

MEMBERSHIP AGREEMENT

Between CONSORTIUM for SOFTWARE ENGINEERING RESEARCH Incorporated, a not-for-profit corporation, incorporated pursuant to the laws of Canada (hereinafter referred to as CSER).

and () a corporation incorporated under the laws of
() (hereinafter referred to as the "Applicant")

Whereas: CSER is a corporation that was constituted for the purpose of carrying on and promoting scientific research and experimental development in the field of software engineering;

Whereas: CSER is engaged in support of software engineering research for and by its Members.

Whereas: The Applicant carries on a business or research program in Canada to which the research endeavour of CSER are related and is desirous of assisting in the scientific research and experimental development endeavour of CSER while sharing with CSER and other members of CSER the results of this research;

Whereas: The Applicant and CSER recognize that the sharing in the results of such research endeavour is to the benefit of all CSER Members, to the benefit of their affiliates, to the benefit of Canadian research institutions who will become Associate Members of CSER, to the benefit of Canada generally and that it will assist Members to compete more effectively in the global marketplace; and

Whereas: The Applicant and CSER wish to encourage greater effort in software engineering research at Canadian universities and wish to influence the development of curriculum for university students and working professionals in the field of software engineering.

Whereas: The Applicant desires to be a Member of CSER in the following category of Membership: **Corporate Member/Associate Member**

Now, therefore, in the consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. DEFINITIONS

In this agreement:

- 1.1 **"Scientific Research and Experimental Development"** shall have the meaning given to that expression pursuant to the Income Tax Act of Canada;
- 1.2 **"Member"** means duly appointed Member of CSER which is in good standing, either a Corporate Member or an Associate Member.
- 1.3 **"Corporate Member"** means a corporate Member of CSER duly appointed pursuant to the bylaws of CSER.
- 1.4 **"Associate Member"** means an Associate Member of CSER duly appointed pursuant to the bylaws of CSER.
- 1.5 **"Work"** means any study or research into or relating to software engineering which CSER directs and assists in funding.
- 1.6 **"Board of Directors"** means the board of directors from time to time in office of CSER, or any committee of the board of directors which is delegated by the board of directors to act in the place or on behalf of the board of directors pursuant to the by-laws of CSER.
- 1.7 **"Intellectual Property"** means all intellectual and industrial property rights produced, acquired or generated in the course of the performance of any Work and shall include all rights which are capable of protection by patents, trademarks, copyright, registered industrial designs, integrated circuit topography registration or foreign equivalents of any of the foregoing, and shall include all trade secrets and know-how produced or generated in the course of the performance of the Work.
- 1.8 **"Background Technology"** means all intellectual property and industrial property rights incorporated into the Work and produced, acquired or generated independently of performance of the Work and shall include all rights which are capable of protection by patents, trademarks, copyright, registered industrial designs, integrated circuit topography registration or foreign equivalents of any of the foregoing, and shall include all trade secrets and know-how incorporated into the Work and produced or generated independently of the performance of the Work.

2. INTERPRETATION

- 2.1 In this agreement, words importing the singular number include the plural and vice versa, and words importing gender include all genders.

3. APPLICATION FOR MEMBERSHIP

- 3.1 The Applicant hereby applies for membership in CSER and agrees to accept and to be bound by the provisions of the Letters Patent and By-Laws of CSER and this Membership Agreement, now in effect, and as they may be duly amended from time to time. In the event of any conflict between the provisions of the Membership Agreement and such Letters Patent and By-Laws, the provisions of the Letters Patent and By-Laws shall prevail.
- 3.2 Upon execution of this Agreement by CSER, the Applicant shall be and is hereby deemed to be a Member of CSER in the category of membership mentioned in the preamble, and is thus entitled to all rights, privileges and obligations of that category of membership as set out in the Letters Patent and By-Laws of CSER and this Agreement.

4. OBLIGATIONS OF CSER

CSER agrees that:

- 4.1 CSER shall not confer membership on anyone who has not, by way of application for membership, first executed a Membership Agreement the same in all material respects to this Membership Agreement as may be amended from time to time pursuant to article 9.0 "Amendments to Membership Agreement".
- 4.2 CSER will undertake the Work authorized, from time to time, by the Board of Directors. CSER will sponsor the Work, and will organize committees established by CSER.
- 4.3 CSER will enter into such contracts and agreements as is necessary to undertake the Work and to fulfil its obligations and to protect the rights of its Corporate Members, but that does not include supporting either legal proceedings or proceedings for the protection or registration of Intellectual Property.

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- 4.4 a) CSER will promote communication among Members and will keep Members informed of technical developments in all CSER sponsored projects.
- b) Without limiting the foregoing, CSER will arrange the dissemination of results of the Work to Corporate Members.
- c) CSER will issue reports to Members on all Work at least once a year, including significant results and the names of researchers, in such manner as may from time to time be devised for this purpose.
- 4.5 CSER will not disseminate any research results to non-Members prior to disclosure of those results to Members, and then only with the consent of the Board of Directors.
- 4.6 CSER will grant Members preference over non-Members in access and cost for all workshops, seminars and conferences organized by CSER.

5. OBLIGATIONS OF MEMBERS

- 5.1 The Applicant agrees that as a Member of CSER:
- a) It will participate in the definition and assessment of CSER research programs.
- b) It will not disclose confidential information to CSER which is outside the scope of CSER projects.
- c) It will consider the possibility of working collaboratively with other Members in shared-cost arrangements on work of interest to CSER.
- d) It will provide qualified personnel for CSER committees for reasonable periods and frequency with no charge for their services.
- e) It will pay CSER an annual membership fee in an amount and at a time as from time to time will be set by the Board of Directors for the Applicant's category of membership.
- f) It will make the financial contributions to Work which it has committed to make.

- 5.2 The Applicant further agrees that:
- a) It will provide technical guidance and access to proprietary software, and will host university investigators at its premises, in support of Work for which it is the CSER sponsor.
 - b) It will mark as "confidential" or "proprietary" any such information which is included in any deliverables to CSER, and it will identify the proprietor of such information.
 - c) It will inform CSER of any publication, patent filing, public disclosure or public use of any proprietary or previously confidential information which is generated or used in the course of any Work.

6. INFORMATION DISCLOSURE

- 6.1 With respect to Background Technology the Applicant agrees:
- a) It will disclose to CSER all Background Technology prior to incorporation into the Work in sufficient detail for understanding and eventual commercial exploitation of the Work.
 - b) It will make the Background Technology required for commercial exploitation of the Work available to CSER Corporate Members on the same terms as it would be available to other commercial customers or if not so available, on commercially reasonable terms.
- 6.2 The Applicant shall make prompt disclosure to CSER of all Work results including disclosure of all Intellectual Property.
- 6.3 The Applicant shall identify and mark all deliverables to CSER which it considers to be confidential or proprietary, and it shall identify the owners. CSER agrees that such markings will not be removed without written consent of the Applicant.
- 6.4 The Applicant hereby grants CSER the right to disclose all deliverables that the Applicant makes to CSER, to all Members, including Associate Members, on a confidential basis.
- 6.5 The Applicant shall not make any public disclosure of any Work or results of any Work, for 90 days (120 days where patent action is contemplated) after disclosure to CSER, unless specific CSER permission has been granted in advance of publication by the Board of Directors.

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- 6.6 If the Applicant makes public disclosure of any Work or results of any Work, the Applicant shall acknowledge CSER sponsorship, unless CSER requests that its name not be used.
- 6.7 The Applicant shall treat all information disclosed to it by CSER which is marked confidential in the same manner and with the same care as the Applicant treats its own confidential information, but with no less than reasonable care, until public release of the information has been approved by CSER or until five years from its receipt from CSER or longer if specifically requested by CSER. However, these requirements for protection and confidentiality shall not apply to information that is already rightfully in the possession of the receiving party; information that is in the public domain through no fault of the receiving party; information that is received from a third party not subject to restrictions or information that is developed independently of the receipt from the other party.
- 6.8 Before the Applicant discloses confidential information received from CSER to affiliates, the Applicant must ensure that such affiliates shall hold the information confidential to the same extent that the Member is required to hold it confidential.
- 6.9 If the Applicant requires researchers or investigators to sign confidentiality agreements to protect information proprietary to the Applicant, such confidentiality agreements must not prevent dissemination of research results nor prevent eventual publication of research results in the public literature.
- 6.10 The Applicant acknowledges that the disclosure of information to Members by CSER does not grant the recipients any rights or licence to the use of the disclosed information, save as expressly set out in this agreement.
- 6.11 The Applicant and CSER shall hold each other blameless for any loss, damage or claim suffered by either, which results from the use of disclosed information.
- 6.12 All confidentiality obligations imposed on the Applicant pursuant to this Agreement shall survive the termination of the Applicant's membership in CSER.
- 6.13 CSER shall require members of the Board of Directors to sign a confidentiality agreement that obliges them to the same conditions as a Corporate Member.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 CSER and the Applicant agree that with respect to any Intellectual Property:
- a) The creator of the Intellectual Property, or the creator's employer, as the case may be, shall acquire initial title to Intellectual Property.
 - b) Corporate Members shall have a right to make internal use of Intellectual Property but they will not have the right to incorporate it into a product or service which is sold to third parties, or to license it to third parties except to the extent that a Corporate Member owns the Intellectual Property. Members may use Intellectual Property in the development of software which is then sold to third parties.
 - c) Nothing in this Agreement grants Members the right to make line-by-line copies of source code listings, or to reverse compile or disassemble object code provided pursuant to this Agreement.
- 7.2 The Applicant must ensure that any Intellectual Property which it thinks might be patentable is disclosed promptly and in confidence to CSER. If initial title holder does not wish to pursue patent protection, the Applicant shall take all reasonable steps to ensure that before there is any public disclosure of the invention, CSER shall have 30 days in which to inform its Corporate Members in confidence of the invention, and the Corporate Members shall have a further 90 days in which to negotiate a licence with the initial title holder and arrange for patent protection prior to disclosure.
- 7.3 The Parties hereto agree that Corporate Members who join CSER after CSER sponsored research projects have already created Intellectual Property may be given rights in the Intellectual Property similar to those enjoyed by other Corporate Members on terms and conditions as determined by the Board of Directors.

8. RESEARCH AGREEMENTS

- 8.1 CSER and the Applicant agree that all Work shall be done under research agreements between CSER and the relevant Associate Members, Corporate Members, researchers, institutions or organizations and that these agreements shall impose obligations related to the disclosure and confidentiality of information, and intellectual property, similar in all substantive respects to those imposed on the Applicant in this Agreement.

9. AMENDMENTS TO MEMBERSHIP AGREEMENT

- 9.1 Any amendment to the Membership Agreement requires approval by 2/3 of the Corporate Members at a meeting of the Members of CSER.

10. TERMINATION AND SURVIVAL OF OBLIGATIONS

- 10.1 This Agreement shall remain in force until terminated by either party giving the other six months' advance notice.
- 10.2 Any Member not in agreement with an approved amendment may terminate on the date of the implementation of that amendment.
- 10.3 CSER may terminate the membership of any Member who is in default of any of the terms of the Membership Agreement, the Letters Patent or the By-laws of CSER. However if the defaulting Member cures the breach within sixty (60) days after written notice is given, the membership will remain in full force and effect.
- 10.4. Any termination shall be without prejudice to the rights and obligations of the Parties which have accrued to the date of termination.

11. GENERAL

- 11.1 This Agreement shall be interpreted pursuant to the laws of Ontario.
- 11.2 This Agreement is not assignable and shall be binding upon the parties and their respective successors.
- 11.3 The order of precedence for interpretation of agreements shall be CSER Bylaws, CSER Membership Agreement and CSER Research Agreements.
- 11.4 The rights and obligations of a Member with respect to confidential information, Background Technology and Intellectual Property shall apply to and be enjoyed by subsidiaries and affiliates of such Members to same extent as if such subsidiaries and affiliates were Members of CSER in the same category as the member.

signature page follows

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Executed in duplicate as of the _____ day of _____, 200__

Consortium for Software Engineering Research

Chair, CSER Board of Directors
