

[I/UCR] Center for Research in Storage Systems (CRSS) Agreement

Industry/University Cooperative Center for Research in Storage Systems Membership Agreement

This Agreement is made on _____ (date) between the Regents of the University of California on behalf of its Santa Cruz campus (hereinafter called "University") and _____ (hereinafter called "Company") for the Center comprising and acting through the Center for Research in Storage Systems, which is defined as all Center for Research in Storage Systems Sites funded by the Industry/University Cooperative Research Center Program of the National Science Foundation.

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Center for Research in Storage Systems (hereinafter called "CENTER") at the UNIVERSITY to maintain a mechanism whereby the UNIVERSITY environment can be used to perform research on storage devices, storage systems architectures, file systems, I/O architecture, and storage applications.

The parties hereby agree to the following terms and conditions:

- A. CENTER will be operated by certain faculty, staff and students at the UNIVERSITY. For the first five (5) years, the CENTER will be supported jointly by industrial firms, Federal laboratories, the National Science Foundation (NSF), the States, and the UNIVERSITY. It is possible that the UNIVERSITY may receive support from NSF for an additional ten (10) years.
- B. Any COMPANY, Federal Research and Development organization, or any Government-owned Contractor Operated laboratory may become a sponsor of the CENTER, consistent with applicable state and federal laws and statutes. Federal Research and Development organizations and Government-owned Contractor Operated laboratories may become sponsors of the CENTER.
- C. COMPANY can elect to become a MEMBER of the CENTER at one of the two following levels of membership:
 - a. COMPANY agrees to pay a membership fee of fifty thousand U.S. dollars (\$50,000.00) per year in support of CENTER and thereby become a MEMBER entitled to the privileges spelled out in the Bylaws of Center for Members.
 - b. COMPANY, which is a small business as defined by the Federal government, agrees to pay a membership fee of fifteen thousand U.S. dollars (\$15,000.00) per year in support of CENTER and thereby become a MEMBER entitled to the privileges spelled out in the Bylaws of CENTER for Members.

Payment of these membership fees shall be made to the UNIVERSITY. Membership is effective on the first day of the calendar quarter following the date that COMPANY executes this agreement, provided that UNIVERSITY receives membership fees from COMPANY within 45 days of such execution. Membership is automatically renewed on an annual basis, provided that UNIVERSITY receives the membership dues prior to commencement of the next membership year.

Checks from COMPANY should be mailed to:

Regents of the University of California, as represented by the University of California, Santa Cruz

University of California
Cashier's Office
Attn: Center for Research in Intelligent Storage
1156 High Street
Santa Cruz, CA 95064

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Because research of the type to be done by the CENTER takes time and research results may not be obvious immediately, COMPANY should join CENTER with the intention of remaining a fee-paying member for at least two (2) years. However, COMPANY may terminate this Agreement for any reason by giving UNIVERSITY ninety (90) days written notice prior to the termination date. Notwithstanding the above, if the membership begins prior to adoption of the original CENTER Bylaws, at any time up to thirty (30) days after adoption of the original CENTER Bylaws, COMPANY may rescind this Agreement without notice, with or without cause, for a full refund of the membership fee; provided that in the event of rescission COMPANY shall forfeit any intellectual property rights under this Agreement.

- D. There will be an Industrial Advisory Board composed of one representative from each CENTER member. This board makes recommendations on (a) the research projects to be carried out by CENTER (b) the apportionment of resources to these research projects, (c) operational procedures, and (d) changes to the Bylaws. The number of votes available to a MEMBER will be proportional to its membership contribution
- E. UNIVERSITY reserves the right to publish in scientific or engineering journals the results of any research performed by CENTER. COMPANY, however, shall have the opportunity for a confidential review any paper or presentation containing results of the research program of CENTER prior to publication of the paper, and shall have the right to request a delay in publication for a period not to exceed three (3) months from the date of submission to COMPANY, for proprietary reasons, provided that COMPANY makes a written request and justification for such delay within forty-five (45) days from the date the proposed publication is submitted by certified mail to COMPANY.
- F. All patents derived from inventions conceived and first actually reduced to practice in the course of research conducted by the CENTER shall belong to the UNIVERSITY. UNIVERSITY, pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, will have ownership of all patents developed from this work, subject to "march-in" rights as set forth in this Act. When an employee of a MEMBER is a co-inventor of intellectual property that includes co-inventors from the UNIVERSITY, this agreement does not require the MEMBER to assign over to the UNIVERSITY any co-inventor rights that the MEMBER may have. All MEMBERS shall have the opportunity for a confidential review of the invention following the filing of an invention disclosure with UNIVERSITY'S technology commercialization office.

MEMBERS are entitled to a nonexclusive, royalty-free license under such patents to make, have made, use, have used, lease, sell, offer to sell, import and/or otherwise transfer any product, and to practice and have practiced any method, provided: (1) that MEMBER is a member in good standing at the time of disclosure to UNIVERSITY personnel responsible for patent matters; and (2) MEMBER shares with other exercising members the cost of filing and maintenance of such patent application. MEMBERS have the right to sublicense patents to subsidiaries and affiliates, but do not have the right to sublicense patents to other entities.

If only one MEMBER seeks a license, that MEMBER may, at its option, either obtain a non-exclusive royalty free license as described above, or obtain an exclusive fee-bearing license on commercially reasonable terms to be negotiated with the inventing UNIVERSITY.

If all MEMBERS elect not to exercise their option or discontinue their support, then the UNIVERSITY will 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 expense, in which event no MEMBER will have any rights in the invention through the UNIVERSITY.

- H. Copyright registration may be obtained for software developed by CENTER. MEMBER will be entitled to a worldwide, irrevocable, nonexclusive, royalty-free license to use, execute, display, reproduce, perform, and disclose

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all software developed by CENTER. MEMBER will have the right to enhance and to re-market the enhanced or unenhanced software with royalties due to CENTER to be negotiated, based on the worth of the initial CENTER software, but not to exceed fifty percent (50%) of the increase in the fair sale price of the enhanced software product sold or licensed by COMPANYY.

- I. Any royalties and fees received by UNIVERSITY under this Agreement, over and above expenses incurred, will be distributed in accordance with UNIVERSITY policy.
- J. Neither party is assuming any liability for the actions or omissions of the other party. Neither party shall be liable to the other party for any lost profits, lost revenues, or any incidental, indirect, consequential, special, punitive, or exemplary damages of any kind, regardless of whether either party was advised, had other reason to know, or in fact knew of, the possibility thereof. The liability of a UNIVERSITY that is a state entity is subject to the terms and limitations of its state laws.
- K. Each notice required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by a nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, as follows:

If to University:

University of California, Santa Cruz
Office of Sponsored Projects
Kerr Hall, MS: OSP
1156 High Street
Santa Cruz, CA 95064
Attention: Deirdre Beach
(831) 459-4046 Telephone
(831) 459-3139 Fax

If to Company:

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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.

Company

University

Company Representative Signature

University Representative Signature

Company Representative Printed

University Representative Printed

Company Representative Title

University Representative Title

Company Representative Email

University Representative Email

Date

Date