

**Pandemic Response Commons
CONSORTIUM MEMBER AGREEMENT**

This **Pandemic Response Commons (PRC) 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 541 N Fairbanks Court, Suite 2200, Chicago, IL 60611 (“CCSR”) and _____, a _____, located at _____ (the “Member”). Each entity is referred to herein as a “Party” or collectively as the “Parties.”

WHEREAS, the Pandemic Response Commons Consortium (“PRCC”) is a division of CCSR;

WHEREAS, the Member wishes to participate in PRCC, 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 PRCC, subject to said terms and conditions; and

WHEREAS, the Member’s participation in and cooperation with PRCC under this Agreement will further the instruction and research objectives of PRCC 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 PRCC

The mission of PRCC is to develop and operate a Pandemic Response Commons to provide the data and decision making infrastructure necessary for understanding, mitigation and response of epidemics and pandemics. To do so, PRCC will develop and operate a collaborative infrastructure that enables sharing of information between stakeholders in industry, academia, and government agencies, support the advancement of epidemic and pandemic research, develop open standards, develop open source software, manage data commons and related cloud computing infrastructure, run meetings, workshops and other events, and in general to advance the state of the art in epidemic and pandemic response, consistent with CCSR’s status as a non-profit, tax-exempt institution.

2. Membership Term; Fees

a. *Initial Term Member Fee*

There will be no member fee (“Member Fees”) during the initial year of the PRC Consortium (April __, 2020 – December 31, 2020). The PRC Consortium may establish yearly membership fees in subsequent years. The fee applicable to the Member is dependent on circumstances particular to the Member.

When there is a Member Fee, it 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 PRCC 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 Term shall be for the period through December 31, 2020. Thereafter, this Agreement shall renew for successive one-year terms (“**Renewal Terms**”) beginning on the Anniversary Date, unless CCSR or Member gives the other notice of non-renewal not less than thirty (30) days prior to the expiration of the then current term. 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.

d. *Use of Member Fees*

PRCC will use all Member Fees to further the objectives of PRCC consistent with CCSR’s status as a non-profit, tax-exempt, entity in a manner substantially related to CCSR’s exempt purpose.

3. **Rights and Obligations of PRCC**

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

b. PRCC shall have the following rights and obligations under this

Agreement, which rights and obligations are more fully described in Appendix 1:

- (i) PRCC shall use diligent efforts to provide the vendor-neutral leadership required to accomplish PRCC's goals.
- (ii) PRCC shall use the Member Fees as outlined in Appendix 1.
- (iii) PRCC 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) PRCC shall establish and maintain PRCC Working Groups, as further set forth in Appendix 1.
- (v) Overall direction of PRCC shall be the responsibility of a PRCC-appointed Chair ("**Chair**"), who shall have the ultimate authority for all PRCC activities, as further set forth in Appendix 1.
- (vi) PRCC shall coordinate, maintain and distribute standards and documentation created under the auspices of PRCC, as set forth in Appendix 1.
- (vii) PRCC shall establish and maintain Internet connections and computing infrastructure and other resources to facilitate the work of the PRCC.

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 PRCC Advisory Committee.
- b. The Member may, but will not be obligated to, appoint one representative to each PRCC Working Group.
- c. The Member shall have the right to establish and maintain computer network links via the Internet with PRCC sufficient to participate in PRCC activities.
- d. The Member shall have access to standards, documentation, data assets, analysis pipelines, a collaboration environment and other outputs produced by PRCC prior to their release to non-members, as set forth in Appendix 1.
- e. Subject to the restrictions contained in this Agreement, the Member may

incorporate PRCC standards and documentation into products at any time after release of the standards and documentation to PRCC 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 (“Affiliates”).

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 and its Affiliates, not to its members or sponsors.

5. Use of Names

The Member will not use the name of PRC, PRCC or CCSR and PRCC and CCSR will not use the name of the Member in any form of publicity without prior written permission, which in the case of PRCC shall be obtainable from the Chair of PRCC 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 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, PRCC, 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 PRCC 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, documentation, copyrightable materials and

other work products created or developed, and in and to all patentable inventions conceived or first reduced to practice, solely by PRCC, CCSR or their employees or consultants 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, documentation, copyrightable materials and other work products created or developed, and in and to all patentable inventions conceived or first reduced to practice solely by the Member, its employees or consultants 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) Member acknowledges and agrees that the software, standards, documentation, copyrightable materials, work products or inventions described in Section (b)(ii) may be subject to the IPR Policy of the PRCC Working Groups on which Member is represented, including without limitation obligations with respect to Essential Claims, as defined in the IPR Policy.

(iv) Except as provided above, patentable inventions and copyrighted materials developed jointly by PRCC and the Member during the course of PRCC 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, documentation and other work products, will be made available to the general public pursuant to the PRCC Notice and License that exists at <https://www.pandemicresponsecommons.org/membership> 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, documentation and other work products 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 PRCC 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, PRC Consortium
Center for Computational Science Research, Inc.
541 N Fairbanks Court
Suite 2200
Chicago, IL 60611
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. Termination

a. 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.

b. *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.

c. *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.

d. *Survival*

The provisions of Sections 5, 6, 7, 10, 11, 12, 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

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, 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 termination of this Agreement by CCSR pursuant to Section 10(b) hereof or by the Member pursuant to Section 10(a) 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, excluding each Party's indemnification obligations under Section 20, each Party's liability to the other Party shall be limited to **ten thousand dollars (\$10,000)**. 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 PRCC or under this Agreement, even if it has been advised of their possible existence.

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 PRCC, 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. Waiver of Jury Trial; Governing Law; Jurisdiction. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR

LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. Subject to Section 19, all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves.

19. Arbitration

All disputes arising under or in connection with this Agreement shall be submitted to JAMS or comparable organization for binding arbitration by a single arbitrator. The arbitrator shall be selected by JAMS in an impartial manner determined by it. The arbitrator shall have complete authority to render any and all relief, legal and equitable, appropriate under law. The arbitrator shall award costs of the proceeding, including reasonable attorney's fees, to the party determined to have substantially prevailed. This Section 19 shall not limit a party's right to seek temporary, preliminary, or permanent injunctive relief or any other form of equitable relief to protect its intellectual property or confidential information or to enforce an arbitration award, in each case in a court specified in Section 18.

20. Indemnification

(a) To the maximum extent permitted by law, each party shall pay, defend, indemnify and hold harmless the other party and its affiliates from and against any and all claims, liabilities, losses, causes of action, or other damages (collectively, "Claims") based on any allegations made by any third party (including any governmental authority) from: (i) the indemnifying Party's gross negligence or willful misconduct; or (ii) the indemnifying party's breach of this Agreement, in each case ((i) and (ii)) except to the extent arising from the indemnified party's gross negligence, willful misconduct or breach of this Agreement.

(b) Each Party's obligations under this Section 20 will be limited to the amount of insurance coverage available to pay any applicable Claim.

[Signature page follows]

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

**CENTER FOR COMPUTATIONAL
SCIENCE RESEARCH, INC.**

Signed: _____

Name: _____

Title: _____

Date: _____

[THE MEMBER]

Signed: _____

Name: _____

Title: _____

Date: _____

[Signature page to PRCC Member Agreement]

EXHIBIT A
APPENDIX 1

EXHIBIT B
NOTICE AND LICENSE