

Center for Embedded Systems for Critical Applications (CESCA) Industry Affiliate Membership Agreement

This Industry Affiliate Membership Agreement (hereinafter "Agreement") establishes an Industrial Affiliate Program between the entity identified below (hereinafter "Member") and the Center for Embedded Systems for Critical Applications (hereinafter "CESCA") at Virginia Polytechnic Institute and State University (hereinafter "University" or "Virginia Tech"), a state agency and educational institution of the Commonwealth of Virginia.

The Member joins this CESCA Industry Affiliate Program (hereinafter "CESCA Program") under the following terms and conditions.

ARTICLE 1: MEMBERSHIP

Member: Name:

 Address:

 Contact Person:

Membership is available at the following levels:

- **Associate member** (\$10,000 per year)
- **Principal member** (\$40,000 per year)

Benefits accruing to each membership level are described in Article 7.

Level of membership per this agreement: _____member

for an annual commitment of: \$_____/year

One year membership period: _____, 20____ through _____, 20____

ARTICLE 2: PURPOSE

The purpose of this CESCA Program is to establish close cooperation and information/technology transfer between groups interested in supporting the research and education activities of CESCA at Virginia Tech.

ARTICLE 3: RESEARCH MISSION

CESCA brings together numerous faculty members, post-doctoral researchers, and graduate/undergraduate students, whose expertise spans a broad range of disciplines, to form a large research group that focuses on challenging problems in embedded computing and communication

systems. The primary mission of CESCA is to nurture a research environment that produces state-of-the-art solutions for the most challenging engineering problems of today. The center also provides high-caliber educational experience for graduate and undergraduate students so that they can become the future leaders in academia, industry, and government.

ARTICLE 4: UNIVERSITY OBLIGATIONS

The University will use its best efforts to organize, direct, and administer the research activities of the CESCA Program in accordance with the terms of this Agreement. The University will, to the extent possible, take Members' suggestions into account in selecting research topics, adopting research methodology, and directing research activities in an effort to maximize use of membership fees. The University will retain ownership of intellectual property generated by the University under research sponsored by CESCA membership fees ("CESCA Project IP") and will assign all CESCA Project IP to the Virginia Tech Intellectual Properties, Inc. (VTIP, a nonprofit corporation that manages intellectual property of the University).

ARTICLE 5: FEES

The Member hereby commits to provide the annual fees as indicated in Article 1. At the sole discretion of the CESCA Program Director and with concurrence from the Department Head of the Bradley Department of Electrical and Computer Engineering (ECE), donations, sponsored research projects, or other non-cash items may be used as the Member's fee (for example, donations of goods or services). In all cases, any non-cash payments must meet or exceed the cash equivalent payment for membership.

ARTICLE 6: ORGANIZATION

6.1 Program Director. The CESCA Program will be under the direction of the Director of CESCA who is elected by CESCA members. He/she will manage the overall activities of the CESCA Program, including coordinating research activities, and establishing the operating and research budget. The ECE Department will provide financial and organizational oversight of CESCA and its budget.

6.2 Advisory Committee.

6.2.1 An Advisory Committee for the CESCA Program has been established to aid in identifying important issues for investigation, assist in establishing a research agenda, and advise on prioritizing research tasks. The Advisory Committee shall provide advice and make recommendations to the CESCA Program Director in developing strategic plans, directions, and policy for the Program.

6.2.2 Each Member shall be entitled to appoint one representative to serve on the Advisory Committee. These representatives may be replaced at any time at the election of the respective Member. The University shall have three (3) representatives on the Advisory Committee, one which shall be the CESCA Program Director.

6.2.3 The Advisory Committee shall meet annually to discuss the research agenda, progress on current projects and new research initiatives. To the extent possible, at least thirty (30) days advance notice will be provided prior to the meeting.

6.2.4 The Chair of the Advisory Committee shall be the CESCA Program Director, who will preside over the committee meetings and will be responsible for maintaining communications with committee members.

- 6.2.5 The ECE Department Head or designee will serve as an *ex officio* member of the Advisory Committee.

ARTICLE 7: PARTNER BENEFITS

7.1 Associate Member Benefits

Associate Members shall be entitled to the following benefits:

- Associate Members are recognized on the CESCA web site as an Industry Affiliate Program Member.
- Associate Members will have a non-exclusive, royalty-free, non-transferable (except to a successor of such Associate Member's business and assets relating to the subject of this Agreement) license to non-commercially use the CESCA Project *intellectual property (IP)* generated during their membership period.
- Associate Members are given an option to negotiate a commercial license to *IP rights* on reasonable terms and conditions for CESCA Project IP generated during their membership period, provided no Principal Member has exercised its six month option rights to such CESCA Project IP.
- Associate Members are given early access to all submitted publications (i.e., conference and journal papers) as well as software tools and libraries via a password-protected portion of CESCA's website.
- Associate Members are given the opportunity to meet, interact, and recruit CESCA's talented students, who are highly trained in various areas related to embedded systems. Associate Members are given access to a *student resume database* via a password-protected portion of CESCA's website. CESCA will provide specific assistance with student recruiting, including posting of notices of recruiting events, circulation of e-mail recruiting announcements, the use of group facilities for in-lab recruiting events, personal introductions (facilitated by CESCA faculty) to students of interest, and faculty attendance at recruiting functions. CESCA can also help identify appropriate internship and co-op students.
- To more strongly foster interaction, a faculty will be designated as a point of contact for each Associate Member. This faculty member will be the first point of contact for the Associate Member. Associate Members will also receive a copy of the *annual report*, which describes the research activities within CESCA.
- Upon an Associate Member's request, faculty or students of CESCA can provide informal advice, more substantial technical consultation at nominal cost, or can recommend suitable experts.
- Each Associate Member will be given access to the CESCA *newsletters* and recorded CESCA seminars.

7.2 Principal Member Benefits

Principal Members will have all the benefits of Associate Members plus the following additional benefits:

- Principal Members will be given the opportunity to support a *graduate student fellowship*. The student awarded with the fellowship will explore a research area that is of interest to the sponsoring Principal Member, consistent with CESCA's strategic plans. The student and the

Principal Member are encouraged to consider summer internship or exchange arrangements and to collaborate on research/thesis directions. Principal Members will receive notification of any CESCA *Project IP that is generated* during their membership term. Principal Members will have a six month option from the date they receive the invention disclosure to:

- a) obtain a non-exclusive, royalty free license in return for reimbursing VTIP for patent costs and associated VTIP administrative fees. Such costs and fees shall be split among all Principal Members exercising this option; or
 - b) the option to negotiate an exclusive royalty bearing license on reasonable terms and conditions, provided no other Principal Member exercises the option for a non-exclusive license under section (a) herein.
- Annual visits by the point of contact will be made to the Principal Member's facilities (if requested by the Principal Member) to summarize specific research activities in the Principal Member's area of interest. These visits will also provide opportunities for technical exchange in common areas of interest.
 - A Principal Member will have the option to suggest its membership fees be directed to support specific CESCA research areas.

ARTICLE 8: COSTS AND PAYMENT

Membership fees shall be made payable to the Virginia Tech Foundation and mailed to the following address:

CESCA (ATTN: Jung-Min "Jerry" Park)
302 Whittemore Hall (mail code: 0111)
Electrical and Computer Engineering Department
Virginia Tech
Blacksburg, VA 24061

All membership fees will be maintained in a separate account and shall be expended for wages, supplies, equipment, travel, and other expenses in connection with the CESCA Program. The title to any equipment purchased for the CESCA Program with membership fees shall vest in the University. The University will keep complete and systematic written financial records related to the CESCA Program. All such records will be available for inspection by a designated representative on the Advisory Board, and copies of all or any part of such records shall be furnished to the Advisory Board upon request.

ARTICLE 9: TERM AND TERMINATION

The term of this Agreement is for a one (1) year period as designated in Article 1, and will automatically renew for successive one-year periods unless terminated by written notice from either Member or University. Membership will be on a rolling year basis, starting on the date this Agreement is executed.

This Agreement may be terminated by the mutual consent of the parties, 30 days after written notice from e Member, or upon termination of the CESCA Program by the University. In the event that either party commits a material breach or default in any of the terms or conditions of this Agreement, and that party fails to remedy that default or breach within thirty (30) days after receipt of notice from the other party, the party giving notice may, at its option, terminate this Agreement effective within another thirty (30) day period. Except in the case of default by the University or termination of the CESCA Program, early withdrawal will not entitle Member for refund on a pro-rata basis.

ARTICLE 10: CONFIDENTIAL INFORMATION

During the performance of activities under the CESCA Program, it may be necessary for Members and University to make confidential technical or business information available. Any Member providing or acquiring access to confidential information shall enter into a mutually agreeable nondisclosure agreement.

ARTICLE 11: WARRANTY AND LIABILITY

11.1 University represents that it has adequate liability self-insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment. University has no liability insurance policy as such that can extend protection to any other person.

Each party hereby agrees to be responsible and assume responsibility for its own wrongful or negligent acts or omissions, if any, pertaining to its participation hereunder, or those of its own officers, agents, or employees thereof.

11.3 Member acknowledges that the CESCA Program results will be provided to Member on an "AS IS" basis for use by Member and any third party to which Member may extend the right to use the CESCA Program results at Member's sole risk and responsibility. Further, Member hereby agrees to defend, indemnify and hold University harmless against all claims, demands, losses, damages, causes of action, and other liabilities of every kind (whether based in contract, tort, or other legal theory) by all parties for personal injury, death, or property damage or loss which arises out of or results from any use of the CESCA Program results by Member or any third party to which Member may extend the right to use the CESCA Program results.

11.4 In no event shall any party be liable to any other party for any consequential, indirect, incidental or special damages, including loss of profit or business interruption arising out of the use or inability to use the data and information obtained from the CESCA Program, or from any other claim arising from this Agreement.

11.5 EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, UNIVERSITY DISCLAIMS ANY AND ALL OTHER WARRANTIES; EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12: MISCELLANEOUS

12.1 No Member shall use the name of another Member in any advertising or publication relating to the subject matter of this Agreement without that other Member's prior written consent. The University shall not use the name of a Member in any advertising or publication relating to the subject matter of this Agreement without that Member's prior written consent.

12.2 The validity and interpretation of this Agreement will be governed by the laws of the Commonwealth of Virginia, without regard to the conflicts of laws and provisions thereof.

12.3 This Agreement may be assigned by either party to any of its affiliates, but may not otherwise be assigned without the party's prior written consent which will not be unreasonably withheld.

12.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition or any other term or condition by the other party.

12.5 Each clause of this Agreement is a distinct and severable clause, and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby. This Agreement states the entire understanding between University and Member and supersedes, cancels and merges all prior representations, understandings, covenants, or agreements, whether oral or written with respect to the CESCA Program. No change, alteration, or modification to this Agreement will be effective unless it is in writing and signed by the authorized representatives of both University and Member.

In consideration of the foregoing terms and conditions, the parties through duly authorized representatives have executed this Agreement.

MEMBER: _____	VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
By: _____	By: _____
Typed Name: _____	Typed Name: Scott F. Midkiff
Title: _____	Title: Head, Bradley Department of Electrical and Computer Engineering
Date: _____	Date: _____