

# OPEN SOURCE FIRMWARE FOUNDATION

## MEMBERSHIP AGREEMENT

Please have this Membership Agreement executed by an authorized representative of the Member and send an executed copy in PDF form by email to membership@opensourcefirmware.foundation. A countersigned copy will be returned to you by email for your records when your eligibility for membership has been confirmed and an invoice will be sent to you for payment of applicable membership fees. The Foundation will rely on the contact information provided in Exhibit A for any notices.

Note that this Agreement is not an indication of interest; execution of this agreement creates an irrevocable, binding obligation for the Member to make the payments provided for and to otherwise perform in accordance with its terms. The Foundation may refuse any Membership Agreement submitted by a member that has payment obligations outstanding to the Foundation or to any other the Foundation directed fund.

This Membership Agreement (the "Agreement") is made effective as of \_\_\_\_\_, (the "**Effective Date**") by and between Open Source Firmware Foundation (the "**Foundation**"), an Oregon non-profit mutual benefit corporation, and \_\_\_\_\_, a/n \_\_\_\_\_ (the "**Member**") with a/an \_\_\_\_\_ membership (the "**Membership Level**") with an employee headcount of \_\_\_\_\_ ("**Consolidated Employees**" if applicable, see Exhibit B). The Foundation and the Member are collectively referred to herein as the "Parties".

WHEREAS, the Foundation is a not-for-profit mutual benefit corporation, the purposes of which are to advance research on open source software and to educate open source communities by facilitating technology exchange with the aim of building a global community around open source firmware through sharing of intellectual resources, infrastructure, services, events and training; and to engage in any lawful act or activity related to the foregoing for which corporations that are organized as not-for-profit may be organized under Chapter 65 Nonprofit Corporations of the Oregon Revised Statutes.

WHEREAS, the Foundation is open to all organizations that want to promote and to improve the ecosystem for the Foundation's specifications.

WHEREAS, the undersigned hereby agrees to become a Member of the Foundation at the membership level shown above, and be subject to the rights and obligations of members set forth herein and in the Foundation's Bylaws, as amended from time to time.

NOW, THEREFORE, THE FOUNDATION AND THE MEMBER AGREE AS FOLLOWS:

1. Class of Member; Rights; Obligations. There shall be four (4) Membership Levels in the Foundation: (1) Founding Member, (2) Premier Member, (3) General Member, and (4) Associate Member. Rights and obligations of members are set forth in this Agreement and in the Foundation's Bylaws to which the Member hereby agrees. Member has applied for membership in the member or participant class set forth in Exhibit A, which is hereby incorporated into this Agreement. Member shall be entitled to, and the Foundation shall provide to Member, all of the rights, benefits and

privileges of the member or participant class of the Foundation of which Member is a part, as set forth in the Bylaws and this Agreement. Member has received, read, understands and agrees to be bound by and comply with the obligations of the member or participant class of which Member is a part, as set forth in the Bylaws. Member acknowledges and agrees that the Bylaws of the Foundation, including the provisions relating to Member's rights, benefits and privileges, may be amended from time in accordance therewith and subject to and in accordance with the Oregon Nonprofit Corporation Law. Member agrees, subject to Member's right to withdraw from membership or participation in the Foundation, as the case may be, to comply with such amendments. Member hereby represents and warrants to the Foundation that Member has the full right, power and authority to enter into and execute this Agreement, and that Member has taken all actions necessary to authorize it to enter into and perform its obligations under this Agreement. In the event of any conflict between the terms of this Agreement and the Bylaws, the Bylaws shall control. Member shall not engage in activities that may adversely affect the nonprofit and/or tax-exempt status of the Foundation under applicable federal and state laws.

2. Compliance with Foundation Policies. Member has received, read, understands and agrees to be bound by and comply with the following policies of the Foundation (each a "Policy" and collectively, the "Policies"): (i) the IPR Policy; (ii) the Foundation's Antitrust Guidelines; (iii) the Code of Conduct; and, (iv) any other policies and procedures of the Foundation as may be set forth by the Board of Directors of the Foundation from time to time. Member acknowledges and agrees that each of the Policies may be amended from time to time in accordance with their respective terms and the Bylaws. The Foundation shall provide Member with a copy of any such Policy amendment within thirty (30) days of the effective date thereof. Member agrees, subject to Member's right to withdraw from membership or participation in the Foundation, as the case may be, to comply with such amendments. Member agrees to comply with the charters of any specific project that it chooses to contribute to and to comply with the technical governance and intellectual property policies for each technical project community, if any, hosted by the Foundation and its affiliates are or will be set forth, as the case maybe, under the applicable charter for each project. Member hereby represents and warrants that it has the power to cause all intellectual property owned or controlled by it and all of its Affiliates to be licensed as set forth in the IPR Policy. Member acknowledges and agrees that any discussions about sales levels, methods, channels of distribution, markets, customers, prices or profitability or any other topic which would restrict use of technologies or which would violate any antitrust laws are prohibited, all as more particularly described in the Foundation's Antitrust Guidelines.
3. Membership Commencement. All membership privileges, rights and obligations will commence starting at the Effective Date.

4. No Warranty of Foundation. ALL INFORMATION PROVIDED TO MEMBER AS PART OF ANY SPECIFICATION OR AS A PART OF ANY PROPOSED OR FINAL SPECIFICATION IS PROVIDED TO MEMBER "AS IS", "WITH ALL FAULTS", WITH NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, VALIDITY OF PATENT CLAIMS, WHETHER ISSUED OR PENDING, OR THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

5. Membership Fees; Member Assessments; Member Expenses. Member shall pay to the Foundation the applicable Membership Fees describe as in **Exhibit B**. Member agrees that the Foundation may condition continued membership or participation, as the case may be, upon payment of such Membership Fees as well as any applicable Member Assessments, as described in the Bylaws. The failure to pay such Membership Fees and/or any Member assessments may subject the Member to termination or suspension of membership or participation in the Foundation, as the case may be, as provided in the Bylaws. Member shall bear its own costs and expenses for its participation in member or participant activities, such as travel, employee compensation, and incidental expenses.

## 6. Publicity.

6.1 Press Releases & Other Public Announcements. Subject to the terms and conditions of this Section 6, Member may make a press or other public announcement regarding its activities as a member or participant of the Foundation, as the case may be, provided that Member shall not use, name or include the identities of any other Member in any form of publicity or public announcement without the prior written consent of such other Member. Member is not authorized to provide quotes or comments on behalf of the Foundation.

6.2 Use of Member's Name & Logo. Name and Logo (Artwork) has to be used under the conditions of the Creative Commons Attribution-NoDerivatives 4.0 International license. There is a short version which explains the license easily (<https://creativecommons.org/licenses/by-nd/4.0/>).

## 7. Confidentiality.

7.1 Definition. "Confidential Information" means a) any Technical Specifications designated as such by the Board of Directors; or b) all information that is provided by or on behalf of the Foundation or another Member (each, a "Disclosing Party") to Member in connection with Member's activities as a member or participant of the Foundation and is marked as "Confidential Information" or similar, as the case may be. The term Confidential Information shall not be deemed to include information that: (i) becomes generally available to the public other than as a result of unauthorized disclosure or use by Member; (ii) was already in possession of Member on a non-confidential basis prior to its disclosure by or on behalf of the Disclosing Party; (iii) becomes available to the Member on a non-confidential basis from a source other than the Disclosing Party provided that such source is lawfully in possession of such Confidential Information and under no obligation of confidentiality to the Disclosing Party or any third party; or, (iv) is approved in writing in advance by the Disclosing Party for Member to use or disseminate free of

any ongoing obligations hereunder.

7.2 Member's Obligation. Member shall not use Confidential Information for any purposes other than the sole purposes of (i) carrying out the necessary work and obligations of Foundation and/or (ii) providing feedback between sub-organizations within the Foundation, including, but not limited to the Board of Directors, Committees and subgroups such as Workstream. Member shall not disclose Confidential Information to third parties except as necessary to fulfill the foregoing purposes and under an agreement by the third party to be bound by the obligations of this Section 7. Without limiting the generality of the foregoing, Member agrees to disclose to its employees, agents, service providers, legal advisors, consultants, or independent contractors (collectively, "Representatives") only such Confidential Information as is necessary to each such Representative's responsibilities in performing the acts allowed by this Agreement. Member shall safeguard Confidential Information for a period of three (3) years after the date of initial disclosure, with the same standard of care that is used with respect to Member's own confidential information, but in no event less than reasonable care. If Member receives a subpoena or court or governmental order to produce any of the Confidential Information or otherwise determines that Member is legally required to disclose or produce any of the Confidential Information in its possession or control, Member shall: (a) promptly notify the Disclosing Party in writing of such required disclosure; (b) allow the Disclosing Party a reasonable opportunity to seek a protective order or other relief to prevent, restrict and/or limit such disclosure and cooperate with the Disclosing Party in seeking any such relief; and, (c) disclose only that portion of the Confidential Information that is legally required to comply with the subpoena, order or other disclosure requirement.

8. Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED BELOW, IN NO EVENT WILL THE MEMBERS OR THE FOUNDATION BE LIABLE, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, TO MEMBER OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY OR OTHERWISE, WHETHER OR NOT MEMBER OR THE FOUNDATION HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO ANY SEPARATE AGREEMENT BETWEEN OR AMONG MEMBERS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO A BREACH OF CONFIDENTIALITY HEREUNDER OR A BREACH OF THE IPR POLICY RELATED TO THE OBLIGATION NOT TO ASSERT OR TO LICENSE INTELLECTUAL PROPERTY RIGHTS AS PROVIDED IN THE IPR POLICY.

9. Term and Termination.

- 9.1 Term. From the Effective Date, this Agreement continues in full force and effect for one (1) year (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one-year terms ("**Renewal Terms**") unless terminated by the Member or the Foundation in writing three (3) months prior to the Renewal Term.

9.2 Termination. The Membership of any Member shall terminate in accordance with any termination event set forth in the Foundation's Bylaws, upon the Membership conditions no longer being met, or upon the Member resigning such Member's Membership. Upon termination of Member's membership, this Membership Agreement shall terminate.

9.3 Effects of Termination.

9.3.1. No Refunds. Member will not be entitled to a refund of any Membership Fees, Member Assessments or any other amounts paid to the Foundation prior to the date of termination of this Agreement, including without limitation if the termination of this Agreement arises out of Member's withdrawal as a member or participant of the Foundation.

9.3.2 Continuing Effect of Agreements. The termination of this Agreement shall not affect any agreement that Member entered into with any other Member(s) prior to the date of such termination of this Agreement, including without limitation any license agreement entered into pursuant to the IPR Policy. All such agreements shall continue in full force and effect in accordance with their terms.

9.3.3 Confidential Information. Upon termination of this Agreement, Member shall, within thirty (30) days of the Disclosing Party's request, return to the Disclosing Party or destroy all documents and information containing Confidential Information. If the Disclosing Party requests that such documents or information be destroyed, Member shall destroy same and provide the Disclosing Party with written certification of such destruction. Notwithstanding the foregoing, Member may retain one (1) copy for archival purposes if and solely to the extent required by (i) applicable laws, rules or regulations; (ii) its generally applicable records retention policies or (iii) its corporate governance or internal compliance policies; and if any such requirements to retain such copy cease or otherwise no longer apply, Member will then destroy or return documents or information under this Section 9.3. Such archival copy shall continue to be subject to the terms of Section 7 of this Agreement.

9.4 Effect of Suspension of Membership. The suspension of any Member's membership in the Foundation as provided in the Bylaws shall not diminish the obligations and duties of such suspended Member under the terms of this Agreement, provided that such Member shall have no rights or benefits under this Agreement during such suspension.

9.5 Survival. The following Sections will survive any termination of this Agreement: Sections 9.3 (Effects of Termination), 9.5 (Survival), 5 (Membership Fees; Member Assessments; Member Expenses) for any post due amounts owed by the Member, 4 (No Warranty), 7 (Confidentiality), 8 (Limitation of Liability), and 11 (General). If any Policy has specific provisions which survive after termination of either this Agreement or Member's membership in the Foundation, then such provisions shall survive the termination of this Agreement.

## 10. Rights and Obligations.

- 10.1 Fees, Dues. All membership Fees are based in US Dollars. Unless agreed otherwise, all Fees will be due within thirty (30) days of receipt of an invoice and subject to the Foundation's payment policy [Exhibit C].

The Member agrees to pay the annual fees established for its Membership Level, if any, as set forth in Exhibit A, as the Foundation may amend from time to time. For the purposes of calculating General membership fees, consolidated employees include all employees of the related companies, including any direct and indirect parent companies, and all sister, and subsidiary entities, excluding third party contractors.

For any Member with a prior relationship with the Foundation, acceptance of any Membership Agreement will be conditioned upon payment in full of any pre-existing obligations due to the Foundation by the applicant on or before the date of the agreement. Notice of any increase in membership dues will be given on or before November 15 in the current calendar year.

- 10.2 Non-liability. No Member shall be liable for the debts, liabilities, or obligations of the Foundation by reason of being a Member.

## 11. Miscellaneous Provisions.

- 11.1 Entire Agreement. This Agreement, the Exhibits attached hereto, and the documents referred to herein, constitute the entire agreement between the Parties, and supersede all prior agreements, understandings and negotiations, with respect to the subject matter hereof

- 11.2 Amendment. The Foundation may from time to time modify the terms of this Agreement in accordance with the Bylaws. Amendments shall be prospective only unless agreed to otherwise by the Parties.

- 11.3 Notices. All notices hereunder shall be in writing and sent to Member at the address indicated in the Exhibit A, and to the Foundation at the address indicated on the signature page below or at such address as either party may later specify by such written notice. Such notices shall be deemed made and given three (3) days after sending, if mailed by registered or certified mail, postage prepaid, return receipt requested, or one (1) day after sending, if sent by express courier service or facsimile/electronic transmission.

- 11.4 Assignment. Member may not assign this Agreement to any third party by operation of law, as a result of a change in control, or otherwise and any attempted assignment in violation of this Section will be void.

- 11.5 Relationship of Parties. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. Nothing in this Agreement shall be construed to prohibit or restrain the entry by any Member into any separate contract or agreement with other Members or third parties on any terms.
- 11.6 Governing Law. This agreement shall be governed by the laws of the State of Oregon without regard to its conflicts of laws principles. Any suit, action or proceeding, including without limitations actions by and between Members, arising from or relating to this Agreement must be brought in either Federal or State court for the County and City of Salem, Oregon, USA, and each party irrevocably consents to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.
- 11.7 No Waiver. Any waiver of a party's rights hereunder must be set forth in a writing executed by a duly authorized representative of such party, and absent such writing, the failure by either party to exercise any of its rights under this Agreement will not be deemed to constitute a waiver of any of such rights, or other rights or remedies available to such party.
- 11.8 Severability. If any provision of this Agreement is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions; provided, however that if the Parties are unable to so change the provision, then the affected party may terminate this Agreement upon thirty (30) days' notice.
- 11.9 English. This Agreement is prepared and executed in the English language only and any translations of this Agreement into any other language shall have no effect. All proceedings related to this Agreement shall be conducted in the English language.
- 11.10 Counterparts. This Agreement may be executed in one or more counterparts, which may be electronic counterparts, each of which shall be deemed to be an original, but collectively shall constitute one and the same Agreement. This Agreement may be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., [www.docusign.com](http://www.docusign.com)).

*[Signature page to follow]*



**OPEN  
SOURCE  
FIRMWARE**  
— **FOUNDATION**



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below:

\_\_\_\_\_, (the  
Member)

OPEN SOURCE FIRMWARE FOUNDATION  
(the Foundation)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name

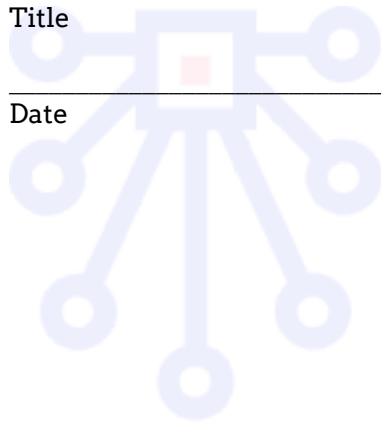
\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



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SOURCE  
FIRMWARE  
— FOUNDATION

**Exhibit A**

**MEMBER INFORMATION**

<b>Member</b>		
Name of Member Company:		
Membership Level:		
Phone:		
Address:		
City:	Province/State:	
Postal Code:	Country:	
<b>Primary Contact</b> (For all notices, including voting where applicable)		
Name:		
Title:		
Phone:		
Email:		
Address (if different from above):		
City:	State:	ZIP Code:
<b>Accounts Payable / Billing Contact</b> (All invoices will be sent to this e-mail address unless the Member directs otherwise)		
Name:		
Title:		
Phone:		
Email:		
Billing Address (if different from above):		
Preferred method(s) for receiving invoices (PDF or Hard Copy)?		
Is a Purchase Order (PO) required (Yes or No)? If Yes please provide the following details:		
Name:		
E-Mail:		
City:	State:	ZIP Code:
<b>Marketing Contact</b>		
Name:		
Title:		
Phone:		
Email:		
<b>PR Contact</b> (For approving press releases or quotes with respect to the Foundation)		

Name:
Title:
Phone:
Email:

**Technical Contact**

Name:
Title:
Phone:
Email:

**Legal Contact** (This contact should be your primary in-house attorney for open source matters with respect to the Foundation. If you do not have in-house counsel, please leave this blank.)

Name:
Title:
Phone:
Email:

**PR/Logo Usage**

Do we have your permission to:
...display your logo on the website (yes/no):
...announce your participation via press release (yes/no):
Phone:
Email:

**Legal Contact** (This contact should be your primary in-house attorney for open source matters with respect to the Foundation. If you do not have in-house counsel, please leave this blank.)

Name:
Title:
Phone:
Email:

## **Exhibit B**

### **MEMBERSHIP LEVELS**

The membership levels and associated fees are listed below.

<b>Level</b>	<b>Annual Fee</b>	<b>Board Seat</b>	<b>TA Seat</b>	<b>Requirements</b>
Founder*	\$30,000 or equivalent contribution	Yes	Yes	Invitation only
Premier	\$50,000	No, each member has one vote for BoD election	Yes	BoD grant
General	\$5,000 - \$30,000 Based on the company size**	No, majority vote for one vote for BoD election	No	Business corporation
Associate	Free	No	No	Academic, government, non-profit corporations and OSF projects

\*Join as a founder with the following benefits:

- One permanent seat in the Board of Directors
- Influence the way of Open Source Firmware as part of the foundation
- One time offer in the early stage of the Foundation

\*\*The annual fee for **General Membership** is determined according to the following table, based on the Member's consolidated employee headcount:

<b>Consolidated Employees</b>	<b>General Fees</b>
5,000 and above	\$30,000
Between 2000 and 4999	\$25,000
Between 500 and 1999	\$20,000
Between 100 and 499	\$10,000
Less than 100	\$5,000
Startup***	\$200

\*\*\*Companies that have an employee headcount of twenty or less, an annual turnover of one million dollar or less, and have been founded within the last five years can apply as a "Startup".

## Exhibit C

### **PAYMENT POLICY**

Payment is made through our payment provider ("**Stripe**"), which are issuing invoices per yearly subscription package ("**Membership Level**"). After you fill out the document, we will send you a payment link to your billing email address.



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