**NORTH DAKOTA STATE UNIVERSITY**

**MEMBER AGREEMENT FOR THE**

**INDUSTRY CONSORTIUM PROGRAM (“ICP”)**

This Agreement is made this \_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2010 by and between North Dakota State University (hereinafter called "UNIVERSITY"), through its Industry Consortium Program (hereinafter ”ICP”) in the Department of Computer Science, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "MEMBER").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an ICP at the UNIVERSITY to maintain a mechanism whereby the UNIVERSITY environment can be used to perform research of interest to Members.

WHEREAS, this Agreement sets forth the rights attendant to membership in the ICP.

WHEREAS, the organization and operation of the ICP will be specified by ICP bylaws that will be adopted at the first ICP Industrial Advisory Board meeting.

WHEREAS, this Agreement does not prohibit separate proprietary directed research that may be desired by the MEMBER. UNIVERSITY and MEMBER may enter into a separate sponsored research agreement to govern such arrangements.

The parties to this Agreement hereby agree to the following terms and conditions:

A. ICP will be operated by certain faculty, staff and students at the UNIVERSITY. The ICP shall be operated by the Members under the leadership of Dean Knudson, ICP Director. Through ICP, the UNIVERSITY will facilitate interaction between Member organizations and UNIVERSITY faculty, staff and students.

B. Any private company may be considered to become a Member of the ICP, consistent with applicable state and federal laws and statutes.

C. MEMBER agrees to contribute $15,000.00 annually in support of the ICP and thereby becomes a Member. Payment of this membership fee shall be made to UNIVERSITY as a lump sum on or before \_\_\_\_\_\_\_\_\_\_\_\_; or in four equal quarterly installments of $3,750.00 on \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_ of each year of sponsorship. Checks from MEMBER should be mailed to Dean Knudson, ICP Director, and made payable to UNIVERSITY. Any funds not expended during the membership year will be carried forward to the next year. Because research of the type to be done by the ICP takes time and research results may not be obvious immediately, MEMBER should join the ICP with the intention of remaining a fee paying member for at least two years. However, MEMBER may terminate this Agreement by giving UNIVERSITY thirty (30) days written notice prior to the termination date.

D. There will be an Industrial Advisory Board composed of one representative from each Member. This board makes recommendations on (a) the research projects to be carried out by the ICP (b) the apportionment of resources to these research projects, and (c) changes in the bylaws.

E. UNIVERSITY reserves the right to publish in scientific or engineering journals the results of any research performed by the ICP. MEMBER, however, shall have the opportunity to review any paper or presentation containing results of the research program of the ICP prior to publication of the paper, and shall have the right to request a delay in publication for a period not to exceed sixty (60) day(s) from the date of submission to MEMBER, for proprietary reasons, provided that MEMBER makes a written request and justification for such delay within thirty (30) days from the date the proposed publication is submitted by certified mail to MEMBER.

F. One benefit of participating in a consortium such as ICP, is the opportunity to pool resources and expertise to solve problems of interest to the entire membership. Given the collaborative nature of such an endeavor, MEMBER is discouraged from sharing MEMBER proprietary or Confidential Information with ICP.

UNIVERSITY, however, may from time-to-time disclose to MEMBER certain unpublished research-in-progress or research results that could result in intellectual property to UNIVERSITY. In order to avoid premature or inadvertent disclosure and to preserve such intellectual property rights, UNIVERSITY may identify such unpublished research as Confidential Information as defined herein.

“Confidential Information” means any unpublished scientific and/or technical information including, but not limited to, data, know-how, show-how, trade secrets, protocols, or procedures which may be disclosed during the term of this Agreement. Confidential Information includes information which is treated by UNIVERSITY as confidential, or that MEMBER has a reasonable basis to believe is confidential including any written or orally disclosed information, any written form of orally disclosed information and tangible embodiments.

UNIVERSITY shall mark any Confidential Information as confidential. UNIVERSITY will use commercially reasonable efforts, (a) to label or identify Confidential Information as confidential at the time of disclosure if not previously marked confidential by UNIVERSITY, and (b) for Confidential Information disclosed or delivered other than in writing, to indicate that such Confidential Information is confidential at the time of disclosure, and to provide a written document summarizing such Confidential Information within thirty (30) days of such disclosure.

The confidentiality obligations of this Agreement shall not apply to Confidential Information that is:

a. known to MEMBER at the time it was disclosed, as evidenced by MEMBER’s written records prior to the time of disclosure; or

b. at the time of disclosure or later becomes publicly known under circumstances involving no breach of this Agreement as evidenced by a printed publication of general circulation; or

c. lawfully and in good faith made available to MEMBER by a third party who did not derive it, in any manner, from UNIVERSITY; or

d. was independently developed by MEMBER without use of UNIVERSITY’s Confidential Information; or

e. is required to be disclosed by law, court order, subpoena, other legal process or act of governmental authority, provide, however, that if such disclosure is requested or required, MEMBER shall promptly notify UNIVERSITY of the request for disclosure, use reasonable efforts to minimize the extent of disclosure, and seek to obtain confidential treatment of any Confidential Information that is required to be disclosed.

G. All inventions conceived or first actually reduced to practice solely by the UNIVERSITY in the course of research conducted by the ICP shall belong to UNIVERSITY. All inventions conceived or first actually reduced to practice solely by the MEMBER in the course of research conducted by the ICP shall belong to MEMBER. All inventions conceived or first actually reduced to practice jointly by the UNIVERSITY and MEMBER in the course of research conducted by the ICP shall belong jointly to the UNIVERSITY and that MEMBER. However, in the event that an invention is conceived or first actually reduced to practice jointly by the UNIVERSITY and multiple Member organizations in the course of research conducted by the ICP, such invention(s) shall belong jointly to the UNIVERSITY and each contributing Member organization.

The UNIVERSITY does not guarantee that any patent rights will result from the efforts in ICP, that the scope of any patent rights will cover MEMBER’s commercial interests or that any patent rights will be free of dominance by other patents, including those based on inventions made by other inventors within North Dakota State University.

H. UNIVERSITY agrees that all current ICP Members are entitled to a nonexclusive royalty-free license to UNIVERSITY inventions conceived or first actually reduced to practice in the course of research conducted by the ICP, for in-house noncommercial use only; provided however that such invention is not the subject of an exclusive license to another Member. MEMBER may have the right to sublicense to its subsidiaries and affiliates for in-house noncommercial use only. Members that wish to exercise rights to a royalty-free license agree to pay for pro rata share of the costs of a patent application, prosecution, and maintenance costs.

I. Members that wish to use UNIVERSITY inventions for commercial use, either as an integral part of a commercial product or service, or in the development of a commercial product or service, may obtain a *non-exclusive*, royalty-bearing license through one of its agents, with the right to sublicense to its subsidiaries and affiliates. If only one Member seeks a license to UNIVERSITY inventions, that Member may obtain an *exclusive* royalty-bearing license, with the right to sublicense to its subsidiaries and affiliates through a separate agreement to be negotiated under commercially reasonable terms with the NDSU Research Foundation.,

J. Copyright registration shall be obtained for software developed by the ICP. MEMBER shall be entitled to a nonexclusive, royalty-free license to all software developed by the ICP. MEMBER will have the right to enhance and to re-market enhanced or unenhanced software with royalties due to the ICP to be negotiated, based on the worth of the initial software, but not to exceed 20% of a fair sale price of the enhanced software product sold or licensed by MEMBER. If only one Member seeks a license to such software, that Member may obtain an exclusive license through a separate agreement to be negotiated with the NDSU Research Foundation.

K. Any royalties and fees received by UNIVERSITY under this Agreement, over and above expenses incurred, will be distributed in accordance with UNIVERSITY royalty sharing policy.

L. MEMBER understands and agrees that UNIVERSITY may be involved in or conducting similar research now or in the future on behalf of North Dakota State University, State of North Dakota, U.S. federal government, or third parties. UNIVERSITY shall be free to initiate or continue any and all such research now and in the future, and MEMBER shall not gain any rights whatsoever via this Agreement to other such research or any results of such research.

M. In entering into, and performing their duties under this Agreement, the parties are acting as independent contractors and independent employers. No provision of this Agreement shall create or be construed as creating a partnership, joint venture, or agency relationship between the parties. No party shall have the authority to act for or bind the other party in any respect. The parties’ respective employees or students shall not be entitled to any benefits applicable to employees of the other party.

N. It is understood that the parties are subject to United States laws and regulations controlling the export of technical data, computer software, prototypes, and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by MEMBER that MEMBER shall not export data or commodities to certain foreign countries without prior approval of such agency. UNIVERSITY neither represents that a license shall not be required nor that, if required, it shall be issued.

O. The liability of the ICP, as an entity of UNIVERSITY, a state-supported university of the State of North Dakota, for bodily injury, property damage, infringement of proprietary rights and patents, and other items is limited by the North Dakota Century Code ch.32-12.2.

MEMBER will indemnify and hold harmless UNIVERSITY, its employees, officers, trustees and agents from and against any liabilities, damages, or claims arising out of personal injuries or property damage which may in anyway result from or arise from participation in this Agreement to the extent of the MEMBER’S gross negligence. Members release other Members and UNIVERSITY from liabilities, damages or claims for personal injuries or property damage which may in anyway result from or arise from participation in this Agreement unless caused by a MEMBERS gross negligence.

P. The internal laws of the state of North Dakota shall govern the validity, construction, and enforceability of this Agreement, without giving effect to the conflict of laws principles thereof. Any action to enforce this Agreement must be adjudicated exclusively in the state District court of Cass County, North Dakota.

This Agreement shall not be assignable by MEMBER without the prior written consent of UNIVERSITY.

IN WITNESS WHEREOF, this Agreement is effective as of the date of the last signature set forth below.

UNIVERSITY MEMBER

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Valrey V. Kettner

Associate Vice President

Sponsored Programs Administration

ICP Director:

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Dean Knudson