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THE EDISON MATERIALS TECHNOLOGY CENTER

Operating Procedure No. OP-10a

TECHNOLOGY REVENUE SHARING POLICY

1.0 INTRODUCTION

EMTEC's collaborative research and development projects develop, deploy, and commercialize innovative materials and processing technologies. In order to grow EMTEC's collaborative research and development projects, EMTEC must participate in the success of projects by sharing in the revenues of the commercializing entity which are associated with the technology developed. Such sharing can take various forms; however, it must at all times be fair and equitable with the EMTEC member company, or other project participant that is commercializing the technology.

This Policy establishes guidelines for Technology Revenue Sharing by EMTEC for successfully commercialized EMTEC funded projects. The policy is consistent with EMTEC's Intellectual Property Policy, Operating Procedure No. OP-02 dated May 20, 1994. It also is closely aligned with EMTEC's Core Technology (CT) Projects Operating Procedure No. OP-04 dated July 15, 1998. EMTEC's Technology Revenue Sharing Procedure and Policy have been reviewed and approved by the EMTEC Technology Commercialization Advisory Committee.

2.0 PURPOSE

This Policy is intended to provide guidelines for Technology Revenue Sharing on successfully commercialized EMTEC funded projects. It includes a Categorization of Projects, General Principles and Objectives Relating to Technology Revenue Sharing, Memoranda of Understanding (MOU), and various forms of Technology Revenue Sharing. It also presents guidelines for the timely signing of MOUs, and the final signing of Technology Revenue Sharing Agreements.

3.0 DETAILED PROCEDURES

3.1 PROJECT CATEGORIES

EMTEC collaborative R&D projects fall into four categories.

- 3.1.1 Technology/Process
- 3.1.2 Software
- 3.1.3 Hardware
- 3.1.4 Material

3.2 GENERAL PRINCIPLES AND OBJECTIVES RELATING TO TECHNOLOGY REVENUE SHARING

EMTEC, being an organization of member companies, wants only a fair and reasonable portion of the revenues realized by successful commercialization entities using the technologies that EMTEC helped to develop.

3.2.1 REVENUE SHARING GUIDING PRINCIPLES

- Determination of the type and level of revenue sharing and the subsequent negotiation of a Revenue Sharing Agreement is the responsibility of the EMTEC Vice President of Technology.
- Each project is unique and as such payments back to EMTEC should be determined on a project-by-project basis.
- The revenue sharing method should be realistic for the Project Category and the applicable industry in which it is being utilized.
- EMTEC supported collaborative R&D projects require some form of revenue sharing.
- MOUs should be executed at the inception of a project if the resulting technology and benefits are not clearly defined at that time.
- Prior to entering Phase II of a project, a Commercialization Plan is required from the Commercializing Organization. This plan will form the basis for negotiating a Revenue Sharing Agreement.
- Revenue Sharing Agreements are required prior to the release of Phase II funds by EMTEC.
- Revenue sharing obligations begin with the first sales of products from a technology or sale of the licensed technology. EMTEC should continue to receive payments as long as the technology is used.
- Revenue Sharing Agreements will consider a number of qualitative and quantitative factors that may affect the final Agreement.
- The Agreement will include a "March-in Rights" allowing EMTEC to grant marketing rights to another organization if the technology is not marketed or developed by the original licensing organization in a reasonable period of time.
- EMTEC shall have the right to audit a licensee's books relating to sales of the licensed technology on an annual basis.
- When co-funding is provided by another organization, or if EMTEC provides co-funding to another project, revenue sharing will be determined on a pro rata basis in relation to EMTEC's proportionate share of the project's funding.

3.2.2 DETERMINING REVENUE SHARING

- Projects that are university led may require revenue sharing from the university in some cases, but will normally involve revenue sharing from an industrial team member who will commercialize the technology. Such revenue sharing agreements will be done under an agreement between EMTEC and the industrial participant.
 - For projects where a technology or process is developed and commercialized by a company who then licenses other users to practice the technology or process, EMTEC will share in the fee charged to the user by the commercializing company.
 - For projects where a material may be developed by a company and then sold to other companies for fabrication into a product, revenue sharing may be obtained from both the company producing the material and the company or companies creating a product from the material. This may apply to companies not in the original project, who at a future time may purchase the material, which is then made into a product and commercialized.
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3.2.3 CAPS

The anticipated revenue sharing to EMTEC is dependent on the sales life of the product or its useful life, which is often different from the initial projection. For this reason, EMTEC will not normally limit its revenue share by capping the amount of revenue sharing it will realize.

3.2.4 BUYOUTS

By written request from a company to “Buy Out” its revenue sharing commitments, EMTEC may renegotiate a lump sum payment.

3.3 MEMORANDA OF UNDERSTANDING (MOU)

Some projects are further back in the R&D pipeline than many other EMTEC technology development projects, and therefore project participants may find it difficult to define the commercial value of the eventual results or to commit to the sharing of a portion of revenues from the new technology at the initiation of the project. There is also a possibility that the new technology may find application outside of the project’s scope, in which case revenue sharing will be negotiated for such applications in the future. In these cases, EMTEC will execute a MOU with the project team members who may benefit from the technology. Such an MOU will be negotiated prior to the release of Phase I funds by EMTEC.

EMTEC will ask for only a portion of what is a reasonable fee for comparable technology. In return the companies will express their good-faith intention of future revenue sharing. On this basis, a final Revenue Sharing Agreement will be negotiated after the receipt of a Commercialization Plan from the companies and prior to the release of Phase II funds by EMTEC.

3.4 FORMS OF REVENUE SHARING

3.4.1 NEW MEMBERSHIPS

Memberships are extremely important to EMTEC, because EMTEC is a member organization and highly values its members and the network, which they create. As such, new memberships and the revenue from new membership fees, which result from a project will be considered in any Revenue Sharing negotiation.

3.4.2 REINVESTMENT

In some cases, the income received by EMTEC from a commercializing company under the royalty sharing policy (3.4.3) may be sufficient to compensate EMTEC for its contributions to the development of the technology. Usually, however, it is anticipated that the commercializing company will use the technology internally to make and sell products rather than licensing the technology to third parties. In such cases, in lieu of royalty sharing, EMTEC will receive reinvestment income by sharing in the revenues generated by commercialization of the EMTEC supported technology. A Revenue Sharing Agreement will be negotiated with a commercializing company following receipt of a Commercialization Plan and prior to the initiation of Phase II of the project. The terms and conditions of the Revenue Sharing Agreement will take into consideration the Commercialization Plan, the

value portion of the commercializing company's revenue attributable to the EMTEC supported technology, industry standards and methods for valuing technology, and the Revenue Sharing Guiding Principles listed in Subsection 3.2.1.

3.4.3 ROYALTY SHARING

- Normally royalty sharing will be as defined in Section 8.2 "Royalty Sharing" of the EMTEC Intellectual Property Policy No. OP-2 - 50% to EMTEC and 50% to the Originating Organization.
- EMTEC will share in the fees, which a commercializing company negotiates with third parties for the right to use the EMTEC supported technology.
- In cases where prior technology is brought to an EMTEC project, EMTEC may negotiate a lower share to EMTEC based on a larger initial investment by the originating organization.

3.4.4 EQUITY POSITIONS

On a case -by case basis, EMTEC may consider an equity position in a company rather than reinvestment or royalty sharing.

3.4.5 SHARED SAVINGS

In some instances the only income-enhancing benefit of intellectual property may be in the form of cost savings realized by the user. In such cases, EMTEC will share in the savings associated with the technology in proportion to EMTEC's investment relative to the total project cost.
