

UCF MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT (“**Agreement**”) is entered into by and between UCF, a California nonprofit mutual benefit corporation (“**UCF**”), and the undersigned entity (“**Member**”) and is effective on the date UCF countersigns this Agreement (the “**Effective Date**”).

1. DEFINITIONS

Capitalized terms used in this Agreement but not otherwise defined in this Agreement have the same meaning as when the same terms are used in the Bylaws.

1.1 Affiliate means an entity that Controls, is Controlled by, or is under common Control with another entity, but only so long as such Control exists. For avoidance of doubt, the members of Lawrence Livermore National Security, LLC (“LLNS”) shall not constitute “Affiliates” of LLNS.

1.2 Bylaws means the UCF corporate bylaws, as in effect and as amended from time to time by UCF in its sole discretion, a copy of which is attached hereto and incorporated herein as Exhibit A.

1.3 Committed Specifications has the meaning set forth in Section 6.2.2.

1.4 Compliant Portions means only those specific portions of software products that: (i) implement and are compliant with all relevant portions of a Specification, and (ii) are within the bounds of the Scope.

1.5 Confidential Information means and includes: (i) a Draft Specification, (ii) a Specification prior to its release by the Board of Directors; (iii) a Draft Design or Draft Programming Guideline; (iv) a Design Guideline or Programming Guideline prior to its release by the Board of Directors; (v) any Contributions, (vi) any written materials marked as confidential at the time of disclosure; (vii) any orally-disclosed material that is designated as confidential at the time of disclosure and in a written memorandum sent to the Secretariat within thirty (30) days of disclosure, summarizing the Confidential Information sufficiently for identification; and (viii) all minutes of meetings related to the foregoing of a Working Group or the Board of Directors.

1.6 Contribution means a submission by the Member or its Affiliates to or for a Working Group or the Board of Directors proposing an addition to or modification of an existing Specification or a new Specification or portion thereof, or a submission by the Member or its Affiliates proposing changes or modifications to the Design Guidelines or Programming Guidelines, or proposing new Design Guidelines or Programming Guidelines, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a Working Group, and attributed in the meeting minutes to the submitting Member, provided that the minutes are promptly provided to the individual representing the Member and confirmed in writing by the Member no later than forty-five (45) days of receipt of such written minutes. If the Member does not withdraw or modify its proposed Contribution in writing within such forty-five (45) day period, the Contribution shall be deemed submitted.

1.7 Control means (i) the direct or indirect ownership or control of at least fifty percent (50%) of the voting power or equity in an entity, or (ii) the direct or indirect possession of the power to direct or cause the direction of the management of the corporation.

1.8 Design Guideline or Programming Guideline means a document or documents entitled Design Guideline or Programming Guideline containing functional and technical guidelines to aid in interoperability of implementations of a Specification as adopted and approved for release by the Board of Directors.

1.9 Disclosing Party has the meaning set forth in Section 4.1.

1.10 Draft Design Guideline or Draft Programming Guideline means a proposal, document or documents entitled Draft Design Guideline or Draft Programming Guideline in draft or non-final form, being worked on or considered by a Working Group or the Board of Directors prior to adoption and approval by UCF for release as a Design Guideline or Programming Guideline.

1.11 Draft Specification means a proposal, document or documents regarding a proposed Specification or proposed modifications to a Specification in draft or non-final form, being worked on or considered by a Working Group or the Board of Directors prior to adoption as a Specification.

1.12 Founding Members means all Members that meet the Founding Membership criteria as set forth in the Bylaws.

1.13 Member means the undersigned Member.

1.14 Members mean all UCF Members, regardless of membership class, including Members who become Members after the undersigned Member joins.

1.15 Necessary Claims means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which a Member or its Affiliates have the right at any time during the term of this Agreement to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by an implementation of a Specification and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

1.16 Receiving Party has the meaning set forth in Section 4.1.

1.17 Scope means software network application programming interfaces. Notwithstanding the foregoing, the Scope shall not include any enabling technologies that may be necessary to make or use any software that complies with a Specification (including without limitation processor architecture (including, but not limited to, instruction set architecture), processor microarchitecture, semiconductor manufacturing technology, compiler technology, object oriented

technology, basic operating system technology, and hardware functionality for executing any software that implements the Specification).

1.18 Secretariat means the company designated by UCF as the Secretariat with which UCF has contracted to provide management, administrative and membership services.

1.19 Specification means a document entitled UCF Specification expressly adopted and approved for release by the Board of Directors, and any updates or revisions expressly adopted and approved for release by the Board of Directors.

1.20 Unified Software has the meaning set forth in Section 2.4.

1.21 Working Group means any group consisting of Member representatives that meets to discuss and evaluate additions to or modifications of existing Specifications or new Specifications, or submissions proposing changes or modifications to Design Guidelines or Programming Guidelines or new Design Guidelines or Programming Guidelines.

2. MEMBERSHIP

2.1 Membership. Member agrees to be a Member of UCF on the terms and subject to the conditions stated in this Agreement as well as to the terms and conditions stated in the Bylaws.

2.2 Class of Membership. Subject to the terms and conditions of this Agreement and the Bylaws, Member agrees to be a Member of UCF in the class designated on the signature page of this Agreement. Member's assignment to the Academic or Industry membership classes is subject to meeting the qualifications for membership in the class and confirmation by a majority of the Board of Directors and the Founding Members of UCF.

2.3 Qualifications. The Member is an organization, or an individual meeting the Industry Membership criteria, university or other organization meeting the Academic Membership criteria, or an organization meeting the Founding Membership criteria that is a user, manufacturer, seller, or supplier of computers, computer parts or components, peripherals, software, or related products or services.

2.4 Support for Mission. During the term of its membership in UCF, the Member expects to support the design, development, application and adoption of open source, unified software frameworks to support high-performance communication libraries (the "**Unified Software**"). However, nothing in this Agreement shall obligate Member to manufacture or use services or products complying with or utilizing the Unified Software or preclude the use of alternate or competing services, products and specifications.

2.5 Member Benefits. The Member shall be entitled to the benefits provided by this Agreement and the Bylaws. The Member shall be entitled to participate in UCF membership meetings, to receive materials disseminated to Members generally, to access World Wide Web pages maintained by UCF, and to the other benefits of such membership, as determined by UCF in its sole discretion or as specified in the Bylaws.

2.6 Use of Name. The Member may publicly disclose that it is a Member of UCF. However, the Member may not identify any product or service as being sanctioned by, sponsored by or associated with UCF, unless in accordance with policies and procedures which may be established by UCF. UCF shall have the right to include the Member's name in any lists of Members published by UCF and to announce that the Member has joined UCF.

2.7 Affiliates. The Member acknowledges and agrees that it and its Affiliates shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. Member also acknowledges and agrees that Section 5 of this Agreement, entitled "Intellectual Property," binds Member and Member's Affiliates in accordance with its terms.

3. OBLIGATIONS OF MEMBERS

3.1 Bylaws. The Member has reviewed and hereby agrees to abide by the Bylaws.

3.2 Contribution. The Member may make Contributions to Specifications, to Design Guidelines, and to Programming Guidelines, subject to the terms and conditions of this Agreement and the Bylaws.

3.3 Dues and Other Fees. The Member shall pay dues, fees and other assessments applicable to its class, as established from time to time by the Board of Directors and approved by the unanimous consent of the Founding Members. Dues within a class shall be nondiscriminatory. Subject to the terms and conditions of the Bylaws, the Board of Directors may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership.

3.4 Expenses. The Member shall bear its own costs and expenses for its participation in any and all activities it conducts related to this Agreement, such as travel, employee compensation, and incidental expenses.

4. INFORMATION

4.1 Confidential Information¹. The Member, its Affiliates, and UCF will maintain in confidence all Confidential Information disclosed by another Member, its Affiliates, and UCF (a "**Disclosing Party**"). A receiving party of another party's Confidential Information hereunder (a "**Receiving Party**") will not use, disclose or grant use of such Confidential Information for any purpose other than those expressly authorized by this Agreement; provided that any Member's or any of its Affiliates' Contributions that are incorporated into a Specification, Design Guideline or Programming Guideline shall no longer considered as such Member's Confidential Information. Additionally, any Confidential Information incorporated in a particular revision of such documents, including any exhibits or attachments thereto, shall be permitted to be released upon agreement of the Board of Directors or as otherwise provided in the Bylaws. A Receiving Party will neither disclose nor distribute Confidential Information, except as necessary for its employees, agents and/or consultants (under a comparable confidentiality agreement restricting the

¹ Note to Draft: the language added to section 4.1 and section 5.5 has been inserted to fulfill requirements that certain Founding Members have under Prime Contracts with the Department of Energy.

consultant's right to use to be solely with respect to work done for the Member) with a need to know for the purpose of developing or updating the Specification, Design Guideline or Programming Guideline documents, or developing services or products based upon such documents. Neither Member nor its Affiliates will share any Confidential Information unless such Confidential Information is technical information necessary to the development and/or adoption of the Unified Software including the Specifications, Design Guidelines, and Programming Guidelines.

The Receiving Party agrees that Confidential Information is confidential and proprietary to the Disclosing Party, and shall be maintained in confidence with at least the same standard of care as the Receiving Party uses to protect its own confidential and proprietary information of like kind and sensitivity, and in no event less than a reasonable standard of care. The Receiving Party will mark any copies of Confidential Information made by a Disclosing Party as "confidential," "proprietary" or with a similar legend as on the original. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of such Confidential Information.

The obligations of confidentiality contained in Section 4.1 will not apply to the extent that such Confidential Information: (i) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party; (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party in breach of this Agreement; (iv) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a third party who, to Receiving Party's knowledge, had no obligation not to disclose such information to others; (v) was developed independently by the Receiving Party without any use of Confidential Information; (vi) made public by agreement of the Board of Directors or as otherwise provided in the Bylaws; or (vii) was inherently disclosed in the manufacture, marketing, sale or maintenance of a product or service based on a Specification, Design Guideline or Programming Guideline.

The Receiving Party will also not be considered to have breached its obligations under this Section 4 for disclosing Confidential Information to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request, and to the extent that it may legally do so, the Receiving Party: (i) advises the Disclosing Party prior to making such disclosure in order that the Disclosing Party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information; and (ii) uses reasonable efforts to not disclose Confidential Information that is not required to satisfy such legal requirement.

The obligations of confidentiality set forth in this Section 4 will expire three (3) years from the date of the disclosure to the Member. Upon any termination or expiration of this Agreement, Member and its Affiliates shall destroy all Confidential Information in their possession or control or return it to UCF at UCF's request.

Notwithstanding anything to the contrary herein, a Member shall have the right to disclose the Confidential Information to the United States Department of Energy (“DOE”) or the designee thereof, as required under the Prime Contract between such Member and DOE. Confidential Information shall be protected against further disclosure by DOE employees under 18 USC 1905.

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions are incorporated into this agreement and are controlling.

The parties acknowledge that each is responsible for its own compliance with all U.S. export control laws and regulations. Each party acknowledges that it is responsible for obtaining export license, if required, before giving any foreign person access to Confidential Information. Each party acknowledges that it is responsible for all regulatory record-keeping requirements associated with the use of export control licenses and license exemptions and exceptions.

5. INTELLECTUAL PROPERTY

5.1 Grant of Licenses. When the Member or its Affiliates makes a Contribution or when the Board of Directors adopts and approves for release a Specification, the Member and its Affiliates hereby grant to UCF, each of the other Members and their respective Affiliates, and third party licensees of UCF (such grant conditioned upon a reciprocal license grant to Member and its Affiliates by the third party licensees of UCF under their Necessary Claims) a nonexclusive, nontransferable, non-sublicensable, perpetual, irrevocable, royalty-free, fully-paid, worldwide license under such Member’s and its Affiliates’ Necessary Claims to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such license shall not extend to any part or function of a product or service in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Member and its Affiliates agree that they will not transfer patents having Necessary Claims for the purpose of circumventing this Section 5.1 and that any transfer of affected patents and patent applications are subject to the foregoing license grant. The license given under this section is subject to the **REPRESENTATIONS & WARRANTIES under section 7 below and to the LIMITATION OF LIABILITY under section 8 below.**

5.1.1 Specification Opt-Out. Upon submission of any Draft Specification for final approval and release, Members will have a period of up to sixty (60) days to review such Draft Specification prior to approval and release by the Board of Directors. During the sixty- (60-) day review period, each Member should determine whether it or any of its Affiliates would be unwilling to provide other Members, and their respective Affiliates, with the licenses referred to in this Section 5. If a Member is unwilling to provide such licenses, it must promptly (but no later than the expiration of the sixty- (60-) day review period) notify the Board of Directors in writing of its unwillingness to license and its decision to “opt-out” of participation concerning the Specification. If a Member opts-out of participation concerning a Specification, that Member shall have no rights or

obligations with respect to that Specification including, but not limited to, reciprocity of licensing rights and obligations under this Agreement or the Bylaws. If a Member does not opt-out of participation concerning a Specification, it shall have all of the rights and obligations granted under this Agreement and the Bylaws with respect to that Specification without taking any additional affirmative action. The ability of a Member to opt-out of a particular Specification does not apply to any Contribution which that Member made to preparation of the Specification or Draft Specification. If a Member knowingly makes a Contribution to a Specification or Draft Specification, the Member may not during the review period then refuse to license the elements of the Contribution under the Member's Necessary Claims as set forth in Section 5.1.

5.1.2 Defensive Termination. Notwithstanding anything to the contrary herein, a Member may terminate its license grant under Section 5.1 upon written notice to UCF in the event that any other Member or its Affiliates, or third party licensee of UCF asserts a claim of patent infringement against such Member with respect to the Necessary Claims, unless the Member, the Affiliate, or third party licensee of UCF asserting such claim fully withdraws such claim within ten (10) days of initially asserting such claim.

5.2 Limited Agreement to Disclose. In the event that the Member or any of its Affiliates has actual knowledge that the Member would be unwilling to provide other Members with a license to a work-in-progress of any Working Group, such Member agrees to: (i) promptly provide written notification to the Secretariat and appropriate Working Group chairperson of such Member's intent not to license; and (ii) withdraw from all applicable discussions and not contribute. Nothing in this Section is intended to create a duty for a Member or its Affiliates to conduct a search of their patent portfolios.

5.3 No Other License. No patent license, immunity or other right is granted under this Agreement by any Member or its Affiliates to any other Member or its Affiliates or to UCF, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth herein.

5.4 Transfer of Necessary Claims to Third Parties. Any transfer to a third party by Member or its Affiliates of a patent having Necessary Claims shall be subject to the terms and conditions of this Agreement.

5.5 Copyrights. To the extent permitted by its Prime Contract with DOE, the Member and its Affiliates grant to UCF a worldwide, fully paid-up, royalty-free, irrevocable, perpetual, nonexclusive, non-transferable, sublicensable copyright license, to the extent a copyright exists, to allow all other Members, their Affiliates, and third party licensees of UCF to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member and its Affiliates solely for the purposes of developing, publishing and distributing (i) Specifications, Design Guidelines, and Programming Guidelines, and (ii) products or services based on such documents. Subject to the license, Contributions owned or developed by Member shall remain the property of Member and no interest in the ownership of the Contributions shall be conveyed to UCF or to any other Member.

5.6 Other Trademarks. Member's use of the UCF name, and UCF's use of the Member's name, shall: (i) inure to the benefit of UCF or the Member, respectively; and (ii) be in accordance with any trademark usage guidelines provided by the Member or UCF (as applicable) to the other party from time to time. The Member will not use any name or logo adopted by UCF except to refer to a Specification and to products or services which comply with a Specification. Member shall not use or adopt any trademarks for any product, service or specification likely to cause confusion with any trademarks or trade names adopted by UCF, unless agreed to in advance by the Board of Directors. UCF shall not use or adopt any trademarks for any product, service or specification likely to cause confusion with any trademarks or trade names adopted by Member, and shall not use Member's name or trademarks in any way that would imply that Member has endorsed UCF or any of its products or services, unless agreed to in advance by Member.

6. TERM AND TERMINATION

6.1 Term. Unless terminated as provided herein or as provided in the Bylaws, this Agreement shall remain in full force and effect, renewing annually upon the Member's payment of dues in accordance with the Bylaws.

6.2 Termination by Member. The Member may withdraw from membership by terminating this Agreement at any time upon the giving of written notice or email to the President of UCF in accordance with the Bylaws. Member shall be obligated to pay all dues, assessments, or fees which accrued prior to the effective date of termination in accordance with this Agreement and the Bylaws. After the effective date of termination, Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Section 6.2.2.

6.2.1 Ownership of UCF Trademarks. Notwithstanding the Member's termination of this Agreement and except as provided in Section 2.5 during the term of this Agreement, UCF owns all right, title and interest in and to all trademarks of UCF.

6.2.2 Survival of License Grant If Member Terminates. Notwithstanding Member's termination of this Agreement, Member's and its Affiliates' license grant as provided in Section 5.1 shall remain in full force and effect: (i) for Specifications as to which the Board of Directors gave notice of its approval prior to Member's termination ("**Committed Specifications**"); (ii) for any Contribution made by the terminating Member to a Specification prior to the effective date of its termination; and (iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Member's termination. Such grant shall extend to all Members of UCF, including Members who become Members after the effective date of Member's termination.

6.2.3 Exception in the Event of Noncompliance. The license, which survives under Section 6.2.2, shall terminate completely: (i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products and services that comply with Specifications that were in effect prior to or within sixty (60) days after the effective date of Member's termination; or (ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of UCF as stated in its Bylaws prior to or within sixty (60) days after the effective date of Member's termination.

6.3 Termination by UCF. UCF may terminate this Agreement on written notice: (i) if Member breaches its obligation under this Agreement or under the Bylaws, provided UCF shall first give Member written notice and thirty (30) days' opportunity to cure the breach; or (ii) if UCF terminates the Unified Software projects described in Section 2.4. Member shall be obligated to pay dues, assessments, or fees which accrued prior to the effective date of termination. After the effective date of termination, Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Sections 6.3.1 and 6.3.2.

6.3.1 Survival of License Grant if UCF Terminates. Notwithstanding UCF's termination of this Agreement and except as provided in Section 6.3.2, Member's and its Affiliates' license grant as provided in Section 5.1 shall remain in full force and effect following any such termination of this Agreement: (i) for Committed Specifications; (ii) for any Contribution made by the terminated Member to a Specification prior to the effective date of its termination; and (iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Member's termination. Such agreement shall extend to all Members of UCF, including Members who become Members after the effective date of Member's termination.

6.3.2 Exception in the Event of Non-Compliance. The license which survives Member's termination under Section 6.3.1 shall terminate completely: (i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products or services that comply with Specifications that were in effect prior to and sixty (60) days after to the effective date of Member's termination; or (ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of UCF as stated in its Bylaws prior to or within sixty (60) days after the effective date of Member's termination.

6.4 Survival. Sections 1, 2.7, 4, 5.1, 5.3, 5.4, 5.5, 6.2, 6.3, 6.4, 7, 8, and 9 will survive any expiration or termination of this Agreement.

7. REPRESENTATIONS & WARRANTIES

7.1 Member Representations and Warranties. The Member represents and warrants that: (i) the Member and its Affiliates' representatives to UCF shall not submit a Contribution that, to the actual knowledge of its or its Affiliates' representatives responsible for administering intellectual property, violates the intellectual property rights of any other Member, any Affiliates of a Member or any third party; (ii) the Member and its Affiliates have the right to grant and convey all rights and licenses granted or conveyed under this Agreement; and (iii) the Member and its Affiliates have the power and authority to enter into and to perform its and their obligations under this Agreement and the execution and performance of this Agreement by Member and its Affiliates do not, and shall not, violate any agreements, rights or obligations among or between Member, any of its Affiliates and any third party.

7.2 Warranty Disclaimer. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL CONTRIBUTIONS, SPECIFICATIONS, DESIGN GUIDELINES AND PROGRAMMING GUIDELINES PROVIDED OR RELEASED HEREUNDER TO UCF BY MEMBER OR ITS

AFFILIATES OR TO MEMBER OR ITS AFFILIATES BY UCF OR FROM OR TO ANY OTHER MEMBERS OR SUCH OTHER MEMBERS' AFFILIATES, ARE PROVIDED AND RELEASED "AS IS," AND WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY

8.1 Damages Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY CLAIM OF BREACH OF LICENSE OR CONFIDENTIALITY RESTRICTION, IN NO EVENT (A) WILL UCF BE LIABLE TO ANY MEMBERS OR TO ANY OF THEIR AFFILIATES, (B) WILL ANY MEMBERS OR THEIR AFFILIATES BE LIABLE TO UCF OR ANY OTHER MEMBER, NOR (C) WILL ANY PARTY BE LIABLE TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER A PARTY HERETO FOR ANY COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, ANY LOST PROFITS, ANY LOSS OF USE, ANY LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY BREACH, STRICT LIABILITY, PRODUCT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 Damages Cap. IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY CLAIM OF BREACH OF LICENSE OR CONFIDENTIALITY RESTRICTION, IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY FOR DAMAGES HEREUNDER, REGARDLESS OF CAUSE OF ACTION, EXCEED THE AMOUNTS PAID AND PAYABLE BY MEMBER AND ITS AFFILIATES TO UCF PURSUANT TO THIS AGREEMENT OR THE BYLAWS DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE FIRST SUCH CLAIM.

8.3 General. Each party acknowledges that the foregoing limitations are an essential element of the Agreement between the parties and that in the absence of such limitations the terms set forth in this Agreement would be substantially different.

9. OTHER PROVISIONS

9.1 No Assignment. The Member may not assign or delegate this Agreement or any of its rights or obligations hereunder, in whole or in part, whether expressly or by operation of law, except with the approval of not less than two-thirds (2/3) of the Founding Members of UCF in accordance with the Bylaws. Notwithstanding the above in this paragraph, all contractor-operated DOE national laboratory Members may transfer their obligations to successor contractors in the event of termination or expiration of their prime contracts with DOE. UCF may freely assign this Agreement and its rights and obligations hereunder to an Affiliate or to a successor-in-interest in connection with a merger, change of control, sale of all or substantially all of its assets to which this Agreement relates or similar transaction. Any purported assignment in violation of this

Section shall be null and void from the beginning and shall be deemed a material breach of this Agreement. Any permitted assignment hereunder shall be binding upon any permitted assignee.

9.2 Notice. The Member designates the representative identified below for the purpose of receiving notice under this Agreement. The Member may change the designated representative by written notice to UCF. If the Member fails to designate a representative, notice may be sent to the Member at its address stated in the signature page below. Any notification made under this Agreement shall be sufficiently given or made if: (i) delivered by hand or commercial courier; (ii) sent by pre-paid registered post; or (iii) sent by legible facsimile transmission addressed to the intended recipient at its address or facsimile number set out below (provided that the receipt of such facsimile transmission is confirmed and a copy thereof is sent immediately thereafter by pre-paid registered post or commercial courier). Any such notice, demand or communication shall be deemed to have been duly served: (x) if delivered by hand or commercial courier, or sent by pre-paid registered post, at the time of delivery; or (y) if made by successfully transmitted facsimile transmission, at the time of dispatch (provided that the receipt of such facsimile transmission is confirmed and that immediately after such dispatch, a copy thereof is sent by pre-paid registered post or commercial courier). A party may from time to time notify of its change of address or facsimile number in accordance with this Section 9.2.

Member Representative:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

e-mail Address: _____

9.3 No Joint Venture. Nothing contained in this Agreement and no action taken by the Member shall be deemed to render the Member or its Affiliates an employee, agent or representative of UCF or any other Member or their Affiliates, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Members or their Affiliates or with UCF.

9.4 Compliance with Laws. The obligations of the parties hereto shall be subject to all laws, including antitrust laws, present and future, of any government having jurisdiction over the parties hereto, pertaining to the Member's and its Affiliates' participation in UCF pursuant to this Agreement. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable laws, including antitrust laws. Member consents to the disclosure of its name as a member of UCF, for the purpose of permitting UCF to invoke the protection of the National Cooperative Research and Production Act of 1993 (15 U.S.C. §§4301, et seq.).

9.5 Governing Law. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be governed by the laws of New York, without regard to conflict of law provisions. Member agrees that in the event of any dispute

between Member and any other Member, UCF may elect to remain neutral and play no role in any such dispute.

9.6 Severability. If any provision or part of this Agreement is rendered void, illegal or unenforceable in any respect under any enactment or rule of law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9.7 Amendments. This Agreement may be amended on a nondiscriminatory basis by the affirmative vote of at least two-thirds (2/3) of the Board of Directors. The Member shall be given at least thirty (30) days' prior written notice of the effective date of an amendment, and amendments shall be prospective only. A Member shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its membership in UCF.

9.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of executed counterparts transmitted by telecopy, or other electronic transmission service shall be considered original executed counterparts for purposes of this paragraph, provided that receipt of copies of such counterparts is confirmed.

9.9 Cumulative Remedies. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by either of the parties shall not constitute a waiver by such party of the right to pursue any other available remedy.

9.10 Waiver. No delay or neglect on the part of UCF, Member or its Affiliates in enforcing against any other party any term or condition of this Agreement or in exercising any right or remedy under this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right or remedy of that party under this Agreement.

9.11 Construction. The headings to the clauses, sub-clause and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation" and "discretion" means sole discretion. Unless the context otherwise requires and with the exceptions of "Member" and "Members," words denoting the singular number shall include the plural and vice versa, words importing the masculine gender shall include the feminine gender and words importing a person shall include a company or corporation and vice versa.

9.12 Integration. This Agreement and the Bylaws set forth the entire agreement of the parties relating to the Member's membership in, and Contributions to, UCF, and supersede and replace any and all prior representations, agreements, discussions and understandings whether oral or written, between the parties relating to the Member's membership in, and Contributions to, UCF. No variation or addition to the terms and conditions contained in this Agreement shall be binding unless agreed in writing and signed by the authorized representatives of the parties.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF the parties have hereunto entered into this Agreement as of the Effective Date.

MEMBER:

By: _____ Dated: _____

Printed Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

e-mail Address: _____

Membership Class: [Founding/Industry/Academic] Member

ACCEPTED AND AGREED:

UCF

By: _____

Dated: _____

Printed Name: _____

Title: _____

Exhibit A
Bylaws