

## **Charter Membership Agreement**

### **CENTER FOR ADVANCING BUSINESS THROUGH INFORMATION TECHNOLOGY**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, ("Effective Date") by and between the Center for Advancing Business through Information Technology for and on behalf of the Arizona State University (hereinafter called "UNIVERSITY") and \_\_\_\_\_ (hereinafter called "COMPANY"). The UNIVERSITY is an educational institution organized under the laws of the State of Arizona and administered by the Arizona Board of Regents (hereinafter called "REGENTS").

A. The parties to this Agreement intend to join together in a cooperative effort to support a Research Center for Research and Education in Advancing Business through Information Technology (hereinafter called "CENTER") at the UNIVERSITY to establish and maintain a mechanism whereby the UNIVERSITY environment will be used to undertake research and development toward the collaboration, innovation, incubation and technology transfer of knowledge management, knowledge discovery and software service innovations in the emerging E-business environment;

B. This work will include the appropriate research in all aspects of advancing business through information technology with an emphasis on teaching and a cooperative research program;

C. CENTER will be operated by certain designated faculty, staff and students at the UNIVERSITY. CENTER will be supported jointly by private sector entities, the State of Arizona, and the UNIVERSITY. Member fees will be used for support of the direct and indirect costs of CENTER, including certain designated research projects

D. This program will strengthen the UNIVERSITY'S research and teaching capabilities in Information Management;

#### **AGREEMENT:**

1. The CENTER shall be operated by the UNIVERSITY under the leadership of the Director, Dr. Ajay Vinze. Any successor directors shall be appointed in accordance with CENTER by-laws.

2. Any United States corporation, or any Federal research and development organization, or any government-owned contractor operated laboratory is eligible to

become, with the approval of the CENTER Director, a member of the CENTER, consistent with applicable state and federal laws and statutes.

3. Membership: A COMPANY agrees to contribute a minimum of \$50,000 (or such future amount that the CENTER and member companies may determine for subsequent annual terms pursuant to the by-laws) in cash annually in support of the CENTER and thereby becomes a CHARTER MEMBER.

Checks for payment of these dues shall be made payable to Arizona State University Foundation, a not-for-profit entity organized under the laws of the State of Arizona and under the management and control of the UNIVERSITY. Payment can be made in a lump sum or via quarterly payment on or before the first day of January, April, July and October of each year. Checks shall be made payable to "Arizona State University Foundation" and shall be mailed to CABIT, College of Business, Arizona State University, P.O. Box 873606, Tempe, AZ 85287-3606.

4. The term of this Agreement shall be twelve (12) months from the effective Date unless extended by a written amendment to this Agreement. COMPANY may withdraw from this membership at any time by terminating this Agreement. COMPANY may terminate this Agreement for any reason by giving UNIVERSITY ninety (90) days written notice prior to the termination date. Should COMPANY exercise its termination option and said termination date occurs prior to the end of the year or quarter through which the COMPANY has made its contribution, UNIVERSITY shall not be obligated to provide a refund on any portion thereof. The annual renewal date for all membership in the CENTER shall be the July 1<sup>st</sup> following signature of this agreement. The rights and obligations of the parties under Sections 6, 11, 14, 15 and 16 shall survive the expiration or termination of this Agreement.

5. There shall be a Center Advisory Board (CAB) comprised of representatives from each member. Each CHARTER MEMBER shall have one representatives on the CAB with seven votes for each representative. The Board makes recommendations on:

- a. The research projects to be carried out by CENTER.
- b. The apportionment of resources to these projects.
- c. Changes in the bylaws.

6. The organization and operation of the CENTER will be specified by the CENTER bylaws to be adopted no later than the second Center Advisory Board meeting. The bylaws, when adopted (and as they may later be modified), will become part of this Agreement.

7. Intellectual Property and Publication. If new intellectual property is developed by research at the CENTER, the following terms and conditions shall apply:

- a. Except for inventions resulting from joint research by the COMPANY, title to all inventions conceived or first actually reduced to practice in the course of research conducted by or at the CENTER and all patents thereon (“Subject Patent”), shall vest in the UNIVERSITY. Any such invention made which utilized support from NSF or other federal sponsors shall be subject to the terms and conditions of the membership agreement providing the federal funds used in the development of said invention. UNIVERSITY hereby grants and agrees to grant COMPANY, a worldwide, perpetual, non-exclusive, irrevocable, royalty-free license to design, make, have made, import, use, sell, offer to sell, or otherwise dispose of (directly or indirectly) products subject to such Subject Patent(s). Should COMPANY request that a patent be applied for on an invention in order to exercise its right to the foregoing license, and unless otherwise agreed by COMPANY and UNIVERSITY, COMPANY agrees to pay for the cost of such patent application or to share on an equal basis therein should other CENTER- member companies exercise their same right to request the filing of a patent application. COMPANY may request an exclusive license in an invention arising hereunder and UNIVERSITY agrees to consider such request, subject to approval thereof by UNIVERSITY and all other company sponsors. If unanimously approved, UNIVERSITY will then enter into negotiations for an exclusive, royalty-bearing license with COMPANY. All exclusive and non-exclusive licenses granted in accordance with this provision shall include the right for COMPANY to sublicense its AFFILIATES. AFFILIATE is defined herein as, any corporation or other business entity in which the COMPANY owns or controls, directly or indirectly, at least 50% of the outstanding stock or other voting rights entitled to elect directors or control directly or indirectly the maximum percentage of such outstanding stock or voting rights permitted by local law. Any and all Confidential Information and Intellectual Property Rights, existing as of the Effective Date, shall remain the property of the party owning such Confidential Information and/or Intellectual Property Rights.
- b. Title in software and other copyrightable material developed by or at CENTER while COMPANY is a member of the CENTER (Subject Copyright) shall vest in UNIVERSITY. COMPANY is hereby granted an irrevocable, nonexclusive, royalty-free license to use, such Subject Copyrights. This license shall include the right to sublicense copyright use to its AFFILIATES in accordance with all applicable state and federal laws and/or statutes.
- c. UNIVERSITY reserves the right to publish in scientific journals the results of all research performed at CENTER. Prior to publication, however, COMPANY, shall have the right to review any paper containing results of the research conducted during COMPANY’s period of membership of the CENTER. COMPANY may request delay of the proposed publication for a period not to exceed 90 days from the date of submission to COMPANY. Said request for

delay shall only be made in order to permit the filing of patent applications on any invention or discovery made by or at the CENTER or to redact/delete any COMPANY Confidential Information which may inadvertently be included in such publication, and COMPANY shall make said request in writing and include a justification therefore within 45 days from the date the proposed publication was transmitted to COMPANY. Publication of information shall be permitted at any time, however, following the use of this information by COMPANY in a product. 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.

- d. COMPANY agrees to hold in confidence contents of the paper until its publication and not to disclose the contents to anyone except such of its employees or legal counsel as may be necessary for review and the preparation of a patent application unless (a) it is a part of the public domain prior to the date first written herein above; or (b) becomes part of the public domain not due to some unauthorized act by or omission of COMPANY after this Agreement is executed; or (c) COMPANY can demonstrate that it or an affiliate or subsidiary company of COMPANY independently developed such Confidential Information; or (d) is disclosed to COMPANY by a third party who has the right to make such disclosure; or (e) is required to be disclosed to a third party by applicable laws or out of court proceedings. COMPANY shall use such efforts to preserve the confidentiality of the contents of the paper disclosed as it would if the contents had been developed by it and was to be retained in confidence by it.
  - e. UNIVERSITY agrees to license any intellectual property background rights developed by those investigators funded by the CENTER and necessary to practice rights developed by or at the CENTER, to the extent the UNIVERSITY is legally able. COMPANY and UNIVERSITY agree to negotiate such license for available background rights in good faith at terms and conditions standard in the industry.
8. Research projects recommended by the Center Advisory Board will be known as Core Research Projects and will be governed by this Agreement. Subject to Arizona Board of Regents policies, the CENTER may also carry out a limited number of directed research projects known as non-core research projects ("Non-Core Projects"). A member approved for a Non-Core Project must be a member of the CENTER. An independent work scope for Non-Core Projects, including budget, shall be agreed upon by the proposing company(s) and the UNIVERSITY and shall contain sufficient detail to distinguish any intellectual property that may be developed under the Non-Core Project from the Core Research Projects. The terms and conditions for Non-Core Projects

including but not limited to indirect cost, intellectual property ownership and license rights provisions are not part of this Agreement but rather will be individually negotiated with the Office for Research and Sponsored Projects Administration or the ORC&L in accordance with ASU Policy and Procedures.

9. The parties agree to comply with all applicable state and federal laws and/or rules concerning equal opportunity and nondiscrimination.

10. The parties agree that should a dispute arise out of this Agreement, involving the sum of \$30,000 or less, exclusive of interest, costs, and attorney's fees, the parties shall submit the matter to binding arbitration according to the Arizona Supreme Court Rules for Compulsory Arbitration and the decision of the arbitrator(s) shall be final and binding upon the parties. (Sections 12-1518 and 12-133, Arizona Revised Statutes).

11. Dispute Resolution. If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809.

12. COMPANY shall not use the Arizona State University or CENTER'S names in any advertising or promotional material without first having the proposed use approved in writing by the UNIVERSITY'S Vice Provost for Research or his designee. Neither UNIVERSITY nor CENTER shall use COMPANY'S names in any advertising or promotional materials, other than as a list of current members, without the prior written consent of the appropriate company official. The parties agree to negotiate in good faith regarding joint press releases and joint advertising opportunities regarding this Agreement and the relationship it creates.

13. The provisions contained herein constitute the entire Agreement and supersede all previous communications or representations, either verbal or written, between the parties hereto with respect to the subject material hereof. This agreement may not be changed, altered, or supplemented except by written amendment hereto, signed by both parties.

14. The parties have previously executed Corporate Non-Disclosure Agreement ("CDNA") # \_\_\_\_\_ dated \_\_\_\_\_ which shall govern the exchange and protection of each party's confidential information. Unless a disclosure is subject to such CDNA, University personnel will not be responsible for keeping confidential any information disclosed by COMPANY.

15. This Agreement is subject to Section 38-511, Arizona Revised Statutes. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of University is an employee, consultant, or agent of any other part to this Agreement.

16. This agreement is made under and shall be construed and enforced in accordance with the laws of the State of Arizona.

17. Any payment, notice, or other communication required or permitted to be made or given to either party pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to the party by certified or registered mail, postage prepaid, addressed to it at its address set forth or to such other address as it shall be designated by written notice to the other party as follows:

In the case of ASU:

Director  
Center for Advancing Business through Information Technology  
College of Business  
Arizona State University  
P. O. Box 873606  
Tempe, AZ 85287-3606

Office of Technology Collaborations & Licensing  
Office of the Vice Provost for Research  
Arizona State University  
P. O. Box 875311  
Tempe, AZ 85287-3511

In the case of COMPANY:

Company Name  
ADDRESS  
ADDRESS  
Attn: XXXXXXXXXXXXX

18. The Parties recognize that performance by the UNIVERSITY depends upon appropriation of funds by the State Legislature of Arizona. If the Legislature fails to appropriate the necessary funds, or if the UNIVERSITY's appropriation is reduced during the fiscal year, REGENTS may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. UNIVERSITY agrees to notify the COMPANY as soon as reasonably possible after the REGENTS becomes aware of the loss of funding or potential loss of funding.

19. No Agency. Nothing in this Agreement creates any partnership, joint venture, or agency relationship between the parties. Neither party has any authority to enter into agreements of any kind on behalf of the other party or to bind or obligate the other party in any manner to any third party.

20. No Assignment. UNIVERSITY represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party, and further agrees that it may not assign, transfer or delegate this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without COMPANY's prior written consent, which shall not be unreasonably withheld. A change in control shall be deemed an assignment subject to this paragraph. Any attempted assignment in contravention of this Agreement shall be null and void.

21. Force Majeure. No party shall be liable for any failure to perform its obligations under this Agreement where such failure results from any act of nature or other cause beyond such party's reasonable control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative.

I have read this agreement and  
Understand my obligations thereunder.

APPROVED FOR: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

Director, CABIT  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date