



**Membership Agreement for the Texas Tech University site of the
Center for Autonomic Computing, a National Science Foundation
Industry/University Cooperative Research Center**

This Agreement is made this _____ day of _____ by and
between Texas Tech University (hereinafter called "UNIVERSITY") and
_____ (hereinafter called "COMPANY").

WHEREAS, Texas Tech University (lead site), the University of Arizona, and Mississippi State University (hereinafter called the "Center Universities") have established an Industry/University Cooperative Research Center for Cloud and Autonomic Computing (hereinafter called "CENTER") and the parties to this Agreement intend to join together in a cooperative effort to support the CENTER to maintain a mechanism whereby the university environment can be used to perform research to advance the field and technologies of autonomic computing,

THEREFORE, the parties hereby agree to the following terms and conditions:

A. Personnel of the Center Universities shall conduct CENTER research, perform technology evaluation, provide the academic and industrial community with enhanced educational capability in the field of autonomic computing, and facilitate information exchange and technology transfer. For the first five years, the CENTER will be supported jointly by industrial firms, federal laboratories, the National Science Foundation (NSF), the applicable state and the UNIVERSITY. It is possible that the CENTER may receive support from NSF for an additional five years. The research projects funded by annual payments by members as set forth in Clause C of this Agreement are identified hereinafter as "Center Projects."

It is understood and agreed that the CENTER may receive support from other governmental sources, separate industry projects and/or not-for-profit sponsors. Such funds shall be kept separate and not be used for support of Center Projects as defined under this Agreement. Furthermore, members may fund member specific research projects related to autonomic computing to any of the Center Universities on a contract basis independent of the CENTER. In each case cited in this paragraph, any resulting intellectual property will also be kept separate from intellectual property resulting from investigation of Center Projects.

B. Any company, federal research and development organization, or any government-owned, contractor-operated laboratory may become a member of the CENTER, consistent with applicable state and federal laws and statutes.



TEXAS TECH UNIVERSITY™



Cloud and Autonomic Computing Center

C. COMPANY agrees to contribute the required membership fees of [() \$50,000 for a Basic membership or () \$100,000 for an Executive membership or () \$ ____,__]to UNIVERSITY in support of the CENTER and thereby becomes a member for a period of one year. COMPANY may renew its membership in CENTER by paying this amount per each subsequent year. Payment of membership fees shall be made to UNIVERSITY as a lump sum due January 1 of each year of membership. Checks from COMPANY are to be made payable to only the appropriate university, and not to any individual, and mailed to:

Texas Tech University
Sponsored Programs Accounting and Reporting
Drane Hall / Mail Stop 4-1105
Lubbock, TX 79406-1105

Because research of the type to be conducted by the CENTER takes time and research results may not be obvious immediately, the COMPANY agrees that it has the intention to continue to be an active member for at least two years. However, COMPANY may terminate this Agreement by giving the UNIVERSITY 90 days' written notice.

D. There will be an Industrial Advisory Board composed of representatives from member companies. This board makes recommendations on (i) the research projects to be conducted by Center Universities, (ii) the apportionment of resources to Center Projects, (iii) changes to the bylaws governing the organization and operation of the CENTER. The CENTER bylaws will be adopted at the first meeting of the Industrial Advisory Board and, when adopted, will become part of this Agreement.

E. The Center Universities reserve the right to publish, disseminate and use, in whatever manner they see fit, all data and results of research conducted under Center Projects. COMPANY, however, shall have the opportunity to review any paper containing the results of the research in Center Projects and to request delay of publication to allow for patent considerations. COMPANY must inform the UNIVERSITY in writing of their desire to have a publication delayed within thirty (30) days of submission of paper, by certified mail, from UNIVERSITY to COMPANY. Requests for delay must be received within the 30-day timeline and should be sent by certified mail to:

Dr. Alan Sill
High Performance Computing Center
Texas Tech University
Mail Stop 4-1167
Lubbock, TX 79409-1167



Should the proposed publication be a student thesis or dissertation, UNIVERSITY and COMPANY hereby agree to use their best efforts to complete all reviews of material contained therein and any necessary patent application procedures evolving therefrom in such a manner as not to impede the students' completing their requirements for graduation or completion of a degree. Publication may not be delayed by more than ninety (90) days after the submission of the thesis or dissertation, by certified mail, to COMPANY.

F. Title to inventions made by a Center University and resulting from Center Projects (hereinafter called "CAC Patents") shall reside in the inventing Center University (or Universities in the case of a joint discovery). The inventing Center University, pursuant to Chapter 18 of Title 35 of the United States Code, commonly known as the Bayh-Dole Act, will have ownership of such CAC Patents, subject to "march-in" rights as set forth in this Act.

In consideration of their membership in the CENTER, COMPANY shall be granted the following rights with respect to CAC Patents:

1. COMPANY shall be granted an option to a royalty-free, nonexclusive license to any CAC Patents. Upon exercising such option, COMPANY will be required to pay all patent costs relating thereto, including the costs of patent application, prosecution and maintenance. If more than one CENTER member takes the option for a nonexclusive license to a CAC Patent, all such CENTER members will pay an equal share of the patent costs. Upon exercising its option to a nonexclusive, royalty-free license, COMPANY will sign a license agreement with UNIVERSITY. COMPANY will have the right to sublicense its subsidiaries and affiliates only.
2. If only one CENTER member exercises its option to license a CAC Patent, that member will have an additional option to negotiate an exclusive, royalty-bearing license with the inventing Center University. This option shall be available for ninety (90) days from the time the invention is disclosed through the Center University's licensing organization to the CENTER member. Should COMPANY exercise this option for an exclusive license, COMPANY agrees to pay all patent costs relating thereto, including the costs of patent application, prosecution and maintenance. Upon exercising its option to an exclusive license, COMPANY will sign a license agreement with UNIVERSITY (See 1., above.). COMPANY will have the right to sublicense its subsidiaries and affiliates only.
3. If the options specified in Subparagraphs 1 and 2 above are not exercised by any of the CENTER members, the inventing Center University may offer such inventions to a third party at its discretion.



G. Title to copyrightable materials, including software, produced by Center University personnel and resulting from Center Projects (hereinafter called "CAC Copyrights") shall reside in the originating Center University (or Universities in the case of a joint work).

Under this Agreement, COMPANY's rights with respect to CAC Copyrights in software are as follows:

At the request and expense of COMPANY copyright registration shall be obtained for software developed by Center University. COMPANY shall be entitled to a nonexclusive, royalty-free license to all software developed by Center University. COMPANY will have the right to enhance and to re-market enhanced or unenhanced software with royalties due to UNIVERSITY to be negotiated, based on the worth of the initial software.

H. Any royalties and fees received by UNIVERSITY under this Agreement, over and above expenses incurred, will be distributed according to UNIVERSITY policy.

I. Neither party is assuming any liability for the actions or omissions of the other party. COMPANY only participates in the operation of the CENTER through an advisory role on the Industrial Advisory Board, and as such is not liable for the Center Universities' operation of the CENTER.

J. In no event shall UNIVERSITY and CENTER be held liable for or indemnify, defend, and hold COMPANY harmless for any product liability claim for any product produced by COMPANY, or any of its affiliates, any third party acting on behalf of COMPANY or under authorization from COMPANY, that includes Center Project results provided by UNIVERSITY and CENTER under this Agreement, and COMPANY shall indemnify, defend and hold UNIVERSITY and CENTER harmless from such claims alleging product liability.

K. To the fullest extent under law, neither party will be liable for any consequential damages, lost profits, lost savings, loss of anticipated revenue, or any exemplary, punitive, special or indirect damages, even if advised of their possibility.

L. Any COMPANY or UNIVERSITY that provides information of a confidential or proprietary nature to the Center Universities or member companies under this agreement must provide a license for use of this information by the Center in pursuit of its research.

M. COMPANY agrees not to use the names of the CENTER or the Center Universities, or their seals or emblems, in any publicity or other release without the prior written consent of the Center Universities.



N. On a per-Project basis with approval of the Industrial Advisory Board, software created under this Agreement may be released as open source under an Open Source Initiative (OSI) approved license as "Center Project Software". The specific choice of OSI-approved license will be selected by the Center Project researchers and approved by the Industrial Advisory Board before release. The parties agree that they will not pursue patent protection for such software. For each such approved project, each party understands and agrees that if it wishes to utilize any Center Project Software created solely by the other party, it can obtain and use such Center Project Software under the terms of the designated OSI-approved license.

O. The Center Universities make no warranties, express or implied, as to any matter whatsoever, including, without limitation, the condition of the reports, research or any invention(s) or product(s), whether tangible or intangible, conceived, discovered, or developed under this Agreement or make any representation or warranty regarding actual or potential infringement of patents or copyrights of third parties.

P. This Agreement states the entire understanding between COMPANY and UNIVERSITY with respect to the subject matter of this Agreement and supersedes any previous or contemporaneous written or oral representations, statements, negotiations or agreements. COMPANY 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 caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

COMPANY

TEXAS TECH UNIVERSITY

By:
Title:
Date:

By:
Title:
Date: