



UNIVERSITY OF MINNESOTA

UNIVERSITY OF MINNESOTA'S DIGITAL TECHNOLOGY CENTER AFFILIATES CONSORTIUM FOR RESEARCH IN INTELLIGENT STORAGE MEMBERSHIP AGREEMENT

This Membership Agreement ("AGREEMENT") is entered into by _____

(Name and address of participating organization)

(Hereinafter "MEMBER") and the University of Minnesota (hereinafter "UNIVERSITY") through its Intelligent Storage Consortium (hereinafter "CONSORTIUM"), a collaboration between UNIVERSITY, through its Digital Technology Center (hereinafter DTC) and Participating Member Companies, each of which enters into an agreement which is identical to this AGREEMENT in all material respects. In the event that University allows any changes to this AGREEMENT by a Member Company, the University shall offer to the other Participating Member Companies the opportunity amend their respective agreements with the University to include equivalent changes. This Membership Agreement is effective as of the last date of signing below.

The DTC is an interdisciplinary initiative in the field of digital technology. A company may participate in CONSORTIUM as a MEMBER. CONSORTIUM will implement a coordinated and integrated research program in storage systems partially funded by active industrial participants; it will implement a proactive program to expedite the aggressive transfer of promising technology to industry and to facilitate interaction between industrial companies and university researchers. This agreement does not cover sponsored research that may be desired by the MEMBER. MEMBER may enter into additional, separate agreements for supporting sponsored research projects in which MEMBER proprietary information may be disclosed and which may produce commercially exploitable results.

A. DESCRIPTION OF PARTICIPATION

To participate in the CONSORTIUM, MEMBER must be active in the DTC Affiliates Program. See the DTC Affiliates Program Agreement.

All of MEMBER'S contributing funds will be used for research in the CONSORTIUM'S focus area of intelligent storage. MEMBER may be a member of the Consortia Technical Advisory Council (CTAC) (which will advise this and other DTC consortia); and MEMBER will be invited to appoint one person to CONSORTIUM'S Internal Advisory Board (CIAB). MEMBER will receive notices of all meetings, reviews, symposia, and prepublications,

regarding the Intelligent Storage CONSORTIUM; and will also receive notices of workshops, short courses, and newsletters provided to members of all DTC consortia. MEMBER will have the right to reasonable technical discussion with faculty members in the area of intelligent storage. The required annual payment by MEMBER in the current year is \$45,000 per year for the period of one (1) year from receipt of the required funds; this annual fee may change in future years. Such payment shall be used only for direct costs of CONSORTIUM research plus reasonable administrative overhead incurred by the CONSORTIUM.

B. RESIDENCY PROGRAM

In order to achieve more effective technology transfer, MEMBER may elect to participate in a Residency Program. MEMBER may designate one employee to do appropriate research at UNIVERSITY for at least one (1) and at most twelve (12) months in the twelve (12) months following the effective date of AGREEMENT, and in each renewed year.

A CONSORTIUM Resident at the University will continue to receive his/her regular salary and/or remuneration in accordance with terms and conditions of his/her relationship with MEMBER. However, the University will provide space for hosting and pay for normal expenses incurred (e.g. materials, supplies) by a CONSORTIUM Resident as part of the CONSORTIUM research program. .

C. INTELLECTUAL PROPERTY

1. Title to any invention conceived or first reduced to practice with support from the CONSORTIUM ("Invention") made solely by UNIVERSITY employees shall vest in UNIVERSITY; title to any Invention made solely by MEMBER employees shall vest in MEMBER; title to any Invention made jointly shall vest jointly. Joint Inventions may be used royalty-free by each of the joint owners for any purpose, without accounting to the other joint owner; provided, however, that UNIVERSITY shall make the joint Invention available to other MEMBERS in the CONSORTIUM on the same basis as inventions made solely by UNIVERSITY (*See* §§ C.2 through C.6 below), and provided further that a MEMBER which is a joint owner but which either opts not to share in the costs of intellectual property protection or discontinues its support of such costs shall assign all of its right, title and interest in the invention to UNIVERSITY but member shall be granted a nonexclusive, nonassignable, and nonsublicensable royalty free right and license to make, use and sell the invention.
2. UNIVERSITY employees shall promptly disclose to the UNIVERSITY any sole or joint Invention made with support of the CONSORTIUM. UNIVERSITY shall promptly notify any MEMBER which is a joint inventor and all those MEMBERS, who are members of the CONSORTIUM on the date of the disclosure to the UNIVERSITY, of the existence of the Invention and of their right to exercise the options provided under this section C.2. Within 90 days of receipt of notice, any such MEMBER may direct that a patent application or application for other intellectual property protection be filed; if a MEMBER so directs, all MEMBERS shall then be provided a 60-day option period to elect whether to share equally, among those who elect to execute the option, all costs incurred in connection with such

preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to said Invention.

Those MEMBERS who elect to share such costs shall cooperate with UNIVERSITY to assure that such application(s) will cover, to the best of MEMBERS' knowledge, all items of commercial interest and importance. While UNIVERSITY shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, UNIVERSITY shall keep those MEMBERS advised as to all developments with respect to such application(s) and shall promptly supply to those MEMBERS copies of all papers received and filed in connection with the prosecution thereof in sufficient time for those MEMBERS to comment thereon.

3. If a MEMBER elects not to exercise its option described above in paragraph C.2., or decides to discontinue the financial support of the prosecution or maintenance of the protection, the MEMBER shall have no rights in the Invention. If all MEMBERS elect not to exercise their option or discontinue their support, then the UNIVERSITY shall be free to file or continue prosecuting or maintaining any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at UNIVERSITY's sole expense, in which event no MEMBER shall have any rights in the Invention.
4. If only one MEMBER bears the costs of protection, the UNIVERSITY grants that MEMBER the first option to an exclusive license to the Invention. The license shall bear a reasonable royalty to be negotiated on commercially reasonable terms, with a right to sublicense on terms and conditions to be mutually agreed upon. The option shall extend for a time period of (180) days from the date of filing the first patent application, which period may be extended by mutual agreement.
5. If more than one MEMBER bears the costs of protection, the UNIVERSITY grants to each of those MEMBERS (which are not joint inventors but which have borne the costs of protections) options to a license to the Invention on terms and conditions to be mutually agreed upon. The license shall be exclusive as to the rest of the world, but non-exclusive as among those MEMBERS which enter into licenses, and subject to rights of MEMBERS which are joint owners as specified in Section C.1. The license shall bear a reasonable royalty to be negotiated on commercially reasonable terms. There shall be no right to sublicense; provided, however, that with the consent of the UNIVERSITY and of all MEMBERS which have entered into licenses, either the UNIVERSITY or a MEMBER may sublicense the Invention on such terms as the parties may agree.
6. With respect to Inventions which UNIVERSITY and the Consortium MEMBERS determine not to patent, UNIVERSITY grants to all MEMBERS of the CONSORTIUM a royalty-free, non-exclusive, license to those Inventions which were disclosed to the UNIVERSITY while the MEMBER's membership agreement was in effect.

D. PUBLICATION

It is the policy of the UNIVERSITY to promote and safeguard free and open inquiry by faculty, students, and others. To further this policy, the UNIVERSITY shall retain the right to publish

the results of the research done with the CONSORTIUM. Either party to this contract shall submit a copy of the manuscript to the other party for the purpose of review at least thirty days before the date of publication.

Publication by either of the parties to this contract shall give proper credit to the other party for the cooperative character of the investigation. No commercial brands or trade names shall appear in the publication of the results except as such brand or trade name is essential in the description of the research, nor shall the MEMBER use the name of the UNIVERSITY in any way for advertising purposes.

E. EFFECTIVE DATE, TERMINATION AND REINSTATEMENT

MEMBER will become a member of CONSORTIUM under this AGREEMENT and it is effective upon the last date of signing below, provided that the membership payment is received within 60 days thereof. The AGREEMENT will remain in effect in subsequent years if payment of the payment is made before or on the anniversary date; payment may be made annually, semi-annually or quarterly in advance. If payment is not received, the agreement is automatically terminated without further notice. UNIVERSITY will submit invoice(s) to the MEMBER.

A MEMBER automatically terminated is automatically reinstated under this Agreement (provided the DTC is then using this Agreement for other MEMBERS) by payment of the then-current annual membership fee, accompanied by a letter stating the MEMBER'S intention to be reinstated. The letter should reference the effective date of this original Agreement. The effective date of the reinstated annual agreement is the date the UNIVERSITY receives the annual payment and accompanying letter.

A MEMBER may terminate its membership in the CONSORTIUM at any time upon written notice to UNIVERSITY. UNIVERSITY may terminate the CONSORTIUM on twelve (12) months' notice to all MEMBERS. UNIVERSITY also reserves the right to phase out use of this Agreement for the CONSORTIUM, and/or to phase in a revised agreement, by declining to accept renewals or reinstatements of this Agreement, and by accepting renewals or reinstatements under a revised agreement, to be offered on equal terms to all current and prospective CONSORTIUM MEMBERS. When phasing in any new Agreement, UNIVERSITY will offer all existing MEMBERS the option of completing their current membership year under the old agreement, or of transferring immediately to the new agreement.

F. ASSIGNMENT

The parties may not assign any rights or obligations of this Agreement without the prior written consent of the other party to the Agreement. Any assignment attempted in violation of this Agreement shall be void. In the event of any consented to assignment, the assignor shall remain responsible for its performance and that of any assignee under this Agreement.

G. GOVERNING LAW

The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement brought against the University of Minnesota shall be in the State district courts of Hennepin County, Minnesota.

H. ENTIRE AGREEMENT

This AGREEMENT contains all agreements and covenants between the UNIVERSITY and MEMBER. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind either of the parties hereto, unless otherwise reduced to writing in a mutually acceptable Addendum (hereinafter "ADDENDUM") that has been signed by a duly authorized representative of each of the parties to AGREEMENT. Any such ADDENDUM shall relate solely to participation in either extended or multiple residencies, and the related provision of additional payment by MEMBER.

I. INDEPENDENT CONTRACTOR

It is expressly understood that UNIVERSITY and MEMBER are independent contractors and not the agent, partner, joint venturer or employee of the other. Neither party shall have the authority to enter into any contract or agreement to bind the other and neither party shall represent to anyone that it has such authority. The parties' respective employees shall not be entitled to any benefits applicable to employees of the other party.

J. AGREEMENT MODIFICATION

This Agreement shall be amended only in writing duly executed by all the parties to this Agreement and approved by all then-current MEMBERS of the CONSORTIUM. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

K. LIABILITIES, WARRANTIES AND INSURANCE

Each party shall be responsible for the negligent or wrongful acts of its employees to the extent permitted by law. The liability of the UNIVERSITY is as established in Minnesota Statutes 3.736 and is subject to the limitations and conditions therein. This Agreement contains no promise of indemnification, express or implied, between the parties, except as follows: the MEMBER or MEMBERS which implement a Consortium invention and/or deliverable shall defend, indemnify and hold harmless UNIVERSITY and its employees, officers, directors and agents with respect only to the applicable MEMBER's activities in connection with the implementation of a Consortium invention against any loss, damage, claim or other charge that may result from the implementation of the CONSORTIUM invention and/or deliverable. The foregoing sentence shall not be applicable to any MEMBER(S) which choose not to implement the same invention and/or deliverable and its employees, officers, directors and agents..

Neither party makes any warranties as to any matter, including the condition, originality or accuracy of the research or ownership, merchantability, or fitness for a particular purpose of the research or any invention arising therefrom.

Even if advised of the possibility of such damages, in no event shall either party be liable for personal injury or loss, work stoppage, lost data, or any other reliance or expectancy damages, direct or indirect, or for special or consequential damages of any kind.

During this Agreement UNIVERSITY and each MEMBER shall at all times obtain and keep in force insurance (including self-insurance) including comprehensive general and professional liability, and including coverage for bodily and personal injury, property damage, and product liability, with limits of at least \$1,000,000 per claim and \$3,000,000 per occurrence.

L. NOTICES

All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to SPONSOR:

If to UNIVERSITY:

Sponsored Projects Administration
University of Minnesota
450 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2070
Telephone: (612) 624-5571
Fax: (612) 624-4843
E-Mail: awards@umn.edu

Accepted and agreed to:

MEMBER _____

BY _____ TITLE _____

SIGNATURE _____ DATE _____

REGENTS OF THE UNIVERSITY OF MINNESOTA

BY _____ TITLE _____

SIGNATURE _____ DATE _____