

**Center for Multiphase Flow Research and Education
Industrial Membership Agreement**

This Center for Multiphase Flow Research and Education Industrial Membership Agreement (“Membership Agreement”) is made this **DATE** (“Effective Date”) by and between **Iowa State University of Science and Technology** (“University”) and **COMPANY NAME** (“Company”) for the **Center for Multiphase Flow Research and Education** (“CoMFRE”). Capitalized terms not defined herein shall have the meanings set forth in the Operating Procedures, attached hereto as APPENDIX I. University and Company are each individually referred to as a “Party” and collectively the “Parties”.

WHEREAS, the Parties to this Membership Agreement intend to join together in a cooperative effort to support CoMFRE as led by the University.

The Parties hereby agree to the following terms and conditions:

A. **CoMFRE OPERATIONS.** CoMFRE will be administered by the Director and operated by CoMFRE-affiliated faculty, staff and students at the University.

B. **CoMFRE MEMBERS.** Any company, corporation, non-profit organization, commodity group, government organization, or other organization may become a Member of CoMFRE upon execution of this Membership Agreement and payment of the Membership Fee, consistent with applicable state and federal laws and statutes.

C. **FEES.** Company agrees to contribute one of the following annually in support of CoMFRE and thereby becomes a Member (“Membership Fee”) (please check one). July 01 – June 30 will be the fiscal year for CoMFRE. Company annual support for the first year will be pro-rata, based quarterly on the Effective Date.

___ \$50,000 for companies with more than 500 employees

___ \$25,000 for companies with 100-500 employees

___ \$5,000 for companies with fewer than 100 employees

___ \$1,000 for non-profit entities

Payment of Membership Fee shall be made as a fixed sum due in full by July 30th each year of Membership, or within 30 days of invoice for the first year. To account for normal increases in costs associated with running the center, the cost of membership will increase by 15% every five years. For clarity, the first scheduled increase will be made July 2022. Invoice(s) shall be sent in accordance with the “Invoice To” information as stated on the Purchase Order associated with this Membership Agreement. University will include the company code (CC), the Sponsor contract number and the PO # on all invoices.

Checks from Company should be made payable to “Iowa State University” (TIN 42-6004224) and mailed to Iowa State University, Sponsored Programs Accounting, 2221 Wanda Daley Drive, Administrative Services Building, Room 1810, Ames, IA 50011-1004 with a note in the memo section indicating the payment is for “CoMFRE”.

Because research of the type to be done by CoMFRE takes time and research results may not be obvious immediately, Company should join CoMFRE with the intention of remaining a Member for at least three years.

D. INDUSTRIAL ADVISORY BOARD. There will be an Industrial Advisory Board composed of one representative from each Member. This board provides input on (a) the research projects to be carried out by CoMFRE and (b) approval of and changes in the Operating Procedures.

E. CONFIDENTIALITY. Company agrees to hold in confidence all data and other research results derived from projects using Membership Fees and provided to them by University until such data and/or other research results have been made public and/or patent protection has been applied for. Company shall not use data and/or other research results derived from projects using Membership Fees as a basis for Company-filed patent applications.

F. PUBLIC DISCLOSURE. University reserves the right to publicly disclose the results of any Shared Research performed by CoMFRE. Company, however, shall have the opportunity to review any public disclosure containing results of the Shared Research prior to public disclosure, and shall have the right to request a delay for a period not to exceed thirty (30) days from the date of submission to Company, provided that Company makes a written request and justification for such delay within thirty (30) days from the date the proposed public disclosure is submitted to Company.

G. INTELLECTUAL PROPERTY.

1. All patent claims derived from inventions conceived or first reduced to practice in the course of Shared Research conducted by CoMFRE shall belong to University.
2. University agrees that all CoMFRE Members shall have a nonexclusive, royalty-free license to any patents that arise from the Shared Research for internal research and development purposes.
3. University agrees that all CoMFRE Members are each entitled to have an option to a nonexclusive royalty-free license to any patents that arise in the course of Shared Research for non-research and development purposes. Such nonexclusive license will include the right for Company to sublicense to its subsidiaries and affiliates. Companies that wish to exercise rights to a nonexclusive, royalty-free license agree to pay patent application and maintenance costs on a pro rata basis. The option shall expire four (4) months after the Company is notified of a potentially patentable invention.
4. If only one Company seeks a license, that Company may negotiate an exclusive fee-bearing license with the right to sublicense.
5. Copyright registration shall be obtained for software developed by CoMFRE. Company shall be entitled to a nonexclusive, royalty-free license to all software developed by CoMFRE. Company will have the right to enhance and to re-market enhanced software with royalties due to CoMFRE to be negotiated, based on the worth of the initial software, but not to exceed 25% of a fair sale price of the enhanced software product sold or licensed by Company.

H. LIABILITY/NO WARRANTY.

1. Liability. Neither Party is assuming any liability for the actions or omissions of the other Party. Company assumes no liability for the actions or omissions of CoMFRE or any other Member.
2. Indemnification.

(a) To the extent allowed by law, each Party will indemnify and hold the other Party harmless against all claims, liability, injury, damage or cost arising out of third party claims (i) based upon injury or death to persons, or loss of, damage to, or loss of use of property that arises out of the performance of this Membership Agreement to the extent that such claims, liability, damage, cost or expense results from the negligence of a Party's agents or employees; or (ii) any other non-compliance or breach of this Membership Agreement on the part of a Party.

(b) The indemnity provided by Company for any claim or lawsuit shall not extend beyond that indemnity which University is permitted by applicable law to provide for such claim or lawsuit. The indemnifying party shall not be liable to the extent claims result from or arise out of the negligence, recklessness or willful misconduct of the indemnified party.

(c) Company's indemnity is conditioned upon University's obligation to: (i) advise Company of any claim or lawsuit, in writing within fifteen (15) days after University has received notice of said claim or lawsuit; (ii) assist Company and its representatives in the investigation and defense of any claim or lawsuit for which indemnification is provided; and (iii) not compromise or otherwise settle any such claim or lawsuit without Company's prior written consent.

3. Warranty. EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY AND ALL INTELLECTUAL PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY EITHER PARTY PURSUANT TO THIS MEMBERSHIP AGREEMENT ARE ON AN "AS IS" BASIS. ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.
4. Limitation of Liability. EXCEPT WITH RESPECT TO CLAIMS ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, A PARTY SHALL NOT BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE) BREACH OR STATUTORY DUTY OR OTHERWISE, IN CONNECTION WITH OR ARISING IN ANY WAY OUT OF THE TERMS OF THIS MEMBERSHIP AGREEMENT OR TRANSACTIONS CONTEMPLATED HEREBY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

I. NOTICES. Any official notice, invoice, and other correspondence between the parties under this Membership Agreement shall be in writing and delivered by no less than First Class U.S. Mail service or facsimile transmission addressed to the other party's administrative contact as follows:

	Company	CoMFRE Administrative	ISU: Business Matters
Name		Theodore J. Heindel	Lisa Lorenzen
Title		Director, CoMFRE	Executive Director, OIPIT/ISURF
Address		2624 Howe Hall 537 Bissell Rd Ames, IA 50011-1096	1805 Collaboration Place, Suite 2100 Ames, IA 50010-9166
Phone		515.294.0057	515.294.4740
Email		theindel@iastate.edu	industry-contracts@iastate.edu
		With a copy to jseibel@iastate.edu	

J. TERMINATION.

1. Company may terminate this Membership Agreement by giving University thirty (30) days' written notice. Membership Fees paid by Company are not refundable in the event of termination pursuant to this Section J (1).
2. University can terminate this Membership Agreement upon at least thirty (30) days prior written notice to Company if University decides to discontinue its involvement in CoMFRE. In the event of termination pursuant this Section J (2), CoMFRE shall refund Company the pro rata amount of Company's Membership fees for that year as of the date of University's termination notice.
3. Termination or cancellation of this Membership Agreement shall not affect the rights and obligations of the Parties accrued prior to termination.

K. OTHER.

1. Compliance with Law. Each Party shall act in compliance with all applicable federal, state, and local laws, regulations and guidelines including all health and health care, safety, and environmental standards and requirements, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and similar state laws, the Controlled Substances Act, as amended, and regulations promulgated thereunder, including the U.S. Drug Enforcement Agency (DEA) regulations at 21 C.F.R. § 1300 et seq., and similar state laws, and the Federal Food, Drug, and Cosmetic Act (the "Act"), as amended, and regulations promulgated thereunder in its performance under this Membership Agreement.
2. Debarment and Exclusion. CoMFRE represents, warrants and covenants that (a) CoMFRE and Principal Investigator are not currently, have never been, and, to the best of CoMFRE's knowledge, are not the subject of a proceeding that could lead to CoMFRE or Principal Investigator becoming, as applicable, (i) debarred by the FDA under 21 U.S.C. § 335a, (ii) excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs, (iii) listed on the FDA's Disqualified and Restricted Lists for clinical investigators, or (iv) convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible; and (b) CoMFRE shall not engage, directly or indirectly, any person to perform services under this Membership Agreement if that person has ever been, is currently, or, to the best of CoMFRE's knowledge, is the subject of a proceeding that could lead to that person becoming, as applicable, any of (i)-(iv) above. In the event that CoMFRE receives notice of, or otherwise

becomes aware of, the debarment, proposed debarment or such other exclusion, suspension, restriction or sanction of itself, Principal Investigator, or any person providing services in connection with the performance of this Membership Agreement, CoMFRE shall notify Company immediately and Company shall have the right to immediately terminate this Membership Agreement.

- 3. Antitrust. Each Member has the independent right and obligation to protest any activity that it believes threatens to violate the antitrust or competition laws, and nothing contained in this Membership Agreement shall limit the Member from any necessary corrective action to prevent any perceived antitrust violation, including but not limited to disclosure of the alleged unlawful practice or disassociation from any such discussions or activities. A Member has an affirmative obligation to report, terminate and leave any meeting in which the aforementioned perceived violations are believed to have happened.
- 5. Counterparts. This Membership Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, University and Company have caused this Membership Agreement to be executed by their duly authorized officials, to be effective as of the Effective Date.

COMPANY:

_____/_____
Name: _____ Date
Title: _____

IOWA STATE UNIVERSITY
Read and understood:

Agreed and accepted:

_____/_____
Name: Dr. Theodore J. Heindel Date
Title: Director, Center for Multiphase Flow
Research and Education,
Professor of Mechanical Engineering

_____/_____
Name: Peter Gudlewski Date
Title: Industry Contracts Negotiator
Office of Intellectual Property and Technology
Transfer