

MEMORANDUM OF UNDERSTANDING
Between
[Organization Name]
And
the International Council on Systems Engineering

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this [Day] day of [Month], [Year], by and between [Organization name and address] and the International Council on Systems Engineering (INCOSE), with offices at 7670 Opportunity Road, Suite 220, San Diego, CA 92111, henceforth known as the "Parties." It sets forth the relationship and obligations for [Organization name] and INCOSE relating to mutual participation and collaboration.

1. PURPOSE: This MOU is intended to promote a collaborative relationship in related professional areas that are of mutual interest and benefit to the Parties. The Parties wish to develop and promote best practice processes and guidance, training, and supporting materials that can be used in projects and organizations in the field(s) of [field area(s)]. This agreement is intended to formalize the working relationship and arrangements.

2. BACKGROUND:

[Organization name and description].

INCOSE is a not-for-profit membership organization founded to develop and disseminate the transdisciplinary principles and practices that enable the realization of successful systems. INCOSE is designed to connect Systems Engineering professionals with educational, networking, and career-advancement opportunities in the interest of developing the global community of systems engineers and systems approaches to problems. We are also focused on producing state-of-the-art work products that support and enhance this discipline's visibility in the world.

It is the express purpose of the signatory organizations to support processes that provide customers with systems that perform optimally and are affordable. By joining efforts, the signatory organizations facilitate the exchange and further development of their knowledge and best practices towards comprehensive integration into the design and operation of successful systems.

3. SCOPE AND OBJECTIVES: The Parties will each appoint personnel to explore collaboration opportunities and propose specific objectives on what each party will pursue and how the collaborative efforts will be handled. The *potential* scope for partnering includes, but is not limited to:

- a. Promotion opportunities at one another's annual meetings and symposia.
- b. Adoption of a policy permitting one organization's members to join and participate in the technical or working groups of the other organization for a nominal annual fee, without requiring dual society-level membership; thereby facilitating opportunities for cross-talk among practitioners of the two organizations. This may include preferential access to the other organization's products or other IP.
- c. Facilitation of opportunities for joint collaborative publications, tutorials, presentations, and development/improvement of processes, methods, guidance and tools; plus co-marketing of any joint products, public relations and communications about the nature of the relationship, and sharing of initiatives or projects of potential interest to the Parties' members.

All joint and collaborative opportunities and products will meet the necessary reviews of each of the Parties as prescribed by their respective policies. The embodiment of the cooperative relationship will comprise the specific recommendations in Addendum A, which will be kept up to date as the partnership and its objectives evolve.

4. OWNERSHIP: The Parties agree and acknowledge that [Organization name] is the exclusive owner of all rights, title and interest throughout the world to the name [Organization name]; and that INCOSE is the

exclusive owner of all rights, title and interest throughout the world to the name INCOSE: including, and without being limited to, all rights in the trademarks, service marks, certification marks, and association marks. During the term of this MOU, the Parties shall identify areas of mutual support of events; with a non-exclusive, non-transferable, royalty-free license to use the other party's Conference Marks for the purpose of any mutual advertising and marketing of these events. Both parties shall comply with any branding and logo usage guidelines when producing publications and publicity material.

5. INTELLECTUAL PROPERTY: It is the intent that each Party honor and protect the intellectual property (IP) of the other. Each Party shall continue to own the intellectual property developed by it prior to or independently of this MOU. The parties agree that neither of them shall gain by virtue of this MOU any rights of ownership or any other interest, right, or title to copyrights, patents, trade secrets, trade marks, or any other intellectual property rights owned by the other Party.

By entering into this MOU, the parties undertake:

- (a) Not to use each other's intellectual property without the prior express written consent of the other,
- (b) To ensure the confidentiality of such intellectual property of the other within its respective organizations, and
- (c) Not to use each other's intellectual property other than for the purpose of this MOU.

The Parties mutually agree to make every reasonable effort to avoid publication of the other's IP. However, as part of their individually or jointly published products, proceedings, and training, one organization may provide electronic links to the other organization pointing to where the information may be obtained. The Parties agree to provide the other these links, and license to use logos, trademarks or other IP as requested, when approved in writing and signed by authorized representatives of the Parties.

The ownership of IP developed jointly by the two Parties shall be negotiated on a case-by-case basis. The Parties shall execute appropriate documents with respect to the ownership, licensing, assignment, publication, distribution or other rights associated with jointly-developed materials.

Note: It is not uncommon for individuals presenting such information at one Party's conference to also have affiliation with the other Party or joint Working Group (WG); and therefore, it will be difficult to discern the original Intellectual Property holder. In an effort to determine IP ownership, each organization *should* incorporate into their respective calls for papers and proposed submitters application forms, a means of requiring the submitter to declare if the information being provided is considered IP of either INCOSE or [Organization name], or of the submitter or their employer. In this latter case, they shall be required to declare the extent to which INCOSE and [Organization name] have rights to use or reproduce the IP. Any information not designated as the IP of a specific Party will be considered IP of the Party at whose conference or WG the information is first presented.

6. INDEMNITY: Each Party shall defend, indemnify and hold harmless the other Party, including its officers, directors, employees, advisors, volunteers, and agents, from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of: (i) any individual business operation of the Party, (ii) any breach by the Part of this MOU, and (iii) the negligence or willful misconduct by the Party or its affiliates, sublicenses or subcontractors or their respective officers, directors, employees, agents or consultants. Notwithstanding this section, each Party's indemnifications shall be limited in amount by the proportion to and to the extent caused by the indemnifying Party.

7. PROPRIETARY OR CONFIDENTIAL INFORMATION: During the term of this MOU, each Party may disclose to the other its Proprietary or Confidential Information. Proprietary or Confidential Information shall mean all non-public, proprietary information of either Party, whether or not marked or designated as "confidential", including but not limited to any formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known or ascertainable by others and all notes, analyses, summaries, customer and membership lists, strategic, financial and/or marketing plans, and other materials prepared by a

Party or any of that Party's representatives that contain Confidential Information, regardless of form. Neither Party shall disclose to a third party Proprietary or Confidential Information of the other Party. Each Party further agrees to act as trustee for any Proprietary or Confidential Information jointly created or acquired through the Parties' participation in this MOU.

Each Party that receives such Confidential Information ("Receiving Party") agrees that it will: (i) secure and hold all such Confidential Information in strict confidence, (ii) refrain from the unauthorized release or disclosure of such Confidential Information to any other person or party without the prior written consent of the Party that owns the Confidential Information, except as required by law; and (iii) return all Confidential Information and all copies of such Confidential Information, upon request of the Party that owns the Confidential Information ("Disclosing Party"), or upon the termination of this MOU. Except for personally identifiable information, and other types of information protected by applicable law after public or private disclosure, Confidential Information shall not include information that: (i) is known or becomes known to the public through no wrongful act on the part of the Receiving Party; (b) is in the Receiving Party's possession at the time of disclosure other than as a result of Receiving Party's breach of a legal obligation; (c) becomes known to the Receiving Party by sources other than the Disclosing Party; or (d) is independently developed by the Receiving Party.

If Recipient or any of its Representatives is required by applicable law or a valid legal order to disclose any Confidential Information, Recipient shall notify Disclosing Party of such requirements so that Disclosing Party may seek, at Disclosing Party's expense, a protective order or other remedy, and Recipient shall reasonably assist Disclosing Party therewith. If Recipient remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the Confidential Information that it is required to disclose; and (b) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

The Parties also may provide to each other copies of copyrighted or proprietary materials ("Proprietary Materials"). The Parties agree that they shall not distribute or otherwise make available to third parties any of the other Party's Proprietary Materials, including but not limited to placing such Proprietary Materials on the internet, except as expressly permitted in an agreement hereunder, or as otherwise permitted in writing. Additionally, no copies, adaptations, or derivative works of the Proprietary Materials, or any portion thereof, may be created by any Party, or anyone acting on its behalf or under its direction, without the prior written consent of the owner of the Proprietary Materials.

8. DATA SECURITY AND PROTECTION: Each Party represents and warrants that it has implemented and maintains appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and security of Confidential Information, including personal identifiable information and other sensitive data. To the extent that either Party will receive, use, process or handle personal identifiable information ("Personal Information") in fulfilling the terms of this MOU, each Party will ensure that such use is in accordance with all applicable laws and that the Personal Information is appropriately secured in all forms and used only for the purposes for which such Personal Information was received. In the event that the Disclosing Party discloses to the Receiving Party any Personal Information relating to the Disclosing Party's customers or any other third parties, the Disclosing Party represents and warrants that such Personal Information does not infringe any rights of any third party, including copyright, trademark, right of publicity or privacy and that the Disclosing Party has obtained all required rights or permissions necessary to provide such Personal Information to the Receiving Party for the intended use.

9. RELATIONSHIP MANAGEMENT: The Parties will each name a representative who will act as a liaison between the organizations, in particular as the authorized senders, recorders and recipients of any proprietary or confidential information, IP or Copyrighted material. The names and contact details of each representative shall be maintained at Addendum A.

10. GENERAL ADMINISTRATION, TERMS AND CONDITIONS:

Non-Binding: Except Sections 4, 5, 6, 7, and 9 of this MOU, which shall be binding, the Parties understand that nothing else herein shall be construed as a binding contract between the Parties. The Parties further understand that (i) the activities intended by this MOU may not be successfully completed; and/or (ii) the results achieved may not be as anticipated. Further, INCOSE and [Organization name] acknowledge and agree that this MOU is a non-exclusive engagement; nothing contained herein shall be construed as preventing or restricting either Party from pursuing any opportunity with other entities without involving the other Party or to enter into similar alliance arrangements with other entities.

Relationship of the Parties: This MOU shall not be construed to be an agency or a partnership or joint venture or an employment relationship whether for tax or for any other purpose. Neither Party shall be entitled to bind the other Party with any third party by its actions, unless it has specifically obtained the prior written consent of such other Party to do so. Each Party is an independent contractor, and no provision of this MOU grants either Party any express or implied right of authority to assume or create any obligations or responsibility on behalf of or in the name of the other Party, or bind the other Party in any manner or thing whatsoever. This MOU is not a commitment of financial resources. Any commitment by a Party to pay fees or other amounts to the other Party must be approved in writing, by the paying Party in advance. Except as may be agreed by the Parties in an applicable Definitive Agreement(s), each Party will be responsible for all expenses incurred by such Party in connection with negotiation of this MOU and any promotion, marketing or other activities under this MOU. Each Party shall be liable to pay any tax attributable to it.

Compliance with Laws: Each Party warrants to the other Party that in performing their duties required under this MOU, they will comply with all applicable state, national and international laws, rules and regulations applicable to the performance of its obligations under this MOU and shall take no action which constitutes a violation of applicable law and which would subject the other Party to penalties under applicable law. This includes without limitation applicable laws prohibiting corrupt practices such as the US Foreign Corrupt Practices Act and the UK Bribery Act, laws governing data privacy and security, and laws prohibiting unlawful discrimination. Each Party specifically affirms that during the performance of this MOU, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ethnicity or veteran status. Each Party commits to obtaining all applicable permissions and licenses required in connection with its obligations under this MOU.

Governing Law: This MOU, and all matters arising out of or relating to this MOU, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

-or-

The governing law provision is intentionally left silent.

Choice of Forum: Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this MOU, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Southern District of California. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Southern District of California. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Assignment: Neither Party may assign or transfer neither its interest in this MOU, nor any interest herein or claim hereunder without the express written consent of the other Party.

Complete agreement: This MOU constitutes the entire agreement among the Parties and supersedes all other prior MOUs of the Parties for the period to which it applies and may not be modified except in writing signed by the Parties.

Notices: Any notice given under this MOU to any of the Parties may be effected by: (i) email, (ii) facsimile, or (iii) overnight courier, each of which shall be confirmed by delivery receipt confirmation. Notices should be sent to the relationship manager or designee.

Counterparts: This MOU may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party uses a scanned or facsimile transmittal, that copy shall be deemed to be an original.

Financial Considerations: Each party agrees to bear its own cost of participation for any activities or obligations associated with this MOU. For financial considerations relating to a specific activity and/or event refer to the applicable addendum relating to the activity and/or event for such details.

Amendments: Amendments to this MOU may be made at any time subsequent to the initial effective date upon mutual consent of the Parties. Modifications to Addendum A that do not increase the total commitment of either party may be agreed between designated representatives without requiring re-authorization of this MOU.

Terms of MOU: This agreement shall remain in effect for a period of three (3) years, unless otherwise changed through mutual agreement of both Parties. Three months before the expiry of the MOU, the Parties shall meet to discuss renewal or changes of direction. At periods not exceeding each 12-month period from initial MOU signature, [Organization name] and INCOSE should meet to review progress towards agreed goals, plus any necessary revisions or amendments.

Termination: Either Party may terminate this MOU after giving the other Party notice in writing 60 days in advance of termination. In the event either Party elects not to renew this MOU at end of Term, cancellation notice shall be provided in writing to the other Party no later than 60 days in advance of the expiration date. Upon termination or non-renewal of this MOU, no Party may use, license, create derivative works, or exploit in any way the jointly owned works or intellectual property of the other Party without the written consent of the other Party. However, this does not include works that are owned by one of the Parties for which the other Party has contributed as part of a broader industry project team assembled solely for the purpose of creating or revising those works. Upon termination or non-renewal, each Party shall return any Proprietary or Confidential Information of the other Party in its possession.

No exclusivity: Nothing in this agreement shall prohibit either Party from establishing contracts, strategic alliances or MOUs with any other entity, organization or individual. INCOSE and [Organization name] acknowledge and agree that this MOU is a non-exclusive engagement; nothing contained herein shall be construed as preventing or restricting either Party from pursuing any opportunity with other entities without involving the other Party or to enter into similar alliance arrangements with other entities.

IN WITNESS WHEREOF, this MOU is executed by the Parties hereto by their respective undersigned and authorized officers as of the date first written above.

ORGANIZATION NAME

INCOSE

Authorized Signature

Authorized Signature

Name

Kerry Lunney

Title

President

Organization Name

International Council on Systems Engineering, Inc

Address for communications:

Address for communications:

Street Address

7670 Opportunity Rd, Suite 220

City, State/Province Zip Code

San Diego, CA, USA, 92111

E-mail Address

info@incose.org

ADDENDUM A

[Examples are below. These need to be modified to be specific.]

Recommendations:

1. Implementation of a joint cross organizational Working Group on [purpose / task].
2. [Organization name] and INCOSE to offer jointly [purpose / task]-focused events and to stimulate cross fertilization.
3. [Organization name] and INCOSE to provide mutual assistance and support for international standards.
4. [Organization name] and INCOSE to mutually support specific, non-funded, events of each organization. Events to be determined but to include: [Organization name] meeting/event, INCOSE Symposium. Such support will include invitations to each organization's meetings on subjects of mutual interest.
5. [Organization name] and INCOSE to develop jointly new processes, methods, guidance and tools in the field of [field name].
6. [Organization name] and INCOSE to develop a joint approach for interfacing with other organizations in related professional areas.
7. [Organization name] and INCOSE to develop discipline-specific or domain specific variants or extensions of a Competency Framework.
8. [Organization name] and INCOSE to develop discipline-specific or domain specific variants or extensions of the INCOSE SE Handbook and the SE Vision 2025.
9. INCOSE to integrate [capability] within the Model Based System Engineering initiative with the support and contribution of [Organization name].
10. [Organization name] and INCOSE to plan and develop a series of articles, papers and presentations for their respective membership publications, events and general promotion of the benefits of joint approaches.

Specific Areas of responsibility for [Organization name]:

- [Organization name] will take the lead on...
- [Organization name] will promote...
- [Organization name] will ... at their events...
- [Organization name] will provide...

Specific Areas of responsibility for INCOSE:

- INCOSE will take the lead on...
- INCOSE will promote...
- INCOSE will ... at their events...
- INCOSE will provide...

Points of contact (designated representatives):

For [Organization name]:

[Name]
[Title, Organization]
[e-mail address]

For INCOSE:

David Endler
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