MEMBERSHIP LOGO TERMS AND CONDITIONS

OPEN COMPUTE PROJECT FOUNDATION

(A Delaware Nonprofit Nonstock Corporation)

These member trademark terms and conditions ("**Trademark Terms**") apply to all Members (as defined below) of the Open Compute Project Foundation ("**OCP**"). These Trademark Terms set forth the rights and obligations associated with Open Compute Project Members' use of the Membership Logos (as defined below) to designate their OCP membership level on websites and in other materials. In the case of any inconsistency between these Trademark Terms and the OCP Bylaws ("**Bylaws**"), the Bylaws control. In the case of any inconsistency between these Trademark Terms and the Open Compute Project Membership Agreement ("**Membership Agreement**"), the Membership Agreement controls.

SECTION 1
DEFINITIONS

SECTION 1.1 "**Licensed Logo**," for each Member, means the one Membership Logo corresponding to such Member's status in good standing as an Open Compute Project Member, pursuant to the Tiered Membership Requirements and Benefits Policy (**"Tiered Membership Policy**"), Membership Agreement, and Bylaws.

SECTION 1.2 "**Member**" means a an individual person or organization that has executed an Open Compute Project Membership Agreement, is fully compliant therewith, and is otherwise a member in good standing of the OCP, pursuant to the Tiered Membership Policy, Membership Agreement, and Bylaws.

SECTION 1.3 "**Membership Logos**" means the Open Compute Project Membership Logos identified in the attached Exhibit A, and any additional membership logos OCP may adopt in the future. OCP reserves the right to update, replace, supplement, or revise the contents of Exhibit A.

SECTION 1.4 "**OCP Trademark Usage Guidelines**" means the document titled "Open Compute Project Trademark Usage Guidelines," which describes the proper manner of using and displaying the Membership Logos and is available at http://opencompute.org/participate/legal-documents, as the same may be updated by OCP from time to time.

SECTION 2
TRADEMARK LICENSE

SECTION 2.1 **Grant**. Subject to these Trademark Terms, OCP hereby grants to Member a limited, non-exclusive, revocable, terminable, non-transferable, non-sublicensable, royalty-free, worldwide license to reproduce and use the Licensed Logo to indicate or publicize its OCP membership level in any reasonable manner that fully comports with these Trademark Terms and the OCP Trademark Usage Guidelines, such as on Member's website or in marketing collateral.

SECTION 2.2 **Included Guidelines**. The Trademark Usage Guidelines form a portion of

these Trademark Terms and are included by this reference as if they had been restated herein in their entirety. Member is prohibited from using the Licensed Logo in any other form than specifically set forth in these Trademark Terms and the OCP Trademark Usage Guidelines.

SECTION 2.3 **Required Link**. If Member uses the Licensed Logo on its website or other electronic materials with hyperlinking capability, Member shall cause the representation of the Licensed Logo to link directly to the OCP web site at opencompute.org.

SECTION 2.4 **Duration**. The license granted in these Trademark Terms will continue only while Member remains a member of the OCP in good standing, pursuant to the Membership Agreement, the Tiered Membership Policy, the Bylaws, and otherwise, or until terminated under Section 4 of this Agreement, whichever occurs first.

SECTION 2.5 **Unlicensed Use**. Nothing contained herein grants Member the right to use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without express written permission from OCP. Member agrees not to use OCP or Open Compute Foundation – or any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP – on any products, packaging, labels, tags, in signage, advertisements, or any informational or promotional material, whether in print, electronic, or other form, except as expressly permitted in this agreement or otherwise in writing by OCP. Use of the Licensed Logo in any manner inconsistent with the terms of these Trademark Terms, including the OCP Trademark Usage Guidelines, or use of any other trademark, service mark, certification mark, membership mark, tag line and/or logo of OCP without explicit written permission from OCP, and in accordance with the terms thereof, whether intentional or not, shall be considered an infringement and a breach of these Trademark Terms and the Membership Agreement and could result in revocation of membership and prosecution for trademark infringement, in addition to any other remedies that OCP may have at law, under these Trademark Terms, the Membership Agreement, or otherwise.

SECTION 2.6 **Changes to Guidelines.** Member shall be afforded three (3) months subsequent to any changes to the OCP Trademark Usage Guidelines or the Membership Logos to implement any new requirements of the OCP Trademark Usage Guidelines or changes to the Membership Logos or to discontinue use of the Licensed Logo without affecting the validity of these Trademark Terms, including the OCP Trademark Usage Guidelines, or the rights granted hereunder. For a period of one (1) year from the date of the change to the OCP Trademark Usage Guidelines or the Licensed Logo, Member shall have the right to distribute remaining inventory stock (but not to create or obtain any new inventory stock) of physical materials bearing the Licensed Logo in the normal course of business where such materials have become non-compliant as a direct result of such change to the OCP Trademark Usage Guidelines or the Licensed Logo.

SECTION 2.7 **Membership Status**. Member must remain an OCP Community, Silver, Gold, or Platinum level member in good standing all times while using the Licensed Logo.

SECTION 2.8 **Changes to Member's Membership Tier.** In the event Member changes its Membership Tier, Member may immediately begin use of the Membership Logo corresponding with its new membership tier. Member agrees to use all reasonable efforts to transition to the Membership Logo associated with its new Membership Tier and shall be

afforded three (3) months to cease use of the Membership Logo associated with prior membership tier. At no time may Member simultaneously use two Membership Logos on the same website or collateral material.

SECTION 3
OCP OWNERSHIP OF TRADEMARKS

SECTION 3.1 **OCP Ownership**. Member acknowledges and agrees that OCP is the sole owner of the Membership Logos and all associated goodwill, and Member shall take no action and make no statement inconsistent therewith. Member shall not challenge or contest, or cause any third party to challenge or contest, OCP's rights in the Membership Logos, the validity of the Membership Logos, or any registrations therefore, or the validity of these Trademark Terms. Member shall not register or attempt to register anywhere in the world any of the Membership Logos or any other name or mark confusingly similar thereto. All use of the Licensed Logo by Member will inure solely to the benefit of OCP and Member shall acquire no rights therein. If at any time Member acquires any rights in, registrations of, or applications for, any of the Membership Logos, by operation of law or otherwise, Member shall immediately upon request by OCP and at no charge to OCP assign such rights, registrations, or applications to OCP, along with any and all associated goodwill.

SECTION 3.2 In order to comply with the requirements under certain foreign trademark laws, OCP may need to know if the Membership Logos are being used in a particular country or countries and other information regarding such use. Member shall supply such information upon OCP's request. Member shall assist OCP in complying with the formalities of local law, including but not limited to, the execution of any application for registration as a registered user, the execution of additional license agreements suitable for recording with appropriate authorities, of providing proof of use of the Licensed Logo or any other applicable documents. Member shall pay the expense of complying with such formalities.

SECTION 3.3 **Trademark Registration and Protection.** Member agrees to provide OCP, at OCP's expense, such reasonable assistance as OCP may require in OCP's efforts to register and protect OCP's rights in the Membership Logos.

SECTION 3.4 **Third-Party Infringement**. Member shall immediately notify OCP in writing of any suspected infringement of OCP's rights in the Membership Logos in any jurisdiction of which Member becomes aware. Member agrees to notify OCP of any claims made against it, adverse to or conflicting with OCP's exclusive ownership of the Membership Logos. OCP may, in its sole discretion, enforce its rights in the Membership Logos to stop unauthorized use of the Membership Logos, at OCP's own expense, and will retain all recoveries thereby received.

SECTION 3.5 **Quality Control**. OCP may, from time-to-time, request in writing specimens of the materials of the Member to assess the level of consistency and quality of use of the Licensed Logo and to ensure that Member maintains the consistency and quality of the throughout the term of the these Trademark Terms. Member shall provide such specimen at no cost to OCP. If at any time OCP reasonably determines that any materials bearing the Membership Logos fail to materially conform to OCP's minimum standards or the OCP Trademark Usage Guidelines, OCP shall so notify Member in writing and Member shall correct the non-conformance and provide a corrected specimen of such materials to OCP for review within thirty (30) days from the written notice from OCP regarding such non-conformance.

SECTION 4
LICENSE TERM

SECTION 4.1 **Term.** The term of this Agreement shall commence on the Effective Date of Member's Membership Agreement and shall continue unless and until terminated as set forth in Section 5 below.

SECTION 5
LICENSE TERMINATION

SECTION 5.1 **Termination.**

(a) **Termination for Breach**. OCP may terminate this license upon thirty (30) days prior written notice to Member, without need of judicial notice or court action, of a material breach of these Trademark Terms, unless the breach is corrected to OCP's reasonable satisfaction within the thirty (30) day period. Material breaches shall include, but not be limited to, the Member's use of the Licensed Logo on materials inconsistent with these Trademark Terms;

(b) **Termination of Membership**. In the event Member ceases to be an OCP Member in good standing pursuant to the Bylaws, the Membership Agreement, the Tiered Membership Policy or any other applicable document or agreement, the license granted herein shall terminate without notice and with immediate effect, and Member shall cease any and all use of the Membership Logos and destroy any physical materials bearing the Membership Logos.

(c) **Termination for Failure to Adopt Amended Terms.** OCP shall have the right to amend these Trademark Terms by providing Member with at least sixty (60) days written notice of such amendment after which time these Trademark Terms will terminate absent written agreement by Member to the amended terms (the "Revised Trademark Terms").

(d) **Termination by Member.** Member may terminate this Membership Logo Agreement (i) any time within thirty (30) days of adoption of a Revised Trademark Terms by giving written notice to OCP; or (ii) any time after giving sixty (60) days advanced written notice to OCP; provided, however, nothing in these Trademark Terms shall relieve Member of its surviving obligations pursuant to Section 5.3 of these Trademark Terms.

(e) **Termination of Membership Mark Program.** This Certification Mark License Agreement immediately terminates upon discontinuance of the Membership Mark program, for any reason. If these Terms and Conditions are terminated pursuant to this section, Member must cease use of the Licensed Logo, but shall be afforded three (3) months subsequent to the discontinuance of the Membership Mark program to cease use of the Licensed Logo.

(f) **Partial Termination by OCP.** Upon three (3) days prior written notice, OCP may terminate Member's right to use the Licensed Logo without need of judicial notice or court action in one or more particular countries, states, counties, or other jurisdictions (each a "jurisdiction") (i) where such continued use is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to settle a dispute relating to a trademark or service mark based on the Licensed Logo, or (ii) in which OCP determines that the continued use of the Licensed Logo in such jurisdiction may impose potential liability on OCP or threaten OCP's ownership or use of any of the Membership Logos.

(g) **Insolvency**. The license under these Trademark Terms will terminate immediately and automatically , without the need for notice to Member, if Member (i) makes an assignment for the benefit of creditors; (ii) is the subject of any voluntary or compulsory winding-up other than for the purposes of reconstruction or amalgamation; (iii) has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property; (iv) is the subject of any dissolution or liquidation proceeding; or (vi) discontinues its business in the ordinary course without a successor.

SECTION 5.2 **Effect of Termination.** Upon the termination of these Trademark Terms, (a) Member will have no further rights, privileges, or licenses under these Trademark Terms, (b) Member will discontinue immediately all use of the Licensed Logo or any other Membership Mark and will not use any marks confusingly similar thereto, (c) and Member will cooperate generally with OCP to insure that all rights in the Licensed Logo and any other Membership Mark and the goodwill connected therewith shall remain the property of OCP. Unless otherwise specified in a specific provision in Section 5.1, upon termination Member may not distribute any remaining materials, including electronic reproduction, bearing the Licensed Logo or any other Membership Mark.

SECTION 5.3 **Survival.** The obligations in Sections 3.1 (Ownership), 6.1 (Disclaimers), 6.2 (Limitations on Liability), 5.3 (Survival), 5.2 (Effect of Termination), and 7 (Miscellaneous) will survive termination of these Trademark Terms.

SECTION 6
DISCLAIMERS AND LIMITATIONS ON LIABILITY

SECTION 6.1 **DISCLAIMERS**. THE LICENSED LOGO IS LICENSED "AS IS," WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. OCP HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MEMBERSHIP LOGOS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 6.2 **LIMITATIONS ON LIABILITY**. THE OCP ITSELF, ITS MEMBERS, AND THEIR RESPECTIVE AFFILIATES WILL HAVE NO LIABILITY FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, STATUTORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCURRED BY ANY PARTY ARISING OUT OF OR RELATED TO ANY USE OR EXPLOITATION OR ANY ATTEMPTED USE OR EXPLOITATION OF ANY TRADEMARK OR TRADEMARK LICENSE UNDER THESE TRADEMARK TERMS.

SECTION 7
MISCELLANEOUS

SECTION 7.1 **Jurisdiction-Specific Terms.** Member acknowledges and agrees to abide by any applicable jurisdiction-specific terms and conditions to these Trademark Terms, located at http://opencompute.org/participate/legal-documents (or other applicable online location upon notice from OCP).

SECTION 7.2 **No Waiver**. No failure to exercise, nor any delay in exercising or invoking any right or remedy under these Trademark Terms by OCP shall operate as a waiver thereof, nor shall any single or partial exercise or invoking of any right or remedy prevent any further exercise thereof or the exercise or invoking of any other right or remedy.

SECTION 7.3 **Severability**. If any term or condition of these Trademark Terms is or becomes invalid or unenforceable, the validity or enforceability of any other term or condition of these Trademark Terms shall not be affected and such invalid or unenforceable term or condition shall be enforced to the maximum extent permitted by law and completed by a valid interpretation of such term or condition, which to the extent possible, achieves the original purpose of the invalid or unenforceable term or condition.

SECTION 7.4 **Successors or Assigns**. If these Trademark Terms are permissibly assigned pursuant to the Bylaws and the Member Agreement, they shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

SECTION 7.5 **Relationship**. Nothing contained in these Trademark Terms shall be construed as creating a joint venture, partnership, agency or employment relationship between the parties, and neither party will have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent.

SECTION 7.6 **Notices.** All notices to be given hereunder shall be sent to the addresses set forth in Exhibit B by express, registered or certified mail of the U.S. Postal Service with return receipt requested ("U.S. Mail"), or by a nationally recognized overnight courier service for next business day delivery ("Overnight"). Notice will be deemed to have been given if mailed, five (5) business days after the date on which such notice was mailed or, if sent by courier, two (2) business days after delivery by the courier company. Either party will advise the other of changes of address by written notice.

SECTION 7.7 **Governing Law and Venue**. These Trademark Terms shall be governed by the laws of the state of Texas, USA, excluding its choice of law provisions. The parties agree that any dispute arising out of or related to these Trademark Terms will be subject to, and Member hereby consents to, the exclusive jurisdiction of the state and federal courts located in Travis County, Texas.

I HAVE READ AND AGREE TO BE BOUND BY THE MEMBESHIP LOGO TERMS AND CONDITIONS:

MEMBER

By: _____
(Signature)

Name: _____
(Please print)

Title: _____

Date: _____

Exhibit A

Membership Logos and Associated Membership Levels

Membership Logo	**Associated Membership Level**
OPEN COMMUNITY	Community Level Membership
OPEN SILVER	Silver Level Membership
OPEN GOLD	Gold Level Membership
OPEN PLATINUM	Platinum Level Membership

Exhibit B

Notice Contact Information

If to Open Compute Project Foundation:

Name: _____

Address: _____

_____

_____

Copy to:

Name: _____

Address: _____

_____

_____

If to Member:

Name: _____

Address: _____

_____

_____

Copy to:

Name: _____

Address: _____

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