

OPEN CLOUD CONSORTIUM MEMBER AGREEMENT

This **OPEN CLOUD CONSORTIUM MEMBER AGREEMENT** (the “Agreement”) is made and entered into by and among, **CENTER FOR COMPUTATIONAL SCIENCE RESEARCH, INC.**, an Illinois General Not For Profit Corporation, located at 400 Lathrop Avenue, Suite 90, River Forest, IL 60305 (“**CCSR**”) and _____, a _____, located at _____ (the “**Member**”). Each entity is referred to herein as a “**Party**” or collectively as the “**Parties**.”

WHEREAS, the Open Cloud Consortium (“**OCC**”) is a division of **CCSR**;

WHEREAS, the Member wishes to participate in **OCC**, the purposes of which are more fully set forth below and in the version of Appendix 1 attached hereto as Exhibit A, which is hereby incorporated into this Agreement by reference;

WHEREAS, **CCSR** has agreed to the Member’s participation in **OCC**, subject to said terms and conditions; and

WHEREAS, the Member’s participation in and cooperation with **OCC** under this Agreement will further the instruction and research objectives of **OCC** in a manner consistent with **CCSR**’s status as a non-profit, tax-exempt institution.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Purposes of OCC

The purpose of **OCC** is to support the advancement of research in cloud computing, to develop open standards in cloud computing, to develop open source software for cloud computing, to manage testbeds for cloud computing, to run meetings, workshops and other events related to cloud computing, and in general to advance the state of the art in cloud computing, consistent with **CCSR**’s status as a non-profit, tax-exempt institution.

2. Membership Term; Fees

a. Initial Term Member Fee

Yearly fees for **OCC** membership are found on the schedule at <http://www.opencloudconsortium.org/members/occ-fees-2008.pdf>. The fee applicable to the Member is dependent on circumstances particular to the Member. Notwithstanding anything to the contrary, the Parties agree that the fee for Member shall be _____ which shall cover the period from the date of execution of this Agreement through December 31, _____.

The Member hereby agrees to participate in OCC and to pay the applicable Initial Term Member Fee. The Initial Term Member Fee is due at the time the organization executes this Agreement. Except as provided for in this Agreement, all Member fees, including the Initial Term Member Fee, is nonrefundable and shall be payable to OCC in the currency stated in the membership fee schedule.

b. *Membership Term*

The initial term of membership (“**Initial Term**”) shall begin from the date the Agreement is fully executed by the duly authorized representatives of the Parties (“**Effective Date**”) and shall continue in force through the last day of the calendar year in which the Effective Date falls (“**Anniversary Date**”); provided that the Initial Member Fee set forth in Section 2(a) above shall be for the period through December 31, _____. Thereafter, this Agreement shall automatically renew for successive one-year terms (“**Renewal Terms**”) beginning on the Anniversary. Notwithstanding the foregoing, the Initial Term or any Renewal Term may be terminated if CCSR is dissolved as provided in Section 10(a) or terminated as provided in Section 10(b) or 10(c).

c. *Annual Membership Fee*

For all Renewal Terms, the Member agrees to pay an annual membership fee equal to the then-current applicable Initial Member Fee (“**Annual Fee**”). The Annual Fee shall be due on or before the Anniversary Date for the applicable Renewal Term.

3. Rights and Obligations of OCC

a. CCSR hereby represents and warrants that CCSR shall be responsible for, and shall ensure compliance by OCC, all of OCC's rights and obligations under this Agreement.

b. OCC shall have the following rights and obligations under this Agreement, which rights and obligations are more fully described in Appendix 1:

- (i) OCC shall use diligent efforts to provide the vendor-neutral architectural and administrative leadership required to accomplish OCC’s goals.
- (ii) OCC shall use the Member fees as outlined in Appendix 1.
- (iii) OCC shall establish and maintain a committee comprised of one representative of each Member organization (the “**Advisory Committee**”) that shall operate as set forth in Appendix 1.

(iv) OCC shall establish and maintain OCC Working Groups, as further set forth in Appendix 1.

(v) Overall direction of OCC shall be the responsibility of an OCC-appointed Chair (“**Chair**”), who shall have the ultimate authority for all OCC activities, as further set forth in Appendix 1.

(vi) OCC shall coordinate, maintain and distribute standards and documentation created under the auspices of OCC, as set forth in Appendix 1.

(vii) OCC shall establish and maintain Internet connections and computer resources to facilitate the work of the OCC.

4. Rights and Obligations of the Member

The Member shall have the following rights and obligations under this Agreement, which rights and obligations are more fully described in Appendix 1:

- a. The Member shall appoint one representative to serve on the OCC Advisory Committee.
- b. The Member may appoint a representative to OCC Working Groups.
- c. The Member shall have the right to establish and maintain computer network links via the Internet with OCC sufficient to participate in OCC activities.
- d. The Member shall have access to standards and documentation produced by OCC prior to release of such standards and documentation to non-members, as set forth in Appendix 1.
- e. Subject to the restrictions contained in this Agreement, the Member may incorporate OCC standards and documentation into products at any time after release of the standards and documentation to OCC members has been approved by the Chair.
- f. If the Member has subsidiaries, the rights and privileges granted under this Agreement shall extend to all subsidiaries where more than fifty percent (50%) of the voting stock of which is directly or indirectly owned or controlled by the Member.
- g. If the Member is itself a consortium, user society, or otherwise has members or sponsors, the rights and privileges granted under this Agreement extend only to the paid employees of the Member, not to its members or sponsors.

5. Use of Names

The Member will not use the name of OCC or CCSR and OCC and CCSR will not use the name of the Member in any form of publicity without prior written permission, which in the case of OCC shall be obtainable from the Chair of OCC and in the case of the Member or CCSR from the person identified in Section 8 of this Agreement.

6. Confidentiality

- a. The Parties hereby agree that all disclosures made by the Parties in any proceeding pursuant to this Agreement shall be deemed to be non-confidential information.
- b. In the event either Party wishes to disclose any confidential information to the other Party, the Parties shall discuss the execution of an appropriate non-disclosure agreement, as necessary.

7. Intellectual Property Rights

a. *Rights of Publication*

CCSR, OCC, and the Member shall be free to use and publish any research results, ideas, algorithms, techniques and other information developed jointly by the Member and OCC during the term of this Agreement, except that intellectual property described in (b) and (c) below shall be subject to the licenses specified therein.

b. *Ownership of Copyrights and Patents*

- (i) The Member agrees that all right, title and interest in and to any and all software, standards and documentation created or developed, and in and to all patentable inventions conceived or first reduced to practice, by OCC, its employees, consultants or students or Visitors, shall vest in CCSR. To the extent necessary, the Member agrees to execute such assignment documents as may be required to vest title in CCSR, at no expense to the Member.
- (ii) CCSR agrees that all right, title and interest in and to any and all software, standards and documentation created or developed, and in and to all patentable inventions conceived or first reduced to practice by or for the Member, its employees, consultants, prior to the execution of this Agreement or independent from this Agreement shall vest in the Member. To the extent necessary, CCSR agrees to execute such assignment documents as may be required to vest title in the Member, at no expense to CCSR.

(iii) Except as provided above, patentable inventions and copyrighted materials developed jointly by OCC and the Member during the course of OCC activities shall be jointly owned by the Parties. Each joint owner shall be entitled to exercise all rights of ownership as provided by law, without, however, an obligation of accounting from one to the other. The Member acknowledges that all such jointly owned software, standards and documentation, will be made available to the general public pursuant to the OCC Notice and License that exists at <http://www.opencloudconsortium.org/license.html> on the date the Member executes this Agreement (the “NL”), a copy of which is attached as Exhibit B hereto. Any revisions or updates to the NL will only apply if the Member approves of such revision in writing.

c. *Licenses*

CCSR hereby grants to the Member a non-exclusive, royalty-free, perpetual, irrevocable, right and license to use, reproduce, modify, translate, distribute, publicly display and publicly perform all software, standards and documentation described in Section 7(b)(i) throughout the world, subject to the notices with respect to copyright, trademarks, and disclaimer of liability which shall appear on all copies of the software, standards and documentation provided to the Member by OCC and which must be reproduced on each copy reproduced or distributed by the Member.

8. Notices

All notices or other communications to or upon either party shall be in writing delivered by first class, air mail or facsimile, dispatched to or given at the following addresses:

For CCSR:

Chair, Open Cloud Consortium
Center for Computational Science Research, Inc.
400 Lathrop Avenue
Suite 90
River Forest, IL 60305
UNITED STATES

For the Member:

In the event notices and statements required under this Agreement are sent by certified or registered mail by one Party to the Party entitled thereto at its above address, they shall be deemed to have been given or made as of the date received.

9. Relationship of Parties

The relationship of the Parties under this Agreement shall be that of a voluntary association and this Agreement does not create a partnership or joint venture. Neither CCSR nor the Member can bind the other or create any relationship of principal or agent.

10. Dissolution of CCSR; Termination

a. Dissolution of CCSR

CCSR shall have the right, upon sixty (60) days prior written notice, to dissolve by terminating all OCC Member Agreements.

b. Termination for Cause

Either CCSR or the Member may terminate the Agreement effective immediately and without liability upon written notice to the other Party if the other Party: (i) voluntarily petitions in bankruptcy or otherwise seeks protection under any law for the protection of debtors, is the subject of an involuntary bankruptcy action or trustee appointment, ceases or suspends business, or makes an assignment of the majority of its assets for the benefit of its creditors; or (ii) materially breaches any obligation under this Agreement which is not remedied within thirty (30) days after written notice of the breach, unless the Party has begun substantial corrective action to remedy the default within such thirty (30) day period, in which case termination will not be effective unless ninety (90) days has expired from the date of the notice of default without the default having been remedied.

c. Termination for Convenience

CCSR or the Member may at any time terminate this Agreement, with or without cause, by providing sixty (60) days written notice to the other Party of its desire to terminate this Agreement.

d. Return of Confidential Information

If this Agreement is terminated, each Party will promptly return to the other Party all Confidential Information of the other Party.

e. Survival

The provisions of Sections 5, 6, 7, 10-14, and 18 of this Agreement shall survive expiration or termination hereof, and shall continue hereafter in full force and effect.

11. DISCLAIMER OF WARRANTIES

CCSR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO ANY STANDARDS OR DOCUMENTATION PROVIDED OR MADE AVAILABLE TO THE MEMBER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT STANDARDS AND DOCUMENTATION DOES NOT INFRINGE THE PROPRIETARY RIGHTS OF THIRD PARTIES, INCLUDING PATENTS, COPYRIGHTS AND TRADE SECRETS. THE MEMBER AGREES THAT ALL STANDARDS AND DOCUMENTATION SHALL BE ACCEPTED BY THE MEMBER "AS IS."

12. Limitation of Liability

In the event of dissolution of CCSR and termination of this Agreement pursuant to Section 9 hereof, the Member shall be entitled to receive, as its sole and exclusive remedy, a refund of any portion of the Member's duly paid and as-yet uncommitted Member Fee, and upon such refund, any further liability of CCSR to the Member shall be extinguished. This remedy is in lieu of all other remedies, whether oral or written, express or implied. For all other claims, each Party's liability to the other Party shall be limited to the amount of the Member's duly paid Member Fee. In no event shall any Party be liable for any indirect, incidental, consequential, or special damages, including lost profits, sustained or incurred by the any other Party in connection with or as a result of its participation in OCC or under this Agreement.

13. Force Majeure

If the performance of any obligation by a Party under this Agreement is prevented, restricted or interfered with by reason of natural disaster, war, revolution, civil commotion, acts of public enemies, blockade, embargo, strikes, any law, order, proclamation, regulation, ordinance, demand or requirement having a legal effect of any government or any judicial authority or representative of any such government, or any other act or event which is beyond the reasonable control of the Party affected, then such Party shall be excused from such performance to the extent of such prevention, restriction, or interference, provided that the Party shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.

14. Export Controls

The Parties agree to comply with the U.S. export and re-export controls, including the Export Administration Regulations (15 C.F.R. Parts 730-774) and Foreign Assets Control Regulations (31 C.F.R. Part 500 et seq.). If any software, standards, documentation, or other information is exported by or for CCSR or OCC, CCSR agrees to provide the Parties with Export Control Classification Numbers, Commodity Classification Automated Tracking Systems Numbers (if applicable), and product information needed to obtain export, re-export, or import licenses or other trade compliance authorizations, as may be required.

15. Assignment

Neither this Agreement nor any rights hereunder, in whole or in part, are assignable by the Member without the prior written consent of CCSR. Any attempt to assign the rights, duties or obligations under this Agreement by the Member without such consent shall be a breach of this Agreement and shall be null and void.

16. Entire Agreement

This Agreement, together with Appendix 1 attached hereto as Exhibit A (as modified by this Agreement) and Exhibit B, embodies the entire understanding between the Parties, and cancels and supersedes any other agreements, oral or written, entered into by the parties hereto as to its subject matter.

17. No Modifications

This Agreement may be amended only by a writing signed by the Parties.

18. Arbitration

Any controversy or claim arising out of or relating to this Agreement, its execution or breach, and any damages allegedly suffered there from, first shall be submitted to friendly negotiation between the parties. Matters which cannot be resolved through negotiation shall be finally settled: (a) if the Member is organized or incorporated within any of the United States, under the Commercial Rules of Arbitration of the American Arbitration Association, by one (1) arbitrator appointed in accordance with said Rules, or (b) if the Member is organized or incorporated outside the United States, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one (1) arbitrator appointed in accordance with said Rules. In any event, the place of arbitration shall be Chicago, Illinois. The arbitrator shall determine the matters in dispute in accordance with the laws of the State of Illinois pursuant to Section 18 of this Agreement. The English language shall be used throughout the proceedings. Any award, order or judgment pursuant to such arbitration may be entered and enforced in any court of competent jurisdiction. The Member agrees to submit to the jurisdiction of any such court for purposes of the enforcement of any such award, order or judgment.

[Signature page follows]

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

**THE CENTER FOR
COMPUTATIONAL SCIENCE
RESEARCH**

THE MEMBER

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Signature page to Open Cloud Consortium Member Agreement]

EXHIBIT A
APPENDIX 1

EXHIBIT B
NOTICE AND LICENSE