



# V4 Institute

Virtual Verification Validation and Visualization Institute

## Membership Agreement

Version September 01, 2020

This Agreement, effective as of the date of last signature ("**Effective Date**"), is by and between the National Center for Defense Manufacturing and Machining ("**NCDMM**"), a 501(c) (3) non-profit corporation registered in the Commonwealth of Pennsylvania, located at 486 Cornell Road, Blairsville, PA 15717, manager of the Virtual Verification Validation & Visualization Institute, ("**V4I**" or "**V4I Consortium**" or "**Consortium**") and \_\_\_\_\_, a \_\_\_\_\_ registered under the laws of the State (or Commonwealth) of \_\_\_\_\_ ("**Organization**"), either or both of which may be hereinafter referred to as a "Party" or the "Parties" respectively.

The term Parties as used herein, also include signatories to counterparts of this Agreement executed by other Organizations and NCDMM.

The terms "**Member**" or "**Members**" as used herein may refer to any Party or Parties respectively other than NCDMM.

WHEREAS, the Parties to this Agreement intend to collaborate to support V4I for the purpose of establishing a forum for the manufacturing industrial base, university and US Government to collaborate, in a pre-competitive environment, to advance technologies required to implement computational modeling and simulation concepts and technology, and to develop the workforce skills required to support computational modeling and simulation in the United States for the benefit of the defense and non-defense sectors ("**V4I Purpose**"); and

WHEREAS, NCDMM serves as the program manager and fiscal agent for V4I and is authorized to receive and commit membership payments on behalf of V4I; and

WHEREAS, NCDMM administers all other aspects and performs all other activities of V4I; and

WHEREAS, Organization wishes to become a Member of V4I and thereby obtain the benefits of membership and NCDMM desires to accept Organization as a Member of the V4I; and

WHEREAS, Organization intends to be a Party to and negotiate separate project agreements for conducting computational modeling and simulation applied research and development activities under this Agreement ("**Project Agreements**").

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereto agree to the following terms and conditions:

## 1. DEFINITIONS

- 1.1. **“Affiliates”** means an entity which: (a) controls or is controlled by Organization or (b) is under common control by Organization: where “control” means more than fifty percent (>50%) of the controlled entity’s shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity.
- 1.2. **“Background Intellectual Property (“BIP)”** is defined as Party’s IP acquired or developed by or for it (i) prior to the Effective Date of this Agreement; or (ii) subsequent to the Effective Date of this Agreement, which were not developed in the course of performance of any sub award project under a separate Project Agreement directed to Consortium Research and during the term of such separate Project Agreement, and without using the Proprietary Information or Intellectual Property of any other Party.
- 1.3. **“Consortium Developed Intellectual Property (“CDIP)”** is defined as individually and collectively all IP which is conceived or made solely or jointly by Member(s) during the performance of a sub award project under a separate Project Agreement directed to Consortium Research and during the term of such separate Project Agreement.
- 1.4. **“Consortium Research”** is defined as research supported by membership fees and/or incorporates funds provided to NCDMM for V4I under future grants.  
Consortium Research does not include:
  - 1.4.1. Research carried out by Parties or Members under separate contract unless specified therein;
  - 1.4.2. Research fully funded by a Member without using any membership fees or any funds provided to NCDMM for V4I; or
  - 1.4.3. Research carried out independently by a Member using V4I Infrastructure Access.
- 1.5. **“Executive Committee”** is defined as the elected individuals from the Governance Board who will provide guidance regarding V4I activities and provide input on behalf of the membership.
- 1.6. **“Governance Board”** is defined as the V4I body which provides guidance to the Consortium regarding V4I activities.
- 1.7. **“Intellectual Property (“IP)”** means all current and future intellectual property rights throughout the world, including rights in and to know-how, copyrights, trade secrets, trademarks, mask works, patents, design rights, trade dress and any other intellectual property rights in each case whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing.

- 1.8. **“Proprietary Information”** is defined as any information disclosed to a receiving Party which is declared by the disclosing Party to be proprietary and marked in accordance with the procedures set forth in Section 5.1. However, Proprietary Information shall not include any information which:
- (a) Is already known to the general public at the time of disclosure;
  - (b) became generally available to the public after the disclosure through no fault of breach by the receiving Party;
  - (c) Is disclosed in good faith to receiving Party by a third party having a lawful right to do so without limitation; or
  - (d) As demonstrated by prior written records, is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; or
  - (e) Is developed independently, without reference to or use of Proprietary information of the disclosing Party, by representatives of the receiving Party as evidenced by the receiving Party’s written records; or
  - (f) Is the subject of written consent or authorization of the disclosing Party authorizing disclosure.
- 1.9. **“V4I Infrastructure Access”** includes V4I Consortium facilities, computer systems, and equipment.

## 2. CONSORTIUM ADMINISTRATION

- 2.1 The V4I Consortium is operated as a program administered by NCDMM with the support of NCDMM staff and its established procedures and capabilities.
- 2.2 V4I shall be headed by a Director (**“Director”**) who shall manage strategic operations under guidance from the V4I Executive Committee, made up of representatives elected by the V4I Governance Board.
- 2.3 Each V4I Platinum Member (as described in Exhibit 1), while a Member-in-Good-Standing (as defined in Section 3.3 below), may appoint an individual to serve as its representative on the Governance Board. Gold Members will appoint an individual to serve by proxy vote as determined by membership (as described in Exhibit 1). Governance Board terms are annual based on a Member organization’s membership Anniversary Date as defined in Exhibit 1, item 3, and are limited to the period during which the Member’s organization remains a Member-in-Good-Standing of the Consortium.
- 2.3.1 The Governance Board shall provide input and recommendations from the Consortium membership to the Executive Committee.
- 2.4 The Executive Committee shall consist of at least five (5) positions elected from the Governance Board, and shall be representative of the organizational segmentation of the Membership as a whole. Executive Committee terms shall be for one (1) year, with a maximum of three (3)

consecutive terms per individual. Government Members may have no more than five (5) consecutive terms.

- 2.5 NCDMM senior program managers shall be responsible for each of V4I's specific program focus areas and shall use an NCDMM managed competitive process to solicit and select projects for funding, based on selection criteria consistent with the purpose and requirements of the funding stakeholder and the manufacturing community.
- 2.6 V4I may accept funding from external sources, including but not limited to, states, federal, foundations, or donations, provided such funding and accompanying directions from funder are consistent with V4I Purpose. Unless otherwise directed by funding source, such funding provided for a specific purpose, such as a project or grant, in excess of needs for said purpose, shall only be used in similar manner as annual fees as states in Section 3.5. For any government funded project, any relevant government flow down terms shall be added to said Project Agreement and shall take precedence over terms in this Agreement.
- 2.7 NCDMM may elect to allow non-Member organizations to participate in V4I projects provided the non-Member is a party to a Project Agreement and that said terms are flowed down through said Project Agreement to any subcontractors.

### **3. MEMBERSHIP AND BENEFITS**

- 3.1 V4I membership is open to all US industrial organizations, academic institutions, non-profit organizations and governmental agencies interested in furthering computational modeling and simulation technology and education. A Member shall join the Consortium with the intention of remaining an active, fees paying Member for at least three (3) years.
- 3.2 Exceptions for membership in V4I by a foreign-owned or partially foreign-owned organization could be warranted when the organization's participation in V4I would be in the economic interest of the United States and aligned with the vision and mission of V4I. Application for membership is submitted in writing to the Director and is subject to an approval process.
- 3.3 Membership fees and benefits vary with the membership tier joined and are detailed in Exhibit 2. Upon joining V4I, Member's shall complete Exhibit 1, which includes selection of membership tier to be joined. "**Member's Annual Enrollment Date**" is the effective date of executing this Agreement between such Member and NCDMM. The first twelve (12) month annual membership fee shall be paid within ninety (90) days following Member's receipt of the invoice for such membership fees. Payment for subsequent membership years will be invoiced on the Member's Annual Enrollment Date. To remain a "Member-in-Good-Standing" within the Consortium and continue to receive the rights and benefits thereof, the Member shall pay the annual membership fee within ninety (90) days following Member's receipt of the invoice for such annual membership fees for each subsequent membership year. Membership fees are non-refundable. A Member may change their membership tier at the time they pay their fees.
- 3.4 Members whose payments are overdue shall receive notice from the Director. If payment is not received within thirty (30) days thereafter, the Membership shall be considered to be terminated on the date payment first became due and the Member shall be treated as a withdrawn Member. The withdrawn Member shall automatically cease to have the rights and

benefits of membership, and all Proprietary Information in writing, or other permanent visual form, shall promptly be returned or destroyed with confirmation in writing.

- 3.5 Annual fees shall be used to cover the costs of annual meetings, operating costs associated with administering the V4i Consortium and to support Consortium project execution.
- 3.6 A Member may withdraw from the Consortium by providing sixty (60) days advance written notice to the Director. A withdrawing Party shall be bound by the non-disclosure obligations set forth in Section 5, shall retain prior granted licenses under this Agreement, and is liable for its own continuing contractual obligations under any Consortium documents to which it is a signatory. Upon leaving the Consortium, the Member shall have no further right to share in the research results subsequently generated under the Consortium or in any CDIP resulting therefrom, excluding CDIP jointly developed by the withdrawing Party or that includes, incorporates, or is derived from technical contributions of the withdrawing Party (“**Withdrawing Party CDIP**”).
- 3.7 For Members that leave and subsequently rejoin the Consortium, research results generated or in any CDIP resulting therefrom, excluding Withdrawing Party CDIP, while not a Member shall be managed as BIP to be negotiated between Parties.
- 3.8 Membership fees shall be made payable to NCDMM and sent to:

NCDMM

Attn: Accounts Payable  
486 Cornell Road  
Blairsville, PA 15717

#### **4. INTELLECTUAL PROPERTY RIGHTS AND ACCESS**

- 4.1. Background Intellectual Property. Each Member shall retain all rights to its Background Intellectual Property; and the decision to make available any such Background Intellectual Property for use in a Member’s sub award project shall be at the sole discretion of each Member with respect to identification of all such Background Intellectual Property. No license or rights are granted to a Member’s Background Intellectual Property under this Agreement.
- 4.1.1. In the event that one Member may require use of another Member’s BIP that has been disclosed by a Member as part of the Consortium Research in order to successfully commercialize any CDIP, the Members agree to discuss potential licensing terms and conditions in a separate legally binding agreement between the Members, separate from this Agreement. Such separate BIP license agreements shall be negotiated in good faith with reasonable royalty terms. Member(s) are not required to license any such originating Member(s) BIP.
- 4.2. CDIP shall be owned by the respective inventing or creating Members, subject to any rights and/or any pre-existing rights of any third party and subject to the following conditions:
- 4.2.1. If a Party solely or jointly creates CDIP, the Party must disclose the creation of such CDIP to its technology transfer office, licensing office or other similar department (“**Party’s Tech Transfer Office**”). A non-confidential summary of the CDIP disclosed to the Party’s

Tech Transfer Office shall be sent to NCDMM as soon as practicable so that NCDMM can maintain a list of CDIP. CDIP to be filed with the relevant patent and trademark offices shall not be disclosed to NCDMM until after filing of the patent application. In the event that the CDIP is not filed as a patent application, a summary shall be submitted to NCDMM. The summary shall include sufficient technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and characteristics of the subject CDIP.

During the term of this Agreement, Members owning CDIP, whether solely owned or jointly owned, shall grant upon request (to the extent it may legally do so) to Members-In-Good-Standing at the time of creation license rights pursuant to rights due to such Member based upon its membership tier in Exhibit 2, Membership Benefits. Payment of patent expenses may be required of Parties granted non-exclusive, royalty-free commercial licenses by universities and other non-profit institutions.

- 4.2.2. Members are strongly encouraged to seek legal protection for inventions in the form of patents as soon as is reasonably possible. Protection of a Member's solely developed CDIP shall be done at Member's own expense and through use of their respective Party's Tech Transfer Office.

Each Member agrees to promptly notify NCDMM in writing of all such actions in which legal protection is or has been sought, so that NCDMM can enter such information in its invention disclosure database.

Jointly developed CDIP shall be owned by the relevant developing Members who shall retain a license to use said jointly developed CDIP in the event of withdrawal from V4I per Section 3.6.

In the event that Members with ownership rights for jointly developed CDIP choose to modify such ownership rights, such Members may negotiate a separate legally binding agreement provided that Members in Good Standing retain licenses pursuant to this Section 4.2.2 and Exhibit 2. In the event that a single Member with solely developed CDIP, or multiple Members with an ownership right for jointly developed CDIP elect not to file a patent application or to otherwise protect any CDIP, then such Member(s) agree to notify NCDMM in writing of their intent and must report any pending publication or presentation to NCDMM at the time of this notification. NCDMM may negotiate to obtain such protection at its own expense where Member(s) choose not to seek legal protection. Ownership of such CDIP shall remain with the originating Member(s), unless the originating Member(s) agree(s) to assign such CDIP to NCDMM through negotiation.

- 4.2.3. It is anticipated that one of the outcomes of an active CDIP licensing and commercialization plan is the generation of royalty income by a respective Member. It is acknowledged that Members of academic, government, and industry sectors will manage the disposition and reporting requirements of all royalties received in accordance with their institution's existing policies, through their Party's Tech Transfer Office.
- 4.2.4 To the extent Members are permitted to grant sublicenses to third parties based upon their membership tier in accordance with Exhibit 2, Membership Benefits, Members

shall be responsible for having any and all appropriate written agreements with such third parties to enable Member's compliance with this Agreement and for such parties' use of the CDIP in the same manner Member is responsible for its own use of such CDIP (e.g., violation of the license parameters set forth in this Section by a Member's contractor shall be considered a breach of this Agreement by Member).

- 4.3 Licenses granted under this Section 4 shall be subject to the following additional terms:
- 4.3.1. Any licenses granted to a Member as specified in this Section 4, for which Member does not have ownership interest, may become a royalty-bearing license at fair market value for such Member who is designated a Withdrawn Member.
  - 4.3.2. As a result of this Agreement, any and all rights and obligations of the Members to any CDIP resulting from use of any U.S. Government's facilities, equipment, or funds are subject to any and all applicable rights of the U.S. Government.
  - 4.3.3. Notwithstanding anything to the contrary in this Agreement, certain laws, regulations and/or policies may prevent and/or limit certain Members' ability to offer royalty-bearing licenses to CDIP that have previously been licensed by such Members on a royalty-free basis.
  - 4.3.4. Therefore, the ability to charge royalties to Gold Members, Silver Members, and/or third parties is subject to the granting Member's ability to do so in light of then-existing contractual obligations, legal and regulatory requirements, and policies of the granting Member.
- 4.4 Notwithstanding anything to the contrary in this Agreement, any Member's use or inclusion of any publicly available product or service provided by, or belonging to, another Party or its Affiliates or a third party ("Publicly Available Products") in connection with any project or deliverable under this Agreement shall be subject to such Party's (or third party's if applicable) standard terms and conditions governing the applicable Publicly Available Product.

## **5. PROPRIETARY INFORMATION**

- 5.1 In the normal and routine operation of V4I, there may be some occasions where one Party discloses information that is proprietary and confidential to the disclosing Party. All such information which a disclosing Party believes to be proprietary, confidential, trade secret or the like shall be provided in writing or other permanent visual form (such as, for example, a physical prototype, physical sample, photograph, video or sound recording on any type of recording media) and designated as proprietary with an appropriate restrictive legend stamped or marked thereon at the time of disclosure. Proprietary Information disclosed orally, must be identified as proprietary at the time of disclosure and summarized in writing as being proprietary within thirty (30) days of such disclosure. The receiving Party agrees to exercise the same care and safeguards with respect to Proprietary Information disclosed by the disclosing Party as used to maintain the confidentiality of its own information of like character, but in no event less than a reasonable degree of care.

- 5.2. The obligations of confidentiality and non-disclosure set forth in this Section 5 shall continue for a period of five (5) years from the termination or expiration of this Agreement or until the information ceases to fall under the definition of Proprietary Information.
- 5.3 If the receiving Party or any of its Representatives is legally required to disclose any Proprietary Information of the disclosing Party in connection with any legal or regulatory proceeding, to the extent permitted by applicable laws, the receiving Party will provide the disclosing Party with written notice within a reasonable time of such requirement or obligation (together with a copy of any relevant access request, court order, or other evidence giving rise to such requirement) to enable the disclosing Party to seek appropriate protective relief and/or to seek other remedies to oppose or narrow the scope of any required disclosure. The receiving Party will cooperate with the disclosing Party with respect to such matters and will in any event ensure disclosure only of such Proprietary Information as it has ascertained, after taking legal advice, it is legally compelled to disclose, and will ensure to the best of the receiving Party's ability that all Proprietary Information so disclosed is accorded confidential treatment in terms of this Agreement. The receiving Party will promptly notify the disclosing Party in writing of the means, content, and timing of each such disclosure prior to such disclosure being made to any third party or tribunal.

## 6. PUBLICATION

- 6.1. The Parties agree and expect that results of Consortium Research shall be published or otherwise made publicly available. Parties engaged in Consortium Research shall be permitted to present at symposia, national or regional professional meetings and to publish in journals, theses or dissertations, or by other means of their own choosing, the results of their research, provided that nothing will be done which could bar the availability of patent protection with respect to CDIP of a Member or V4I invention, or which would disclose Proprietary Information of any Member or of V4I or disclose information in violation of the applicable U.S. laws and regulations (e.g., the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR")) that govern the export of specific technical data and technologies, including software, prototypes and other intellectual property, to foreign countries and foreign nationals ("**Export Control Laws**").
- 6.1.1. A Party will not make a public disclosure without a review of the full text of the proposed publication, presentation or other form of public disclosure by the Member(s) involved, the Director as described below. The Member(s) involved and the Director shall be provided a copy of the proposed public disclosure at least one (1) month in advance of the submission of such proposed public disclosure and shall have two (2) weeks after receipt of said proposed disclosure to respond in writing to the submitting Party to identify Proprietary Information and/or to identify any potentially patentable CDIP and/or to identify any CDIP in which the submitting Party does not have an ownership interest. A submitting Party agrees to remove any identified Proprietary Information, potentially patentable CDIP and/or CDIP in which the submitting Party does not have an ownership interest prior to public disclosure (or, for potentially patentable CDIP in which the submitting Party does have an ownership interest, delay public disclosure for a period of sixty (60) days from the date of the response).



- 6.1.2. Notwithstanding anything to the contrary above, student theses and dissertations shall be subject to a separate review and comment process approved by V4I Governance Board wherein the student shall submit such student thesis or dissertation in draft form at least sixty (60) days in advance of the date of their final defense in order to afford an opportunity to identify Proprietary Information and/or identify any potentially patentable CDIP and/or any CDIP in which the Party's student does not have an ownership interest.
- 6.1.3. V4I and/or V4I Members may negotiate and implement a more restrictive public disclosure agreement than defined in paragraphs 6.1.1 and 6.1.2 for a specific project based on the need for extended non-disclosure of CDIP by the project participants.
- 6.1.4. An acknowledgment of funding and a disclaimer shall appear in the publication of any material, whether copyrighted or not, resulting from a V4I project incorporating funds granted in support of the V4I. The acknowledgement shall be based upon requirements of origin funding.

## 7. EXPORT CONTROL LAWS

- 7.1 The Parties shall comply with all applicable US laws and regulations (*e.g.*, the International Traffic in Arms Regulations (“**ITAR**”) and the Export Administration Regulations (“**EAR**”) that govern the export of specific technical data and technologies, including software, prototypes and other intellectual property, to foreign countries and foreign nationals (“**Export Control Laws**”). Specific requirements under the future Federal Grant(s) to NCDMM of funds for the Consortium would include:
  - 7.1.1. The Contractor's responsibility to comply with all applicable export control laws and regulations exists independent of, and is not established or limited by this Agreement.
  - 7.1.2. NCDMM acknowledges and agrees that projects expected to include access to and/or use of and/or creation of export-controlled materials, ITAR-controlled technologies, performance characteristics of military systems, and/or manufacturing technologies that are unique and critical to defense, shall be identified when such a project is being considered for funding.
  - 7.1.3. In addition, if a Party expects to include access to and/or use of and/or creation of export-controlled materials, ITAR-controlled technologies, performance characteristics of military systems, and/or manufacturing technologies that are unique and critical to defense, these shall be identified at the project call phase of the program.
  - 7.1.4. Any data subject to ITAR or EAR requirements must be identified by the disclosing Party with the appropriate export control marking prior to time of disclosure to the receiving Party.
  - 7.1.5. The receiving Party is under no obligation to accept such export controlled information. If the receiving Party accepts the export-controlled data, it is responsible for complying with all applicable export control laws and regulations.

- 7.2. Any Proprietary Information subject to ITAR or EAR requirements must be identified by the disclosing Party with the appropriate export control marking prior to time of disclosure to the receiving Party.

## **8. TERM AND TERMINATION**

- 8.1. The initial term of this Agreement shall commence as set forth in Section 3. Thereafter, this Agreement shall renew automatically upon payment of the annual membership fee for successive one (1) year terms commencing on the membership cycle date specified in Section 3.3 above.
- 8.2. If a Member elects not to renew this Agreement after any twelve (12) month term, it shall notify the Director, in writing, thirty (30) days prior to the start of their next membership term.
- 8.3. If a Party fails to remain a Member-in-Good-Standing, becomes insolvent, is adjudged bankrupt, is placed in receivership, makes an assignment for the benefit of creditors, or enters into any arrangement or composition with its creditors, this Agreement shall be deemed terminated to that Party.
- 8.4. If a Member violates its obligations under this Agreement, NCDMM may terminate this Agreement by sending a termination notice describing the noncompliance to that Party. Notwithstanding anything to the contrary in the foregoing, overdue payments will be handled in accordance with Section 3.3.
- 8.5. This Agreement may be terminated:
- 8.5.1. By NCDMM upon written notice to the Member if conditions preclude continuation of the Consortium; or
  - 8.5.2. At any time upon mutual written agreement of the Parties; or
  - 8.5.3. If this Agreement is determined by a court of competent jurisdiction to be illegal.
- 8.6. Upon termination or expiration of this Agreement for any reason, a Member shall destroy or return to the owning Party and/or the Director all CDIP in which it does not have an ownership or license interest and all Proprietary Information of other Members within its possession, including copies and portions thereof and updates and enhancements thereto in any form, including electronic versions contained on storage devices. Further, Member shall certify that all such Proprietary Information has been returned or destroyed. Each V4I Member shall retain in its possession all Background IP and/or CDIP in which it has an ownership or license interest. Individual Party termination or expiration of this Agreement does not affect the ownership standing in such IP.
- 8.7. In accordance with Sections 3.6 and 5.2 above, termination or expiration of this Agreement for any reason by a Member or NCDMM shall not relieve such Member of its non-disclosure obligations, and/or any contractual obligations under any of the Consortium documents to which it was a signatory.
- 8.8. In cases where Member individually terminates Agreement per Section 3.6 or allows Agreement to expire per Section 8.2, such Member shall retain use of CDIP under any licenses granted to it

prior to its departure (subject, however, to any adjustment of payments and royalties per Section 4.3 above). Such Member shall have no further rights to CDIP developed subsequent to its departure, excluding Withdrawing Party CDIP (defined in Section 3.6). Withdrawal or termination for any reason shall not relieve a Member of its own obligations to make available to other V4I Members-in-Good-Standing any CDIP licensed prior to its withdrawal from the V4I Consortium.

## **9. OTHER CONSORTIUM-RELATED PROJECTS**

- 9.1. Nothing in this Agreement shall be deemed to prevent NCDMM and any Member or any group of Members from entering into a separate research agreement not falling within the scope of this Agreement. In the event of any inconsistency between the terms of the separate agreement and the Membership Agreement, the terms of such separate agreement shall take precedence insofar as such separate agreement does not adversely affect the rights to IP or confidentiality granted to the Member under Sections 3, 4 and 5 of this Agreement.

## **10. MISCELLANEOUS**

- 10.1 This Agreement is not intended by the Parties to create or constitute a joint venture, partnership, trust, association taxable as a corporation or other formal business organization of any kind. This Agreement is not intended to create any rights or obligations other than those expressly stated herein. The Parties are independent contractors, and the employees of one shall not be deemed to be employees of any other. Nothing in this Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of the Parties.
- 10.2 No Party shall use the Proprietary Information of any Party or Member received under this Agreement for any activity other than the performance of V4I projects, and not in any other activity.
- 10.3 This Agreement shall be binding upon and inure to the benefit of the Parties. This Agreement shall not be assigned or transferred by a Party, in whole or in part to any third party without the prior written consent of V4I Director, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this Section shall be void.
- 10.4 All notices required to be given under this Agreement shall be in writing, and deemed effective upon receipt. For purposes of this Agreement, an electronic transmission affirmatively acknowledged by the intended recipient is considered a writing. Writing may also be deemed received by personal delivery or upon transmission by Certified Mail, FedEx with signature required or by UPS Second Day Air with signature required, to the Parties as listed below:

Organization:

NCDMM:

Attn: Gary Fleegle

486 Cornell Road

Blairsville, PA 15717

Organization designates the person listed in Exhibit 1 as the Organization's contact with V4I on technical matters.

Each Party reserves the right to change their designated contact person above and in Exhibit 1 by written notice to the other Party as provided in this Section.

- 10.5 Except as provided below, no amendment or modification of this Agreement shall be valid unless approved (2/3 majority) by the Governance Board. However, notwithstanding anything to the contrary in the foregoing, changes may be made in accordance with the Membership Agreement Amendment process attached hereto and made part hereof as Exhibit 3, and all Parties agree to abide by any changes approved through such process.
- 10.6 If a provision of this Agreement is rendered invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.7 The headings and captions of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.
- 10.8 Waiver of a breach of this Agreement shall not constitute a waiver of any other breach. Failure to enforce any provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provisions.
- 10.9 Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than the Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 10.10 No Party makes any representations or warranties with respect to its performance under this Agreement. ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).
- 10.11 This Agreement constitutes the entire agreement among the Parties and supersedes all previous oral or written agreements and understandings relating to the subject matter of this Agreement.

## 11. DISPUTE RESOLUTION

- 11.1 The Parties recognize that a dispute may arise relating to this Agreement (“**Dispute**”). Any Dispute, including Disputes that may involve the parent company, subsidiaries, or affiliates under common control of any Party, shall be resolved in accordance with this Section.
- 11.2 Mediation. The Parties shall first attempt in good faith to resolve any Dispute by confidential mediation in accordance with the then current *Mediation Procedure* of the International Institute for Conflict Prevention and Resolution (“**CPR Mediation Procedure**”) ([www.cpradr.org](http://www.cpradr.org)) before initiating arbitration. The CPR Mediation Procedure shall control, except where it conflicts with these provisions, in which case these provisions control. The mediator shall be chosen pursuant to CPR Mediation Procedure. The mediation shall be held in New York, New York.

Either Party may initiate mediation by written notice to the other Party of the existence of a Dispute. The Parties agree to select a mediator within twenty (20) days of the notice and the mediation will begin promptly after the selection. The mediation will continue until the mediator, or either Party, declares in writing, no sooner than after the conclusion of one full day

of a substantive mediation conference attended on behalf of each Party by a senior business person with authority to resolve the Dispute, that the Dispute cannot be resolved by mediation. In no event, however, shall mediation continue more than 60 days from the initial notice by a Party to initiate mediation unless the Parties agree in writing to extend that period.

Any period of limitations that would otherwise expire between the initiation of mediation and its conclusion shall be extended until 20 days after the conclusion of the mediation.

- 11.3 Arbitration. If the Parties fail to resolve the Dispute in mediation, and a Party desires to pursue resolution of the Dispute, the Dispute shall be submitted by either Party for resolution in arbitration pursuant to the then current CPR *Non-Administered Arbitration Rules* (“**CPR Rules**”) ([www.cpradr.org](http://www.cpradr.org)), except where they conflict with these provisions, in which case these provisions control. The arbitration will be held in New York, New York and shall be treated as confidential.

The arbitrators will be chosen from the CPR Panel of Distinguished Neutrals, unless a candidate not on such panel is approved by both Parties. Each arbitrator shall be a lawyer with at least fifteen (15) years of experience with a law firm or corporate law department of over twenty-five (25) lawyers or who was a judge of a court of general jurisdiction. To the extent that the Dispute requires special expertise, the Parties will so inform CPR prior to the beginning of the selection process.

The arbitration tribunal shall consist of three (3) arbitrators, of whom each Party shall designate one in accordance with the “screened” appointment procedure provided in CPR Rule 5.4. The chair will be chosen in accordance with CPR Rule 6.4.

If, however, the aggregate award sought by the Parties is less than \$5 million and equitable relief is not sought, a single arbitrator shall be chosen in accordance with the CPR Rules.

Candidates for the arbitrator position(s) may be interviewed by representatives of the Parties in advance of their selection, provided that all Parties are represented.

The Parties agree to select the arbitrator(s) within 45 days of initiation of the arbitration. The hearing will be concluded within nine (9) months after selection of the arbitrator(s) and the award will be rendered within sixty (60) days of the conclusion of the hearing, or of any post-hearing briefing, which briefing will be completed by both sides within forty-five (45) days after the conclusion of the hearing. In the event the Parties cannot agree upon a schedule, then the arbitrator(s) shall set the schedule following the aforementioned time limits as closely as practical.

The hearing will be concluded in ten (10) hearing days or less. Multiple hearing days will be scheduled consecutively to the greatest extent possible. A transcript of the testimony adduced at the hearing shall be made and shall be made available to each Party.

The arbitrator(s) shall be guided, but not bound, by the *CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration* ([www.cpradr.org](http://www.cpradr.org)) (“**the Protocol**”). The Parties will attempt to agree on modes of document disclosure, electronic discovery, witness presentation, etc. within the parameters of the Protocol. If the Parties cannot agree on discovery and presentation issues, the arbitrator(s) shall decide on presentation modes and

provide for discovery within the Protocol, understanding that the Parties contemplate reasonable discovery.

The arbitrator(s) shall decide the merits of any Dispute in accordance with the law governing this Agreement, without application of any principle of conflict of laws that would result in reference to a different law. The arbitrator(s) may not apply principles such as “amiable compositeur” or “natural justice and equity.”

The arbitrator(s) are expressly empowered to decide dispositive motions in advance of any hearing and shall endeavor to decide such motions as would a United States District Court Judge sitting in the jurisdiction whose substantive law governs.

The arbitrator(s) shall render a written opinion stating the reasons upon which the award is based. The Parties consent to the jurisdiction of the United States District Court for the district in which the arbitration is held for the enforcement of these provisions and the entry of judgment on any award rendered hereunder. Should such court for any reason lack jurisdiction, any court with jurisdiction may act in the same fashion.

Each Party has the right to seek from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc. to avoid irreparable harm, maintain the status quo, for all claims related to such Party’s intellectual property or rights therein, or preserve the subject matter of the Dispute. Rule 14 of the CPR Rules does not apply to this Agreement.

EXCEPT FOR CLAIMS RELATED TO INFRINGEMENT OR MISAPPROPRIATION OF A PARTY’S INTELLECTUAL PROPERTY, EACH PARTY HERETO WAIVES: (1) ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY, (2) WITH THE EXCEPTION OF RELIEF MANDATED BY STATUTE, ANY CLAIM TO PUNITIVE, EXEMPLARY, MULTIPLIED, INDIRECT, CONSEQUENTIAL OR LOST PROFITS/REVENUES DAMAGES, AND (3) ANY CLAIM FOR ATTORNEY FEES, COSTS AND PREJUDGMENT INTEREST.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers or representatives on the dates shown below (before executing this Agreement, please complete Exhibit 1 to designate Organization's membership level and other required information).

ORGANIZATION

NCDMM

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Gary Fleegle

Title: \_\_\_\_\_

Title: President & CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1**

**MEMBERSHIP SELECTION**

Please complete the following to select the membership tier joined and provide additional information required to complete this Membership Agreement.

1. **Membership Tier Selection:** Please select Membership option.

- Platinum Membership:** Annual membership fee of \$200,000, with a minimum annual cash amount of \$50,000 for voting rights on the Governance Board.
- Gold Membership:** Annual membership fee of \$50,000, with a minimum annual cash amount of \$12,500.
- Silver Membership:** Annual membership fee of \$15,000.

2. **Designated contacts for V4I Consortium activities:**

(a) Technical Contact:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

(b) Governance Board representative (For Platinum Members only):

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

3. **Member's Annual Enrollment Date:** \_\_\_\_\_



**EXHIBIT 2****MEMBERSHIP BENEFITS**

V4I Members are entitled to the benefits summarized below, based on the membership tier joined. Except for licenses to CDIP, all other benefits shall be provided by and/or through NCDMM and its facilities unless otherwise agreed by the relevant Parties. All Members receive a royalty-free, non-exclusive license for internal research and development (other than for modeling a commercial product) use of CDIP created during the Member's tenure as a Member-in-Good-Standing, while the Member remains a Member-in-Good-Standing. Such licenses shall allow for Members to grant sublicenses to any Affiliates of a Member or Member designated agents, contractors, and non-employee students performing work for the benefit of such Member.

**1. Platinum Membership: \$200,000 per year**

- (a) A seat on the Governance Board. A Platinum Member who satisfies membership fees with less than \$50,000 cash may hold an advisory seat only (no voting rights).
- (b) Collaboration on computational modeling and simulation technology applied research and an individual, royalty-free, non-exclusive license for commercial development for all CDIP that utilizes V4I funding during the Platinum Members term as a Member-in-Good-Standing. Such individual license shall be for the life of any protection obtained for such individual Intellectual Property.
  - i. Such licenses for Platinum Members shall allow for Members to grant sublicenses to Member-designated agents, contractors, and non-employee students performing work for the benefit of such Member. In addition, sublicensing shall be permitted to the licensee's direct customers and suppliers.
- (c) Silver Membership for a major supplier or community college of the Platinum Member's choice. Supplier must be a Small/Medium Enterprise ("**SME**") to qualify for the free sponsored Membership.
- (d) Access to V4I workforce training courses at reduced rate.
- (e) Priority opportunity to nominate and/or select a V4I graduate intern to participate in a Platinum Member project each year.
- (f) Participation in V4I computational modeling and simulation road-mapping process.
- (g) Free access to all V4I managed technical presentations and workshops (does not include booth space, sponsorship, etc.).
- (h) Participation in all V4I poster sessions.

**2. Gold Membership: \$50,000 per year**

- (a) Voting right for representative of Gold Membership on the V4I Governance Board.
- (b) Collaboration on computational modeling and simulation technology applied research and an individual, royalty-bearing, non-exclusive license for commercial development for all CDIP that

utilizes V4I funding during the Gold Member's term as a Member-in-Good-Standing. Such individual license shall be for the life of any protection obtained for such individual Intellectual Property.

- i. Such licenses for Gold Members shall allow for Members to grant sublicenses to any Member-designated agents, contractors, and non-employee students performing work for the benefit of such Member. In addition, sublicensing shall be permitted to the licensee's direct customers and suppliers.
- (c) Access to V4I workforce training courses at reduced rate.
- (d) Opportunity to sponsor or place a V4I graduate intern each year.
- (e) Reduced Silver Membership for SME suppliers or community college of the Gold Member's choice.
- (f) Participation in V4I computational modeling and simulation road-mapping process.
- (g) Free access to all V4I managed technical presentations and workshops (does not include booth space, sponsorship, etc.).
- (h) Participation in all V4I poster sessions.

### 3. Silver Membership: \$15,000 per year

- (a) Fee Access to V4I workforce training courses.
- (b) Opportunity to sponsor or place a V4I graduate intern each year.
- (c) Free access to all V4I managed technical presentations and workshops (does not include booth space, sponsorship, etc.).
- (d) Participation in all V4I poster sessions.

### 4. Membership Fee Payment Requirements

- (a) **Industry** – Cash, in-kind, or mix of cash and in-kind subject to cash minimums. Allowable in-kind contributions will be calculated on the basis of the fair market value of services provided for the 12-month period immediately preceding the Member's Annual Enrollment Date. The supplier of in-kind services shall be responsible for providing reasonable documentation to substantiate the claimed value. Documentation shall be provided to and maintained by V4I.
- (b) **Academic, Associations and other Non-Profit** – Cash, in-kind, or mix of cash and in-kind. Allowable in-kind contributions shall be calculated on the basis of the fair market value of services provided for the 12-month period immediately preceding the Member's Annual Enrollment Date. The supplier of in-kind services shall be responsible for providing reasonable documentation to substantiate the claimed value. Documentation shall be provided to and maintained by V4I.

**EXHIBIT 3****MEMBERSHIP AGREEMENT AMENDMENT PROCESS**

1. Membership Agreement Amendment Overview
  - 1.1 Adoption of the V4I Membership Agreement and any proposed amendment to the Agreement requires a vote of 2/3 majority of the Governance Board under quorum with prior recommendation by the Executive Committee, an ad-hoc Executive Sub-Committee on Membership Agreement (“**Executive Sub-Committee**”), or the Director.
  - 1.2 If the amendment is approved by the Governance Board (2/3 majority) and Director, the change will be incorporated into the Membership Agreement. The revised document will be prepared and distributed to the Governance Board and Executive Committee within ten (10) business days from the change. At minimum, the V4I Membership Agreement should be examined for potential updates on an annual basis by the Executive Committee.
  - 1.3 Amendments may be brought forth by any current or potential member and must be presented to the Director or designee(s). It is encouraged that amendments to the V4I Membership Agreement be considered during the annual program review Governance Board meeting for live discussion and voting. However, electronic and teleconference voting is also acceptable for approving amendments to the V4I Membership Agreement.
2. V4I Membership Agreement Amendment Process

The following are the steps proposed for any potential approval of amendments to the V4I Membership Agreement:

- 2.1 Potential amendments to the Membership Agreement can be discussed by current or potential members by contacting the Director or designee(s) and requesting an initial clarification consultation.
- 2.2 The Director will convey the following principles to the potential requestor:
  - (a) Amendments cannot make fundamental or spirit of the law changes due to fiduciary responsibilities for pre-existing members who have already signed the current Membership Agreement.
  - (b) Future amendments are expected to improve current state of document (examples may include: clarifying language, improving consistency, reflecting updates from other V4I documentation; e.g. Operating Plan).
  - (c) If after initial consultation, the requestor wishes to proceed to propose an amendment(s), the following process must be followed:
    - i. Requestor may propose an amendment to current language by providing an amendment request (amendment form will be provided) that includes, at a minimum, the following:
      - Specific agreement section and paragraph under consideration
      - Current verbatim wording under consideration

- Suggested amendment language
  - Brief rationale (per section and paragraph under consideration)
- ii. The completed amendment request must be submitted to Chair of the Executive Committee for amendment consideration.
  - iii. The Executive Committee assigns an ad-hoc Executive Sub-Committee and a Chair for that Sub-Committee, who will complete an internal review where external discussions with requestor may be conducted, if necessary.
  - iv. Upon completion of external discussions with requestor (if applicable), the Executive Sub-Committee Chair then requests a meeting with appropriate personnel from academia, government and industry (i.e., personnel knowledgeable of contract language; preferably with V4I familiarity) for developing and incorporating appropriate legal language into Membership Agreement based upon amendment recommendation.
  - v. The Executive Sub-Committee provides a recommendation of acceptance/rejection to the Executive Committee. If the Executive Sub-Committee recommends acceptance, it will provide an informational memorandum to the general membership of the potential amendment and allow a comment period of two weeks for current members to review the potential amendment.
  - vi. Executive Committee to vote on Executive Sub-Committee recommendation(s):
    - If amendment(s) are approved, the Executive Committee will submit to the Governance Board for vote.
    - If amendment(s) are denied,
      - The Executive Sub-Committee will provide denial justification/feedback to the Director; and
      - Director or designate(s) will provide denial justification/feedback to requestor.
  - vii. Governance Board to vote to accept or reject amendment(s)
    - If amendment(s) are approved, the Governance Board will submit to Director for approval.
    - If amendment(s) are denied, the Director will provide feedback to the Executive Committee.
  - viii. The Director has final determination on Governance Board approved recommendation.

- If amendment(s) are approved, the Director will distribute the final version to the Governance Board and Executive Committee.
- If amendment(s) are denied,
  - The Director will provide feedback to the Governance Board; and Director or designate(s) will provide denial justification / feedback to request.