

Terms of Use for OCC-Y Cluster

1. The Center for Computational Science Research, Inc. (CCSR) is an Illinois-based 501(c)(3) not-for-profit corporation that manages the Open Cloud Consortium (OCC) and the OCC-Y Cluster.
2. ACCEPTANCE OF TERMS. CCSR allows you access to the cluster donated to CCSR by Yahoo! (the "Cluster") subject to these Terms of Use ("TOU").
3. AS-IS. You understand and agree that the Cluster is provided "AS-IS" and that neither CCSR nor Yahoo! shall have any responsibility for your use of the Cluster.
4. YOUR REGISTRATION OBLIGATIONS. In consideration of your use of the Cluster, you represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the CCSR-Yahoo! Cluster Account Request form (the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or CCSR has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, CCSR has the right to suspend or terminate your account and refuse any and all current or future use of the Cluster.
5. ACCOUNT, PASSWORD AND SECURITY. You will receive a login and password upon completing the Cluster's registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to (a) immediately notify CCSR of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. CCSR cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 4.
6. YOUR MATERIALS ON THE CLUSTER. You understand that all information, data, text, software, or other materials ("Materials"), that you upload to the Cluster is your sole responsibility, and not the responsibility of CCSR or Yahoo!. Under no circumstances will CCSR or Yahoo! be liable in any way for any Materials, including, but not limited to, any errors or omissions in any Materials, or any loss or damage of any kind incurred as a result of the use of any Materials in connection with the Cluster. You agree to not use the Cluster to:
 - (a) upload, post, email, transmit or otherwise make available any Materials that are unlawful, vulgar, obscene, or invasive of another's privacy;
 - (b) harm minors in any way;
 - (c) upload, post, email, transmit or otherwise make available any Materials that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
 - (d) upload, post, email, transmit or otherwise make available any Materials that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;

- (e) upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- (f) upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (g) interfere with or disrupt the Cluster or servers or networks connected to the Cluster, or disobey any requirements, procedures, policies or regulations of networks connected to the Cluster;
- (h) intentionally or unintentionally violate any applicable local, state, national or international law;
- (i) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
- (j) in connection with or to promote any products, services, or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, or other malicious programs or code, counterfeit goods, items subject to US embargo, hate materials (e.g., Nazi memorabilia) or materials urging acts of terrorism or violence, goods made from protected animal/plant species, recalled goods, hacking/surveillance/interception/descrambling equipment, cigarettes, illegal drugs and paraphernalia, unlicensed sale of prescription drugs and medical devices, pornography, prostitution, body parts and bodily fluids, stolen products and items used for theft, fireworks, explosives, and hazardous materials, government IDs, police items, unlicensed trade or dealing in stocks and securities, gambling items, professional services regulated by state licensing regimes, non-transferable items such as airline tickets or event tickets, non-packaged food items, weapons and accessories;
- (k) in any manner or for any purpose that violates any law or regulation, any right of any person, including but not limited to Intellectual Property Rights, rights of privacy, or rights of personality;
- (l) to operate nuclear facilities, life support, or other mission critical application where human life or property may be at stake. University and its Personnel understand that the Cluster or Cluster Software are not designed for such purposes and that their failure in such cases could lead to death, personal injury, or severe property or environmental damage for which CCSR and Yahoo! are not responsible; or
- (m) in a manner that constitutes excessive or abusive usage of resources (e.g., network bandwidth).

You acknowledge that CCSR shall have the right (but not the obligation) in its sole discretion to remove any Materials from the Cluster. Without limiting the foregoing, CCSR and its designees shall have the right to remove any Materials that violates these TOU or is otherwise objectionable. You acknowledge, consent and agree that CCSR may access, preserve and disclose your account information and Materials if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these TOU or other attachments or provisions of the Cluster Account Request form; (c) respond to claims that any Materials violates the rights of third parties; or (d) protect the rights, property or personal safety of CCSR, Yahoo!, its/their members and users, and the public. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Cluster, in whole or in part, is strictly prohibited.

7. INDEMNITY. You agree to indemnify and hold CCSR and Yahoo! and its/their subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Materials you submit, post, transmit or otherwise make available through the Cluster, your use of the Cluster, your connection to the Cluster, your violation of these TOU, or your violation of any rights of another.

8. NO RESALE OF CLUSTER. You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Cluster (including your login and password), use of the Cluster, or access to the Cluster.
9. GENERAL PRACTICES REGARDING USE AND STORAGE. You acknowledge that CCSR may establish general practices and limits concerning use of the Cluster. You agree that CCSR and Yahoo! have no responsibility or liability for the deletion or failure to store any Materials on the Cluster.
10. MODIFICATIONS TO CLUSTER. CCSR reserves the right at any time to modify or discontinue the Cluster. You agree that CCSR and Yahoo! shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Cluster.
11. TERMINATION. You also agree that CCSR may terminate your account and access to the Cluster for: (a) breaches or violations of these TOU, (b) requests by law enforcement or other government agencies, (c) discontinuance or material modification to the Cluster, (d) unexpected technical or security issues or problems, or (e) engagement by you in fraudulent or illegal activities. Termination of your account includes (a) removal of access to all Materials on the Cluster, and (b) barring of further use of the Cluster. You agree that CCSR and Yahoo! shall not be liable to you or any third party for any termination of your account or access to the Cluster.
12. PROPRIETARY RIGHTS. You acknowledge and agree that the Cluster and any necessary software used in connection with the Cluster ("Software") may contain proprietary and confidential information that is protected by applicable intellectual property and other laws.
12. DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:
 - (a) YOUR USE OF THE CLUSTER IS AT YOUR SOLE RISK. THE CLUSTER IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CCSR AND YAHOO AND ITS/THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
 - (b) CCSR, YAHOO! AND ITS/THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE CLUSTER WILL MEET YOUR REQUIREMENTS; (ii) THE CLUSTER WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CLUSTER WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF THE CLUSTER WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS IN THE CLUSTER WILL BE CORRECTED.
 - (c) YOUR USE OF THE CLUSTER IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM YOUR ACCESS.
13. LIMITATION OF LIABILITY. YOU EXPRESSLY UNDERSTAND AND AGREE THAT CCSR, YAHOO! AND ITS/THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF CCSR OR YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE CLUSTER; (ii) THE COST OF PROCUREMENT

OF SUBSTITUTE GOODS AND SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR MATERIALS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE CLUSTER; OR (v) ANY OTHER MATTER RELATING TO THE CLUSTER.

14. NO THIRD-PARTY BENEFICIARIES. You agree that, except with respect to Yahoo! or as otherwise expressly provided in these TOU, there shall be no third-party beneficiaries to this agreement.

15. GENERAL INFORMATION

Entire Agreement. These TOU, together with the other attachments and provisions of the Cluster Access Request form, governs and constitute the entire agreement regarding your use of the Cluster, superseding any prior agreements between you and either CCSR or Yahoo! with respect to the Cluster.

Choice of Law and Forum. These TOU and the relationship between you and CCSR (and to the extent applicable, Yahoo!) shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and CCSR agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.

Waiver and Severability of Terms. The failure of CCSR to exercise or enforce any right or provision of these TOU shall not constitute a waiver of such right or provision. If any provision of these TOU is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these TOU remain in full force and effect.

Non-Transferability. You agree that your account is non-transferable.

Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Cluster or these TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Section Titles. The section titles in these TOU are for convenience only and have no legal or contractual effect.