Open Compute Project Contribution License Agreement

As of Jan 1st, 2019

This Contribution License Agreement ("Agreement") is entered into between the entity identified below and its Bound Entities (collectively, “Contributor”), and Open Compute Project Foundation (“OCP”) as of the date set forth below (“Effective Date”).

1. Definitions.

a. “Bound Entities” means the entity identified below and any entities that the Bound Entity Controls.

b. “Contribution(s)” means the proposed specification(s) or portion(s) thereof submitted by Contributor, as identified in the Appendices.

c. “Control” means direct or indirect control of more than 50% of the voting power to elect directors of that corporation, or for any other entity, the power to direct management of such entity.

d. “Granted Claims” are those patent claims that Contributor owns or controls, including those patent claims that Contributor acquires or controls after the Effective Date, that are infringed by the Permitted Uses. Granted Claims include only those patent claims that are infringed by the implementation of any portions of the Specification where the Specification described the functionality causing the infringement in detail and does not merely reference the functionality causing the infringement. Granted Claims under this Agreement exclude those patent claims that would be infringed by an implementation of the Specification if Contributor’s Contribution to that Specification were removed.

e. “Licensee” means any person or entity who exercises copyright or patent rights granted under this Agreement, and any person or entity Licensee Controls.

f. “Permitted Uses” means making, selling, offering for sale, importing or distributing any implementation of the Specification 1) only to the extent it implements the Specification and 2) so long as all required portions of the Specification are implemented. Permitted Uses do not extend to any portion of an implementation that is not included in the Specification.

g. “Related Entity” means 1) any entity that Controls the Bound Entity (“Upstream Entity”), and 2) any other entity that is Controlled by an Upstream Entity that is not itself a Bound Entity.

h. “Specification” means the proposed specification identified in the attached Appendices and any Versions thereof.
i. "Version" means the version of the Specification to which the Contribution is made and any subsequent versions thereof or revisions thereto leading up to or culminating in the final adopted Specification. For the avoidance of doubt, this Agreement, together with the applicable Appendix, will apply to each subsequent version of the Specification without the need for separately executed Appendices for all such subsequent versions of the Specification.

2. Contributions and Structure. Contributor must sign an Appendix, referencing and incorporating this Agreement, before submitting any Contribution for approval or incorporation into a Specification by OCP. There will be one or more Appendices attached to this Agreement in the form of the Appendix attached hereto. Contributor may make multiple Contributions by completing and executing an Appendix for each Contribution. Contributor may make Contributions to multiple Specifications through the use of Appendices with different letters indications. Each Appendix will be lettered for each Specification to which the Contributor makes a Contribution (e.g. Appendix A-1, B-1, and C-1 for Contributions to different Specifications), and numbered for each Contribution made to a particular Specification (e.g. Appendix A-1, A-2, and A-3 for multiple Contributions to the same Specification).

3. Licenses.

a. Copyright Grant. Contributor hereby grants Licensee a perpetual (for the duration of the applicable copyright), worldwide, non-exclusive, no-charge, royalty-free, copyright license, without any obligation of accounting to Contributor, to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, distribute and implement any Contribution to the full extent of Contributor’s copyright interest in the Contribution.

b. Patents

i. Patent Non-Assert. Contributor, on behalf of itself and its successors in interest and assigns, irrevocably promises not to assert Contributor’s Granted Claims against Licensee for Licensee’s Permitted Uses, subject to the terms and conditions of this Section 3(b). This is a personal promise directly from Contributor to Licensee, and Licensee acknowledges as a condition of benefiting from it that no rights from Contributor are received from suppliers, distributors or otherwise in connection with this promise. This promise also applies to Licensee’s Permitted Uses of any other specifications incorporating all required portion of the Specification.

1. Bankruptcy. Solely for purposes of Section 365(n) of Title 11, United States Bankruptcy Code and any equivalent law in any foreign jurisdiction, this promise will be treated as if it were a license and Licensee may elect to retain Licensee’s rights under this promise if Contributor (or any owner of any patents or patent applications
ii. **Patent License Commitment.** In addition to the rights granted in Section 3(b)(i), Contributor, on behalf of itself and its successors in interest and assigns, agrees to grant Licensee a no-charge, royalty-free license to its Granted Claims on reasonable and non-discriminatory terms, where such license applies only to those Granted Claims infringed by the implementation of the Contribution(s) alone or by combination of the Contribution with the Specification solely for Licensee’s Permitted Uses.

iii. **Termination.**

   1. **Due to Claims by Licensee.** All rights, grants, and promises made by Contributor to Licensee under this Agreement are terminated if Licensee files, maintains, or voluntarily participates in a lawsuit against Contributor or any person or entity asserting that its Permitted Uses infringe any Granted Claims Licensee would have had the right to enforce had Licensee signed this Agreement, unless that suit was in response to a corresponding suit first brought against Licensee.

   2. **Due to Claims by Contributor or Contributor’s Related Entities.** If a Related Entity of Contributor files, maintains, or voluntarily participates in a lawsuit asserting that a Permitted Use infringes any Granted Claims Patents it would have had the right to enforce had it signed this Agreement, then Contributor relinquishes any rights, grants, and promises Contributor has received from other signatories of this Agreement, unless a) Contributor’s promise to Licensee was terminated pursuant to Section 3(b)(ii)(1), or b) that suit was in response to a corresponding suit first brought by Licensee against the Related Entity.

4. **Other Rights Reserved.** Contributor hereby reserves all rights not expressly granted in this Agreement. No additional licenses or rights whatsoever (including without limitation any patent licenses) are granted by implication, exhaustion, estoppel or otherwise.

5. **Representations, Warranties, Disclaimers and Limitation of Liability.** Contributor represents and warrants that the Contribution is Contributor’s original work, except to the extent Contributor may have informed OCP in writing prior to or at the time of Contribution. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 5, THE CONTRIBUTION IS PROVIDED WITHOUT WARRANTY OF ANY KIND, AND OCP ACKNOWLEDGES THAT CONTRIBUTOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL OCP BE LIABLE TO CONTRIBUTOR FOR
6. **General.** This Agreement is the entire agreement between the parties on the subject matter hereof. No amendment of this Agreement will be valid unless made in writing and signed by both parties. This Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in California. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.

[Signatures on Following Page]
Contributor (corporate name): __________________________________________________________

Contributor (contact information):

Email Address: ________________________________________________________________

Mailing Address: ________________________________________________________________

___________________________________________________________

BY SIGNING BELOW, I CERTIFY THAT I AM AUTHORIZED TO EXECUTE THE OPEN COMPUTE PROJECT LICENSE AGREEMENT ON BEHALF OF THE CONTRIBUTOR NAMED ABOVE, THAT THE CONTRIBUTOR ABOVE IS BOUND BY THE OPEN COMPUTE PROJECT LICENSE AGREEMENT, AND THAT ALL PROMISES MADE HEREIN RELATING TO THE CONTRIBUTIONS OR THE SPECIFICATIONS ARE COMMITMENTS OF THE CONTRIBUTOR.

Signature: ________________________________________________________________

Title: ____________________________________

Effective Date: ________________________

OPEN COMPUTE PROJECT FOUNDATION

Accepted by: ________________________________________________________________

Title: ____________________________________

P.O. Box 82287
Austin, Texas 78708
Open Compute Project Contribution License Agreement

Form of Appendix (template only) DO NOT SIGN

Contribution Name:

________________________________________________________________________

Contribution Type: (Specification/Design Package/Reference Architecture/etc.)

________________________________________________________________________

Contributor (corporate name): ___________________________________________________________

Contributor (contact information):

Name: ____________________________________________________________________________

Email Address: _____________________________________________________________________

Mailing Address: ___________________________________________________________________

BY SIGNING BELOW, I CERTIFY THAT I AM AUTHORIZED TO EXECUTE THE OPEN COMPUTE PROJECT LICENSE AGREEMENT ON BEHALF OF THE CONTRIBUTOR NAMED ABOVE, THAT THE CONTRIBUTION AND CONTRIBUTOR ABOVE ARE BOUND BY THE OPEN COMPUTE PROJECT LICENSE AGREEMENT, AND THAT ALL PROMISES MADE HEREIN RELATING TO THE CONTRIBUTION OR THE SPECIFICATION ARE COMMITMENTS OF THE CONTRIBUTOR.

Signature: __________________________________________________________________________

Title: _____________________________________________________________________________

Effective Date: ______________

Open Compute Project Contribution License Agreement
Form of Appendix
Open Compute Project Contribution License Agreement

Appendix A - ____

Contribution Name:

________________________________________________________________________

Contribution Type: (Specification/Design Package/Reference Architecture/etc.)

________________________________________________________________________

Contributor (corporate name): ________________________________________________

Contributor (contact information):
Name:  _____________________________________________________________________
Email Address: _____________________________________________________________________
Mailing Address: _____________________________________________________________________

BY SIGNING BELOW, I CERTIFY THAT I AM AUTHORIZED TO EXECUTE THE OPEN COMPUTE PROJECT LICENSE AGREEMENT ON BEHALF OF THE CONTRIBUTOR NAMED ABOVE, THAT THE CONTRIBUTION AND CONTRIBUTOR ABOVE ARE BOUND BY THE OPEN COMPUTE PROJECT LICENSE AGREEMENT, AND THAT ALL PROMISES MADE HEREIN RELATING TO THE CONTRIBUTION OR THE SPECIFICATION ARE COMMITMENTS OF THE CONTRIBUTOR.

Signature: _____________________________________________________________________

Title: _____________________________________________________________________

Effective Date: ________________

Open Compute Project Contribution License Agreement
Appendix A- ____