

9 May 2008

**MEMBERSHIP AGREEMENT FOR THE INDUSTRY/UNIVERSITY CONSORTIUM IN
EXPERIMENTAL STRUCTURAL DYNAMICS**

This Membership Agreement for the Industry/University Consortium in Experimental Structural Dynamics (hereinafter "Agreement") is entered into by and between _____, a for profit corporation organized under the laws of the _____, having a business office at _____ (hereinafter "Member") and the **University of Cincinnati**, a state institution of higher education organized under Section 3361 of the Ohio Revised Code on behalf of the College of Engineering, Industry/University Consortium in Experimental Structural Dynamics, having an address at 51 Goodman Drive, University Hall, Suite 530, Box 210222, Cincinnati, Ohio 45221-0222 (hereinafter "University").

WHEREAS the University of Cincinnati is establishing an Industry/University Consortium in Experimental Structural Dynamics (hereinafter "Consortium") under the direction of the Director of the Structural Dynamics Research Lab, Dr. Randall J. Allemang; and

WHEREAS Consortium will require funding to conduct graduate research and academic activities (hereinafter "Consortium Activities") which the Members herein contemplated will provide; and

WHEREAS Members will receive access to technologies developed through Consortium Activities in exchange for financial support through membership;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- (A) Enrollment. In exchange for the promises by University set forth in Section B, below, Member agrees to enroll in the Consortium and to abide by the Consortium Terms and Conditions, which are incorporated herein by reference.
- (B) Access. In exchange for the promises by Member set forth in Section A, above, University agrees to provide Member access to technologies as set forth in the Consortium Terms and Conditions.
- (C) Effective Date. The effective date of this Agreement (the "Effective Date") shall be the date the initial Membership Fee or this executed Agreement is received by the University, whichever is later.
- (D) Notices. Notices and communications hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

University of Cincinnati

Sponsored Research Services
University of Cincinnati
Attn: Deborah Galloway, Executive Director
University Hall, Suite 530
51 Goodman Drive
P.O. Box 0222
Cincinnati, OH 45221-0222

Phone: 513-556-2870
Fax: 513-556-4346
E-mail: deborah.galloway@uc.edu

Company Name _____

Contact Person _____
Address _____

Phone _____
Fax _____
E-mail _____

(E) Merger. This Agreement, together with the Consortium Terms and Conditions, states the entire contract between the parties with respect to the subject matter of this Agreement and supersedes any previous or contemporaneous written or oral representations, statements, negotiations or agreements. Member acknowledges that it has not been induced to enter into this Agreement by any oral or written statements or representations not expressly provided in this Agreement. This Agreement may be modified only by written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have accepted and executed this Agreement through their duly authorized representatives as of the date entered below.

University of Cincinnati

Company Name _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

TERMS AND CONDITIONS FOR PARTICIPATION IN THE INDUSTRY/UNIVERSITY CONSORTIUM IN EXPERIMENTAL STRUCTURAL DYNAMICS

These Terms and Conditions (the "Terms and Conditions") shall apply to the Industry/University Consortium in Experimental Structural Dynamics (the "Consortium") and shall govern the Consortium's activities (the "Consortium Activities"). The Consortium is located at the University of Cincinnati (the "University") and is directed by the University's Dr. Randall Allemang. Parties may benefit from Consortium Activities by executing a Consortium Membership Agreement with University, thereby becoming a participating member (each a "Member") of the Consortium.

- 1. Membership Fee.** Each year, each Member shall remit an annual membership fee of \$ 7,500.00 (the "Membership Fee") to the University as a lump sum no later than the anniversary of the effective date of Member's enrollment in the Consortium (each such date a "Membership Anniversary Date"). University shall adjust the Membership Fee only upon one-hundred and twenty (120) days advanced written notice to all Members.
- 2. Research.** University shall employ Membership Fees to conduct graduate research, perform technology evaluation, facilitate information exchange, and provide Members with enhanced education capability in the field of experimental structural dynamics. To support the Consortium, University agrees to apply a reduced indirect charge of 10 % to the Membership Fees.
- 3. Publication.** University reserves the right for its employees and students to publish and use, in University research and instruction, all data and results of the Consortium Activities. University agrees to provide draft publications and presentations to Members which shall have the opportunity to review any public disclosure containing results of Consortium Activities conducted hereunder and to request delay of publication to allow for patent considerations. Members must inform the University in writing of its desire to have a public disclosure delayed within thirty (30) days of receipt of draft. By mutual agreement, public disclosure may be delayed not more than an additional ninety (90) days to secure patent protection for the inventions disclosed therein.
- 4. Use of Results.** University shall grant Members the right to use internally all reports, data, and information contained therein resulting from Consortium Activities for evaluation and research purposes.
- 5. Intellectual Property.** University retains ownership of intellectual property developed under Consortium Activities. All patents for inventions conceived or reduced to practice in the course of Consortium Activities shall belong to the University.
 - a. Patent Option.** University shall inform Members within thirty (30) days of receipt of an invention disclosure. Members shall have an option to a nonexclusive, nontransferable, worldwide royalty free license on any patentable invention conceived and reduced to practice under Consortium Activities during the period of Members' membership. The option shall be for a period of six (6) months from the time the invention is disclosed to Members. This option period may be extended for a defined period by mutual agreement of the University and Members. In exercising such option, Members shall pay a pro rata share of patent filing, prosecution, and maintenance costs associated with protecting the invention in those countries in which patent protection is sought. The term of the license shall be the life of patent protection that is obtained. Under the license, Members shall have the right to make, have made, use, sell, distribute the products, compositions, apparatus, processes, and know-how, and practice the methods, and sublicense its subsidiaries to exercise the same rights obtained by the Members with this license. If only one Member exercises its option, that Member may obtain an exclusive royalty-bearing license at a commercially reasonable rate. Any other disposition of intellectual property of the University shall be determined by mutual agreement of the University and the Members.
 - b. Software Option.** Members shall have an option to a nonexclusive, nontransferable, royalty free site license to use copyrighted software arising from Consortium Activities for each site agreed upon by the Member and the University. Members shall have the right to modify and test copyrighted software arising from Consortium Activities. Members shall have the right to negotiate a royalty bearing license from the University to market modified or unmodified software at a commercially reasonable rate.

6. **Meetings.** University shall grant Members invitation to Consortium meetings to review state-of-the-art technologies, to attend presentations by graduate students on thesis/dissertation work, and to discuss experimental structural dynamics issues with students, faculty and industry peers.
7. **Confidentiality.** If and when a Member wishes to share proprietary materials or information with the University or any of its employees or Members on a confidential basis, the Member will notify the University before any confidential disclosures are made so that an agreement may be made with regard to how the material will be used. Nothing in these Terms and Conditions shall be construed to imply a license for other Members to use protected background technology of another Member for commercial purposes without an express license to do so.
8. **Publicity.** Members agree not to use the name of University, its seal or emblem, in any publicity or other release without the prior written consent of University. Likewise, the University agrees not to use the name or any trademark of any Member without the prior written consent of such Member, except that these Terms and Conditions constitutes such express permission for the University to identify the Consortium Members as appropriate and necessary in funding applications or reports.
9. **Warranty Disclaimer.** University makes no representations or warranties, expressed or implied, as to any matter whatsoever, including, without limitation, results of the research or any invention(s) or product(s), whether tangible or intangible, conceived, discovered, or developed under Consortium Activities; or the ownership, merchantability, or fitness for a particular purpose of the research or any such invention or product. University shall not be liable for any direct, consequential, or other damages suffered by any Member or any others resulting from the use of the research or any such invention or product. University makes no representations or warranties regarding actual or potential infringement of patents or copyrights of third parties, and Members acknowledge that the avoidance of such infringement in the design, use, manufacture, and sale of products and processes related to Consortium Activities shall remain the sole responsibility of the Members.
10. **Insurance.** Throughout each Member's participation in the Consortium, each Member and the University shall maintain, each at its own cost and expense, commercial insurance or a program of self-insurance, covering worker's compensation benefits in accordance with the law of the state of hire, employer's liability, automobile liability and comprehensive or commercial general liability insurance.
11. **Indemnity.** Each Member agrees to indemnify and hold harmless University, its employees, representatives, and agents against any liability, damages, loss or expense, including reasonable attorney fees and expenses of litigation, arising out of the actions of such Member, its employees or any third party acting on behalf of or under authorization from such Member in the performance of these Terms and Conditions, except for the negligent acts of University, its employees, representatives, and agents. Without limiting the foregoing, each Member agrees to hold harmless, indemnify, and defend University, its employees, representatives, and agents from all liabilities, demands, damages, expenses and losses, including reasonable attorney fees and expenses of litigation, arising out of the use by such Member, or by any party acting on behalf of or under authorization from such Member of University technical development or out of any use, sale or other disposition by such Member, or by any party acting on behalf of or under authorization from such Member, of products made or developed as a result of information or materials received from University. The provisions of this paragraph shall survive termination of participation in the Consortium.
12. **Termination.** University may terminate a Member's participation in the Consortium upon ninety (90) days advance written notice to such Member. In the event of such termination the University shall refund to such Member an amount equal to the total unexpended funds (from those supplied by all Members) prorated according to the number of Members and according to the date. Any Member may terminate such Member's own participation in the Consortium at any time by giving University written notice ninety (90) days prior to such Member's next Membership Anniversary Date. Upon termination by a Member, no refund of unexpended funds shall be made.
13. **Relationship of the University and Members.** University is not authorized or empowered to act as agent for any Member for any purpose and shall not on behalf of any Member enter into any contract, warranty, or representation as to any matter. No Member shall be bound by the acts or conduct of

University. No Member is authorized or empowered to act as agent for the University for any purpose and shall not on behalf of the University enter into any contract, warranty, or representation as to any matter. University shall not be bound by the acts or conduct of any Member.

14. Amendments and Modifications. Except as otherwise set forth herein, these Terms and Conditions may be modified only by written agreement executed by the University and all then-current Members.