

**OPEN COMPUTE PROJECT MEMBERSHIP AGREEMENT**  
**Amended May 26, 2020**

This OPEN COMPUTE PROJECT MEMBERSHIP AGREEMENT (“**Membership Agreement**”) is made as of the Effective Date, by and between Open Compute Project Foundation, a Delaware nonprofit nonstock corporation (“**OCP**”), and the undersigned Member (“**Member**”).

**RECITALS**

A. OCP has been formed to steward the Open Compute Project, the mission of which is to create a consumer-led community to further the cooperative development of efficient data center and server technology and to reduce costs and environmental impact of operating data center and server installations.

B. Member wishes to participate in the Open Compute Project on the terms described herein and to further the purposes of the Open Compute Project.

NOW, THEREFORE, the parties agree as follows:

1) **Definitions.**

- a) “*Affiliate*” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject entity. For purposes of this definition control means, direct or indirect ownership of or the right to exercise (a) more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) more than fifty percent (50%) of the controlling interest representing the right to make the decisions for the subject entity.
- b) “*Effective Date*” means the date upon which Member has duly executed this Membership Agreement and paid the dues required for the membership level chosen by Member and agreed to by OCP.
- c) “*Member*” means any member of OCP, as determined in accordance with the Bylaws, that has signed this Membership Agreement. Member includes Affiliates of Member.
- d) “*Bylaws*” are the bylaws adopted by OCP (as of the Effective Date, the then current version of which is available at <http://opencompute.org/participate/legal-documents>).

2) **Participation.**

- a) Member will abide by the following (hereinafter collectively “*Policies and Procedures*”): the Bylaws, this Membership Agreement, the Intellectual Property

Rights Policy (as of the Effective Date, the then current version of which is available at <http://opencompute.org/participate/legal-documents>) (the “**IPR Policy**”), the Tiered Membership Requirements and Benefits Policy (as of the Effective Date, the then current version of which is available at <http://opencompute.org/participate/legal-documents>) (the “**Tiered Membership Policy**”), and any additional rules and policies adopted by OCP in accordance with the Bylaws. Each of the forgoing Policies and Procedures may be adopted and/or modified from time to time by OCP during the term of this Membership Agreement. Dues for membership will be as determined by OCP according to its Bylaws and the Tiered Membership Policy. Member shall abide by all requirements particular to its class of membership according to the Bylaws and the Tiered Membership Policy. OCP will provide [at least thirty (30) days] written notice of newly adopted and/or amended Bylaws, Membership Agreement, IPR Policy and Tiered Membership Policy to Member prior to the effective date of such newly adopted and/or amended Policies and Procedures. Such notice may be provided via e-mail notification to the contact information submitted by Member in Exhibit A (as updated in writing by Member). Member is responsible for reviewing any newly adopted and/or amended Policies and Procedures. Member shall be bound by any newly adopted or amended Policies and Procedures made by OCP during the term of this Membership Agreement unless Member resigns or withdraws from membership as set forth in Section 9(b) of the Bylaws prior to the effective date of such newly adopted or amended Policies and Procedures; provided that no member shall be required to pay any new or increased dues adopted by OCP after the Effective Date until the Member’s anniversary of membership that first follows the change by at least ninety (90) days. Resignation or withdrawal from membership shall not entitle Member to any refund of payments made by Member in connection with Member’s membership unless approved by OCP Board of Directors in its sole discretion.

b) OCP may require, as a condition to membership for certain tiers, that Member make a contribution to the Open Compute Project pursuant to the terms stated in the IPR Policy and the Tiered Membership Policy.

3) **Membership Class.** Member is applying at the following membership class, as set forth in the Bylaws and Tiered Membership Policy, as a (check the appropriate box):

- Executive or
- Non-Executive Member.

4) **Membership Tier (Organization Members Only).** Member is applying at the following membership tier, as set forth in the Tiered Membership Policy (check the appropriate box):

- Community Member,
- Silver Member,
- Gold Member, or
- Platinum Member.

Membership in a particular tier is conditioned upon Member meeting the requirements of such tier as set forth in the Tiered Membership Policy. OCP may move Member between tiers at any time in accordance with the Tiered Membership Policy. The Tiered Membership Policy outlines the benefits afforded each tier of membership. OCP may modify such benefits, including but not limited to adding or deleting certain benefits. For avoidance of doubt, if OCP modifies the Tiered Membership Policy or amends other Policies and Procedures in a manner that is materially detrimental to Member, Member's sole remedy shall be to resign or withdraw from membership in OCP pursuant to Section 9(b) of the Bylaws; provided, however, that OCP will not refund any payments made by Member in connection with Member's membership unless approved by the OCP Board of Directors in its sole discretion.

- 5) **Representative.** Member shall appoint a single point of contact, set forth in Exhibit A, to handle any inquiries regarding this Membership Agreement. Member shall be solely responsible for promptly notifying OCP in writing of any changes to Member contact information and OCP shall be entitled to rely on such contact information for providing notice to Member hereunder.
- 6) **Confidentiality.** Information disclosed by Members shall not be confidential except as provided in the Bylaws or as otherwise agreed in writing by the recipient of the information.
- 7) **Trademarks.** To the extent Member uses any trademarks, membership marks, or certification marks of OCP, Member hereby agrees to and will abide by the Membership Logo Terms and Conditions, the Solution Provider Agreement and/or the Certification Mark License Agreement, as applicable based on the OCP mark(s) at issue, as well as the OCP Trademark Usage Guidelines, which describes the required manner of using and displaying all OCP marks.
- 8) **Press Releases.** Member shall not issue a press release or make any other public announcement without OCP's prior written approval regarding Member's activities as an OCP member, including but not limited to regarding any new project or program involving OCP or the OCP community, first announcements of newly certified products, or future OCP projects, plans or directions. For avoidance of ambiguity, Member does not need prior written approval from OCP for promotional material or announcements regarding (i) Member's own product information after OCP certification is achieved and announced by OCP, (ii) Member's activities regarding such products, or (iii) Member's own projects unrelated to OCP or the OCP community. Member shall not make a press or other public announcement that names the identifies of any other OCP member unless prior written consent is received from any and all OCP members named or referenced in the press release or public announcement. Unless otherwise stated above, OCP may make a press or other public announcement regarding any subject germane to its purposes and may identify Member as a member of the OCP.
- 9) **Term.** This Membership Agreement will commence on the Effective Date and continue until termination of Membership in accordance with the Bylaws.

10) **Termination.**

- a) **Termination on Notice.** Either party may terminate this Membership Agreement for any reason on thirty (30) business days written notice to the other party.
- b) **Termination for Insolvency.** If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this Membership Agreement with immediate effect.
- c) **Termination Because of Law or Order.** Either party may terminate this Membership Agreement with immediate effect if
  - (i) there is or becomes any Law that makes the performance of the terms of this Membership Agreement illegal or otherwise prohibited, or
  - (ii) any Governmental Authority issues an Order restraining or enjoining the transactions under this Membership Agreement.

11) **Export Control:** Each party shall comply with all obligations imposed on it under applicable law to control access to technical data and materials under the U.S. Export Laws and Regulations, or any foreign counterparts thereof, and shall adhere to such laws and regulations in handling and disclosing any technical data and materials received by it under this Membership Agreement.

12) **Miscellaneous.** This Membership Agreement will bind and inure to the benefit of the parties hereto and their successors and assigns, provided, however, that Member may not assign or transfer this Membership Agreement, including by operation of law, or through a merger or acquisition, unless, (i) OCP provides its prior written consent to such assignment, and (ii) the assignee agrees in writing to be bound by this Membership Agreement. This Membership Agreement will be governed by the laws of the State of Texas, without reference to conflict of laws principles. The parties agree that any dispute arising out of or related to this Membership Agreement will be subject to, and Member hereby consents to, the exclusive jurisdiction of the state and federal courts located in Travis County, Texas. This document, in combination with any and all documents referenced herein, contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Membership Agreement shall not constitute a waiver thereof or of any other provision hereof. Except for OCP's adoption and/or amendment of Policies and Procedures as set forth in Section 2(a) above, this Membership Agreement may not be amended, nor any obligations waived, except by a writing signed by both parties hereto. By signing below, the individual executing this Membership Agreement on behalf of Member warrants that he or she has all requisite signing authority for and on behalf of the entity seeking membership.

(Signature on next page)

**Open Compute Project Foundation**

**Member (Organization Name):**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**EXHIBIT A**

Membership Contact

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_