

MEMBERSHIP AGREEMENT

for the

North Carolina State University Center for Efficient, Scalable, and Reliable Computing

This Agreement is made by and between North Carolina State University at Raleigh, NC (hereinafter called "UNIVERSITY") and _____(hereinafter called "MEMBER").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support the Center for Efficient, Scalable, and Reliable Computing (hereinafter called "CENTER") at UNIVERSITY to maintain a mechanism whereby the UNIVERSITY environment can be used to develop a better understanding of computer systems and provide UNIVERSITY with strengthened educational capability in these fields.

Now, therefore, for the mutual benefits and considerations each to the other, the parties hereto agree to the Terms and Conditions specified below:

1. Center Operations:

CENTER will be operated by designated faculty and students at UNIVERSITY and will be supported by industrial companies, federal and state agencies, and the UNIVERSITY.

2. MEMBERSHIP DUES

- A. MEMBER agrees to pay nonrefundable annual membership dues of \$33,000 , in support of CENTER, on or before January 1st of each year and is entitled to the privileges spelled out below. The Center shall use dues for the support of research and research-related programs of the Center and for membership benefits.
- B. MEMBER dues shall be made payable to North Carolina State UNIVERSITY. Checks should be mailed to the Office of Contracts and Grants, 2701 Sullivan Drive, Administrative Services III, Ste. 240, Box 7514, Raleigh, NC 27695-7514 and should clearly indicate reference to "CESR MEMBERSHIP dues".
- C. Notwithstanding the above, either party may terminate this agreement by giving the other one hundred eighty (180) days written notice prior to the termination date. Membership in CENTER shall become effective upon the first payment of dues by MEMBER.

3. MEMBER's RIGHTS

- A. MEMBER shall have one representative on the Industrial Advisory Board which meets twice a year to review and advise on the research agenda for CENTER and the curricula for the academic departments participating in the CENTER.
- B. MEMBER may attend the Annual Research Review that will be held at the Fall Industrial Advisory Board Meeting. Center projects will be presented at this review by faculty and students. MEMBER shall receive a report of the proceedings from the Annual Research Review.
- C. MEMBER may fund external projects through the Center under a separate contract to be negotiated between the MEMBER and UNIVERSITY. Such contracts are subject to full UNIVERSITY overhead and may have confidentiality, patent, and copyright terms that are different from this agreement.
- D. Member may have access to Center resources, faculty, researchers, students and activities specified by the Center from time to time.
- E. Member will have access to a password protected Center website.

4. INTELLECTUAL PROPERTY

- A. CENTER RESEARCH is defined as research supported directly by membership dues and does not include research carried out under separate contract or those supported by public funds.
- B. INTELLECTUAL PROPERTY includes any new inventions, improvements, discoveries, copyright, and computer software, conceived in the course of performance of CENTER RESEARCH, whether or not subject to patent protection. The inventors, in accordance with NC State policy, will disclose INTELLECTUAL PROPERTY to NC State. (CENTER IP) Within sixty (60) days of receipt of any such disclosure, NC State will make a non-confidential disclosure available to Center Members for review. Based on this non-confidential disclosure, Members may acquire further technical and licensing information by entering into a confidentiality agreement with NC State.
- C. Members will have the first right to negotiate a commercially reasonable license, which may be exclusive or non-exclusive, depending on the interests of the membership. NC State will not offer to any non-member organization or individual rights in CENTER IP, unless NC State has previously offered Members rights in such CENTER IP at least sixty (60) days earlier and in accordance with this Membership Agreement. This period may be extended for an additional thirty (30) days upon written request by a Member.

- D. Member acknowledges and agrees that NC State will grant the U.S. Government a non-exclusive, nontransferable, paid-up, worldwide license to practice or to have practiced any CENTER IP developed in part with federally funded research.

5. PUBLICATIONS

- A. A "publication" shall be deemed to mean any written, oral or other public disclosure of research results, including the public use or sale of an invention based on the research results, if that event could bar the availability of 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, and "publish" shall have a corresponding meaning.
- B. Publication of research results in scientific journals is encouraged. In order to prevent untimely publication of patentable research, a publication-delay mechanism has been established. Notification of intent to publish must be sent to each member of the Industrial Advisory Board. Any member of the board can request a maximum six-month delay in publication from the date of notification to determine whether the paper contains patentable material, or if the company making the request has a justifiable reason. If it is determined that patentable material is contained in the proposed publication, such material will be either deleted and publication will be allowed to proceed, or publication will be suspended until all necessary intellectual property rights have been secured through filing of patents. The IAB member must respond within thirty (30) days of receipt to request a publication delay. Failure to respond by a given IAB member shall be construed as approval of the publication by that member.

Under no circumstances will a student's thesis, for which funds are derived from the Center, 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 in University libraries; and provided, further, that the University may be released from this six-month delay period if the IAB members unanimously acknowledge that the thesis does not disclose patentable subject matter, or if a U.S. patent application is placed on file which covers the subject matter of the thesis.

7. CONFIDENTIALITY

A. It may be necessary for one party to disclose information which that party deems to be proprietary and confidential. All such information shall be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, shall be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of three (3) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the foregoing restrictions shall not apply to:

(i) information which is or becomes publicly known through no fault of the receiving party;

(ii) information learned from a third party entitled to disclose it;

(iii) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;

(iv) information for which receiving party obtains the disclosing party's prior written permission to publish or which is disclosed in the necessary course of the prosecution of patent applications based upon inventions developed pursuant to this Agreement;

(v) information required to be disclosed by operation of law or court order;
or

(vi) information which is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.

B. The receiving party shall use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.

8. USE OF NAMES

Neither party will use the name of the other in any form of advertising or publicity without the express written permission of the other party.

9. NOTICES

Any notices required to be given or which shall be given under this Agreement shall be in writing delivered by first-class mail or facsimile addressed to the parties as follows:

For MEMBER:

For UNIVERSITY:

Sponsored Programs, CB 7514
2701 Sullivan Dr, Admin. Services III, Ste 240
Raleigh, NC 27695-7514
Facsimile: (919) 515-7721

10. INDEPENDENT PARTIES

For purposes of this Agreement the parties hereto shall be independent contractors and neither shall at any time be considered an agent or an employee of the other. No joint venture, partnership or like relationship is created between the parties by this Agreement.

11. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and may be assigned only to the successors to substantially the entire business and assets of the respective parties hereto. Any other assignment by either party without the prior written consent of the other party shall be void.

12. GOVERNING LAW

This Agreement is acknowledged to have been made and shall be construed and interpreted in accordance with the laws of the State of North Carolina, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent application or patent concerned has been filed or granted, as the case may be.

13. LIABILITY

The liability of the UNIVERSITY, as an agency of the State of North Carolina, for bodily injury, property damage, infringement of proprietary rights and patents, and other items is limited by the North Carolina Tort Claims Act, Article 31, sec. 143-291.

MEMBER will indemnify and hold harmless UNIVERSITY, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of MEMBER'S negligence or willful misconduct in the performance of this Agreement or from MEMBER'S use or possession of the results produced hereunder.

14. ENTIRE AGREEMENT

Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this project and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement including, without limitation, changes in the field of research, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representative of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first hereinabove written.

For **MEMBER:**

Date _____
Name: _____
Title: _____

For **NORTH CAROLINA STATE UNIVERSITY:**

Date _____
Name: _____
Title: _____