;
- ii. In fulfilling the obligations in (i), the CTO may share a non-confidential, summary version of the Institute Intellectual Property disclosure to Members for the purpose of assessing interest among members in the disclosure.



- iii. Members shall mark their Institute Intellectual Property disclosures as “PowerAmerica Confidential Information” as provided in Section VII, below.
- iv. Notwithstanding any “PowerAmerica Confidential Information” notice, the CTO and responsible technology transfer office may share any Institute Intellectual Property disclosure with other Members as required for licensing set forth in the Bylaws, including as provided in Paragraph (H) below; and
- v. Other than the limited exception above in Paragraph G.iv., the Institute and Members must comply with and not obscure, remove, delete, or deface any “PowerAmerica Confidential Information” notice on any Institute Intellectual Property disclosure or on any other information, documents, software or other materials they receive.

#### H. Licensing of Institute Intellectual Property

##### 1. Non-Commercial License to Intellectual Property

- a. Academic/Non-Profit Members: The owning Member or Members of any Institute Intellectual Property agree to grant to the Academic/Non-Profit Members of the Institute a royalty-free, non-exclusive license to use the Institute Intellectual Property for research and educational purposes only.
- b. Institute Initiated Projects. For Institute Intellectual Property Invented in whole or in part from work performed on Institute Initiated Projects, owning Members agree to grant other Members a royalty-free, nonexclusive license to use Institute Intellectual Property solely for the purposes of carrying out other Institute Initiated Projects or Member Initiated Projects.
- c. Member Initiated Projects: For Institute Intellectual Property Invented in whole or in part from work performed on Member Initiated Projects, owning Members will grant to Members a non-exclusive, royalty-free license to use the Institute Intellectual Property for internal Member use only, but not for sale or commercial exploitation of such Institute Intellectual Property except as described in Section 2 below.

##### 2. Commercial Licensing of Institute Intellectual Property

When Members are the exclusive owners of Institute Intellectual Property, their respective technology transfer offices will follow the procedures outlined below for offering commercial licenses to inventions arising from Institute Research. The CTO will coordinate Intellectual Property reporting to the membership but the owning Members shall be responsible for their own negotiations.

a. Institute Initiated Projects

i. University-owned Know-How

All Members shall have the option to receive a non-exclusive, royalty-free license to make, use, sell, or have made products or services incorporating University-owned Know-How.

ii. University-owned Institute Intellectual Property, other than Know-How

The commercial licensing of University-owned Institute Intellectual Property, other than Know-How, invented in whole or in part from work performed on Institute Initiated Projects will be conducted according to the following procedures:

1. Notices to Members: Each University-owned Institute Intellectual Property disclosure will be promptly disclosed to the CTO in writing and then by the CTO, in writing, to all Members simultaneously. The disclosure may be made initially by the CTO in a non-confidential, summary form to assess Members' interest in the disclosure. The CTO will inform Members at this time of the grant of the non-commercial research license in the University-owned Institute Intellectual Property, of Member rights to protect the University-owned Institute Intellectual Property by the IPPF and the commercial rights that accrue to members in doing so (which shall follow the rights granted in Section 2.b.ii. below) or to elect a commercial license as set forth in steps 2 through 8 below and of the dates upon which the right to exercise the option begins and ends. The CTO will consult with the Executive Committee regarding a need to call a meeting of the Member Advisory Committee for the purpose considering protecting the Institute Intellectual Property by the IPPF. All elections of options provided for below must be made in writing to the CTO and the owning Member or Members. Should the Institute not elect to protect the University-owned Intellectual Property disclosure with the IPPF the procedure in steps 2 through 8 below shall be followed.
2. Tier 1 Members have First Option for Exclusive Commercial License: Each Tier 1 Member has thirty (30) days from the receipt of the University-owned Institute Intellectual Property disclosure to elect an option to negotiate an exclusive commercial license. If more than one Tier 1 Member elects an option to negotiate an exclusive commercial license, then the negotiating will be co-exclusive to the electing Members unless the electing Members can agree to negotiate exclusive licenses by different fields of use.

3. Tier 2 Members have Second Option for Exclusive Commercial License: If no Tier 1 Member elects an option for an exclusive commercial license within the thirty (30) days or certain fields of use are not covered by a license to a Tier 1 Member after the negotiation period (defined below) ends, then each Tier 2 Member has the right to elect an option to negotiate an exclusive commercial license. The option will be limited to particular fields of use if necessary to honor any license executed by a Tier 1 Member. Each Tier 2 Member has thirty (30) days to make the election from the date it was informed of its right to elect. If more than one Tier 2 Member elects an option to negotiate an exclusive commercial license, then the negotiating will be co-exclusive to the electing Members unless the electing Members can agree to negotiate exclusive licenses by different fields of use.
4. Tier 3 Members have Third Option for Exclusive Commercial License: If no Tier 1 or 2 Member elects an option for an exclusive commercial license within the thirty (30) days or certain fields of use are not covered by a license to a Tier 1 or 2 Member after the negotiation period (defined below) ends, then each Tier 3 Member has the right to elect an option to negotiate an exclusive commercial license. The option will be limited to particular fields of use if necessary to honor any license executed by a Tier 1 or Tier 2 Member. Each Tier 3 Member has thirty (30) days to make the election from the date it was informed of its right to elect. If more than one Tier 3 Member elects an option to negotiate an exclusive commercial license, then the negotiating will be co-exclusive to the electing Members unless the electing Members can agree to negotiate exclusive licenses by different fields of use.
5. Tiers 4 and 5 Jointly Have Fourth Option for Exclusive Commercial License: If no Tier 1, 2, or 3 Member elects an option for an exclusive commercial license within the thirty (30) days or certain fields of use are not covered by a license to a Tier 1, 2, or 3 Member after the negotiation period (defined below) ends, then each Tier 4 and 5 Member has the right to elect an option to negotiate an exclusive commercial license. The option will be limited to particular fields of use if necessary to honor any license executed by a Tier 1, 2, or 3 Member. Each Tier 4 and 5 Member has thirty (30) days to make the election from the date it was informed of its right to elect. If more than one Tier 4 and 5 Member elects an option to negotiate an exclusive commercial license, then the negotiating will be co-exclusive to the electing Members unless the electing Members can agree to negotiate exclusive licenses by different fields of use.

6. Cost of Intellectual Property Protection: Each Member that has elected the option to negotiate a commercial license must agree to pay for the cost associated with obtaining protection for the Intellectual Property in the countries in which the license is intended to cover. If there is only one Member electing an option, then that one electing Member shall be liable for all cost associated with obtaining protection for the Intellectual Property. If there is more than one electing Member, then the cost will be shared equally among the electing Members. Each electing Member shall remain liable for and share all costs related to Intellectual Property protection, unless the electing Member provides a thirty (30) day notice that it wants to cancel its election, after which thirty (30) days, the electing Member shall not be liable for any future costs and forfeits any commercial rights to the Intellectual Property under this Plan. If an invoice for a patent expenses reimbursement is not paid by a Member within thirty (30) days of the due date, said Member shall forfeit any commercial rights to the Intellectual Property. If a Member forfeits commercial rights, a license for those rights will be offered first to Members in the forfeiting Member's Tier and if no license is executed, the same rights in succession outlined above will apply.
  7. Negotiation Period: All licenses will be negotiated in good faith according to academic and industry standards. Under each elected option, a Member has a period of one hundred twenty (120) days from the date of the election to negotiate a license with the owning Member or Members.
  8. Commercial Licensing to Non-Members: Owning University Members of any University-owned Institute Intellectual Property agree not to license or offer to license the University-owned Intellectual Property to any non-Member unless no Member has elected the option to negotiate a commercial license as provided for by this Plan, all negotiations periods for licensing to Members have expired, or a commercial license with a Member has terminated and the license or offer to license to the non-Member would not be inconsistent with or otherwise interfere with any license to a Member.
- iii. Commercial Licensing of Jointly-Owned University Intellectual Property. Jointly owned University Intellectual Property will be licensed in accordance with the process outlined in Paragraph H.2.a.i. (Know-How) and H.2.a.ii (Institute Intellectual Property, other than Know-How) above. The University owners of such jointly owned Institute Intellectual Property will negotiate in good faith an invention administration agreement which will grant to one party the authority to manage patent prosecution and licensing, establish procedures for sharing patent filing and prosecution expenses, and

allocate the sharing of royalties.

- iv. Commercial Licensing of Industry-Owned Intellectual Property: To the extent that it is commercially feasible to do so, owning Industry Members are expected to offer commercial licenses to other Members for Industry-owned Intellectual Property Invented or first produced in whole or in part from work performed on Institute Initiated Projects, prior to offering to non-Members. However, the licensing of such Industry-owned Intellectual Property for commercial purposes is at the sole discretion of the owning Member or Members. Industry Members may exploit their Intellectual Property Invented or first produced from work performed on Institute Initiated Projects.

- b. Member Initiated Projects

The commercial licensing of Institute Intellectual Property Invented or first produced from work performed on Member Initiated Projects will be conducted according to the following procedures:

- i. Notices to Members: Each Institute Intellectual Property disclosure will be promptly disclosed to the CTO in writing and then by the CTO, in writing, to all Members simultaneously by the CTO as described in section G, above. The disclosure may be made initially in a non-confidential, summary form to assess Member's interest in the disclosure. The CTO will inform Members at the time of this disclosure of Member rights to elect a commercial license as set forth below. The CTO will consult with the Executive Committee regarding a need to call a meeting of the Member Advisory Committee for the purpose considering protecting the Institute Intellectual Property by the IPPF. All elections provided for below must be made in writing to the CTO and the owning Member or Members.
- ii. Commercial License to Institute Intellectual Property, other than Know-How: If Institute Intellectual Property is protected wholly by funds from the IPPF:
  - 1. Tier 1-3 Members. All Members at the Tier 1-3 levels shall have the option to receive a non-exclusive, non-transferable, royalty-free license to make, use, sell, or have made the Intellectual Property.
  - 2. Tier 4 Members. Members at the Tier 4 level shall have the option to receive a non-exclusive, non-transferable, royalty-free license to make, use, sell, or have made the Intellectual Property for a period of one (1) year from the date the Intellectual Property is disclosed to the Members. Thereafter, Tier 4 Members desiring a commercial license to the Intellectual Property will have to increase their membership tier.

3. IPPF protection of the Intellectual Property as well as the Member's cost share on a Member Initiated Project shall serve as the consideration for any rights or interest in the Intellectual Property relinquished by the owning Member in providing this license.
- iii. Non-IPPF License. For Institute Intellectual Property, other than Know-How, not protected wholly by funds from the IPPF, the commercial licensing of such Intellectual Property shall follow the provisions and procedures provided in Paragraph H.2.a.ii. above. Industry-owned Intellectual Property shall be subject to the same licensing provisions as University-owned Institute Intellectual Property. However, the owning Industry Member can reserve its own rights to make, use, sell or have made the Intellectual Property if licensed to other Members. If the Industry-owned Intellectual Property is licensed to other Members or non-members, it is expected that the Intellectual Property will be commercialized. The Institute may require further compensation from the owning Industry Member's licensee, in addition to the negotiated license royalty fee, which will be used for funding future projects.
- iv. Licensing to Non-Members. If a license is provided to a Member pursuant to section ii above, the Institute or owning Member will not issue or negotiate licenses to the Institute Intellectual Property with any non-member for a period of two (2) years from the date the Intellectual Property is disclosed to the Members.
- v. Commercial License to Know-How. All Members shall have the option to receive a non-exclusive, royalty-free license to make, use, sell, or have made products or services incorporating Know-How.
- vi. Termination. If a Member terminates its membership, then any license rights granted under Paragraph H.2.b. will automatically terminate.

## VII. CONFIDENTIALITY POLICY

a. In the performance of Institute Research, and in furtherance of Institute operations, it may be necessary for Members and the Institute to disclose Institute Intellectual Property, as defined in Article VI, to other Members of the Institute. Members, North Carolina State University, and the Institute, together and individually, may disclose Institute Intellectual Property to and among Members of the Institute that was developed by one or more Members including the Institute Members' employees, and to North Carolina State University and its employees. Such information is defined to be and shall be prominently labeled as "PowerAmerica Confidential Information." Labeling shall be included on interim and final reports, slide presentations and similar disclosures describing results from Institute Research including Institute Initiated Projects and Member Initiated Projects. In addition, there may be the need for a Member or the Institute to disclose

Institute Intellectual Property to non-members. All such information shall be disclosed by the disclosing party in writing and designated as “PowerAmerica Confidential Information” at the time of disclosure, or, if disclosed orally, shall be identified as “PowerAmerica Confidential Information” at the time of disclosure and confirmed in writing as being “PowerAmerica Confidential Information” within thirty (30) days of such disclosure. Prior to disclosure, each such recipient must be bound by obligations of confidentiality and no less restrictive than those set forth in this Article VII, and the Executive Director notified of the expected disclosure. Institute Research that is not Institute Intellectual Property is not PowerAmerica Confidential Information and is not subject to this Confidentiality Policy and may be released publicly after review as provided for in Article VIII. Examples of such Institute Research include general descriptions of Institute Research presented at Institute meetings and scientific and industry conferences.

- b. The Institute, North Carolina State University, and Members shall, as recipients of PowerAmerica Confidential Information hereunder, exercise the same degree of care to prevent inadvertent or unauthorized disclosure that it applies to its own trade secrets and/or confidential and proprietary information. However, neither Institute nor Member shall be liable for disclosure of such PowerAmerica Confidential Information which:
  - i. is, or becomes, available to the public other than by breach of any obligation herein assumed by the recipient; or
  - ii. is furnished to a third party by discloser without restriction of the third party's right to disseminate the PowerAmerica Confidential Information; or
  - iii. is disclosed with the discloser's written permission without an obligation of confidentiality; or
  - iv. is already known to the recipient other than from any previous unexpired confidentiality obligation with discloser as evidenced by tangible records; or
  - v. is independently developed by the recipient as evidenced by tangible records; or
  - vi. is disclosed without restriction to the recipient by a third party having the right to make such disclosure.
- c. The obligations described in Paragraph VII (b) above shall continue with respect to any PowerAmerica Confidential Information disclosed for a period of five (5) years from the date of disclosure thereof, regardless of whether Member remains a Member during said period.

## VIII. PUBLICATION POLICY

For the purposes of this Article VIII, “publication” shall be deemed to mean any written, oral, or other public divulgence including, but not limited to technical publications, press releases, and presentations, of the results of any Institute Research. The procedure in the paragraph below is established to prevent any such divulgence that could bar the availability of patent protection in foreign jurisdictions or trigger the one-year grace period in the U.S. within which a U.S. patent application must be filed or could make PowerAmerica Confidential Information available to

persons (except government entities) outside the Institute's members contrary to the provisions of Article VII.

Publication of Institute Research in scientific journals, and presentations at industry and scientific conferences is encouraged. In order to prevent untimely publication of patentable research or disclosure of other Institute Intellectual Property, any person who desires to publish the results of Institute Research shall provide notification of such intent to publish to the Executive Director. The Executive Director can require a maximum three-month delay in publication from the date of notification to determine whether the information contains Institute Intellectual Property or PowerAmerica Confidential Information. If, after consultation with the relevant Members whose Institute Research may be at issue, it is determined by the Executive Director that the proposed publication contains Institute Intellectual Property or PowerAmerica Confidential Information, such information will be removed from the publication. Any requirement to delete information or delay publication must be communicated to the proposed publisher within thirty (30) days of receipt of notification of intent to publish.

Under no circumstances shall a student's thesis, based in whole or in part on Institute Research, be delayed in degree confirmation; provided, however, that student theses shall be subject to a six-month delay provision following their approval before they are made publicly available; and provided, further, that University Members may be released from this six-month delay period if a U.S. patent application is placed on file which covers the subject matter of the thesis. Students of universities other than North Carolina State University shall be afforded the publication delays for theses contained in the policies of those universities.

## IX. PUBLICITY

Without the prior written consent of the owning entity, Members may not use the name, trademark or image of any other Members, the Institute, or North Carolina State University in any publicity, advertising, press release, or promotional activity or represent that any product or service of the Institute or another Member is the product or service of the representing party.

## X. COMPLIANCE WITH INSTITUTE POLICIES

As a condition of Institute membership, and prior to acceptance as a Member or receipt of Institute funds, applicants for membership must agree to the terms and conditions in these Bylaws and the PowerAmerica Membership Agreement.

## XI. COMPLIANCE WITH APPLICABLE LAWS INCLUDING ANTITRUST, COMPETITION AND EXPORT CONTROL LAWS

The Institute includes among its Members parties who are business competitors. It is the policy of the Institute to comply with applicable antitrust and competition laws that apply to



each of its Members and to encourage its Members to do so as well. Accordingly, in connection with any meeting or activity sponsored by the Institute, no Members, their employees or other representatives shall reach any agreement or exchange any information concerning cost or pricing information, sales or marketing strategies, terms and conditions of purchase or sale, or the allocation of customers or territories. All Members shall avoid even the appearance of such agreements or exchanges of information. If discussions prohibited by this rule take place in any such meeting or activity, all Members should cease participation immediately. In order to minimize the likelihood of such an occurrence, all meetings and activities sponsored by the Institute shall be conducted in accordance with a published agenda and at the Institute's discretion, certain Institute events or meetings will be recorded and documented in appropriate meeting minutes.

From time to time the conduct and results of Institute Research may coincide with goods or technology subject to U.S. export control laws and regulations, in particular the Export Administration Regulations (EAR) or International Trafficking in Arms Regulations (ITAR). It is the responsibility of each Member to comply with these and related laws and regulations as they pertain to the conduct and results of Institute Research. Moreover, it is the responsibility of each Member to comply with all other applicable laws and regulations in all aspects of their membership in the Institute.

## XII. INFORMATION SECURITY

PowerAmerica Members must use all reasonable, appropriate, practical and effective security measures to protect Institute important processes and assets. Members must protect and manage PowerAmerica information assets, including those entrusted to other Members, in accordance with these Bylaws, and any applicable laws.

## XIII. AMENDMENTS

With at least two (2) weeks' notice, these Bylaws may be amended by the vote of two-thirds of the Member Advisory Committee.

## XIV. TERMINATION OF INSTITUTE

The Institute may be terminated if the performance or mission of the Institute is no longer necessary, or is no longer self-sustaining in the opinion of the Chancellor of North Carolina State University.

Notwithstanding termination of the Institute, if Members and North Carolina State University mutually agree, Members may continue with any approved research project for Institute Research in accordance with any available funding associated therewith. Rights in, and responsibilities with respect to, any data, computer software, inventions, copyrighted material or PowerAmerica Confidential Information shall continue in force with respect to any completed, continuing or partially completed research projects for Institute Research.

Arrangements for disposition of property shall be in accordance with any applicable contractual arrangements of the parties that hold an interest in property subject to disposition.