Associate Membership Agreement

Version 3.0

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THE GREEN GRID ASSOCIATION

Associate Membership Agreement
Version 3.0

This Agreement (the "Agreement") is entered into by and between The Green Grid Association (the "Association") and the undersigned entity (the "Associate Member"). By executing the Agreement, the Associate Member accepts Associate Membership in The Green Grid Association in accordance with the Bylaws and the following terms and conditions.

Agreement

1. Definitions

"Affiliate" shall have the meaning defined in The Green Grid Association Bylaws.

"BOD" means the Board of Directors as defined in The Green Grid Association Bylaws.

"Bylaws" means The Green Grid Association Bylaws adopted, approved, and amended by the BOD.

"Committee" means any Committee or Working Group created by the BOD under the Bylaws.

"Draft Specification" shall have the meaning defined in The Green Grid Association Bylaws.

"Entity" shall have the meaning defined in The Green Grid Association Bylaws.

"Member" shall have the meaning defined in The Green Grid Association Bylaws.

"Membership" means the state of being a Member as defined in the Bylaws.

"Associate Member" shall have the meaning defined in The Green Grid Association Bylaws.

"Associate Membership" means the state of being an Associate Member as defined in the Bylaws.

"Specification" shall have the meaning defined in The Green Grid Association Bylaws.

2. Associate Member Benefits and Responsibilities

2.1. Support for The Green Grid Association Bylaws

During the term of its Associate Membership in the Association, the Associate Member plans to support the development, and application of systems, apparatus, devices, procedures, processes, materials, software, metrics and other structures and data relating to data center power management

and business computing ecosystems that will implement and comply with the Specifications adopted and released by the BOD in accordance with this Agreement and the Bylaws. However, nothing in this Section or in this Agreement shall obligate the Associate Member to manufacture, sell, or use products complying with the Specification or preclude the use of alternate or competing specifications.

2.2. Associate Member Benefits

The Associate Member shall be entitled to the benefits provided by this Agreement and the Bylaws. The Associate Member shall be entitled to participate in the meetings of the Association's Associate Members, to receive materials disseminated to Associate Members by the Association, to access web pages and other communication channels developed and maintained by the Association for use by Associate Members, and to all other benefits of Associate Membership as may be determined from time to time by the Association or as specified in the Bylaws.

2.3. Use of Name

The Associate Member may publicly disclose that it is an Associate Member of the Association. However, the Associate Member may not identify any of the systems, apparatus, devices, procedures, processes, materials, software, metrics and other structures and data relating to data center power management or business computing ecosystems as being sanctioned by, sponsored by or associated with the Association, or compliant with a Specification, unless in accordance with policies and procedures that may be established by the Association. The Association shall have the right to include the Associate Member's name in any lists of Associate Members published by the Association and to announce that the Associate Member has joined the Association.

2.4. Affiliates

The Associate Member acknowledges and agrees that it and its Affiliates, if any, shall be treated for all purposes as one Associate Member, entitled to one vote on all matters upon which the Associate Member is entitled to vote. The Associate Member also acknowledges and agrees that Section 3 below binds the Associate Member and its Affiliates in accordance with its terms. Without limiting the foregoing, an Affiliate of an Associate Member shall be free to join the Association as an Associate Member, but not as a Member; provided, however, any such Associate Members and their Affiliates (including Affiliates of an Affiliate) shall be deemed one Associate Member for purposes of any vote of the Associate Members, or Committees or Working Groups of the Association (as defined by the Bylaws). In situations where an Associate Member and its Affiliate(s) may otherwise have two or more eligible voters on a matter, the Associate Member and its Affiliate(s) shall designate a voting contact in a written notice to the BOD. An Associate Member's Affiliate may join the Association as a Member, but only if the Associate Member agrees to resign its Associate Membership and become a Member under the Affiliate's Membership.

2.5. Bylaws

The Associate Member has had adequate opportunity to review and obtain independent legal advice regarding the Bylaws, and hereby agrees to abide by the terms and conditions of the Bylaws. Terms used in this Agreement, without definition, have the same meaning as when the same terms are used in the Bylaws. In the event of a conflict as to the meaning of any such term, the meaning in the Bylaws shall have precedence.

2.6. Contributions

The Associate Member may not make Contributions to any Specification generated by the Association.

2.7. Dues and Other Fees

The Associate Member shall pay dues, fees and other assessments, as established from time to time by the Association and the BOD.

2.8. Expenses

The Associate Member shall bear its own costs and expenses incurred in connection with its Associate Membership in the Association, such as travel, employee compensation and incidental expenses.

3. Intellectual Property

3.1. Ownership

The Associate Member acknowledges and agrees that each Associate Member shall retain ownership of all worldwide rights, titles, and interests in its trade secrets, copyrights, trademarks, patents and other intellectual property, subject to the licenses granted herein.

3.2. Patents

The Associate Member acknowledges and agrees that pursuant to the terms hereof, the Associate Member is not entitled to any patent licenses from Members of the Association nor shall the Associate Member be required, pursuant to their Associate Membership, to grant any licenses in their patents to Members or Associate Members of the Association.

3.3. No Right to Participate in Specification Development or Review Draft Specification

The Associate Member acknowledges and agrees that pursuant to their Associate Membership, Associate Member shall not be entitled to participate in any manner in the Association's development of Specifications, including, but not limited to, participation in the review of Draft Specifications. Should Associate Member desire to participate in the Association's Development of Specifications, or the review of Draft Specifications, then Associate Member must join the Association as a Member.

3.4. Copyrights

The Associate Member grants and agrees to grant to other Associate Members, Members and The Green Grid a worldwide, irrevocable, nonexclusive, nontransferable (except as otherwise provided in the Bylaws or this Associate Membership Agreement), sublicensable, royalty-free copyright license to reproduce, create derivative works of, distribute, display, and perform any copyrightable materials that Associate Member may contribute to the Association by virtue of their participation in the activities of the Association. Subject to Section 3.1, The Green Grid shall own all right, title, and interest in the compilation of copyrightable works contributed to the Association in the furtherance of its purpose, including but not limited to Specifications and related works. Upon the release of a Specification that has been finally adopted by the BOD, The Green Grid grants and agrees to grant the Associate Member a worldwide, nonexclusive, royalty-free copyright license to reproduce, distribute, and display, Specification and the contributions of any and all Members and Associate Members for the purpose of developing and promoting systems, apparatus, devices, procedures, processes, material, software, metrics and other structures and data complying with the Specification. This does not, however, act in any way to grant Associate Member any patent licenses in Necessary Claims of any Member. It is further acknowledged, however, that only Members will have the right to create derivative works of the Specification and the contributions of any and all Associate Members to the extent that the derivative works are created for the purpose of developing and promoting systems, apparatus, devices, procedures, processes, material, software, metrics and other structures and data complying with the Specification.

3.4.1. Copyright Notices

Any publication of a Specification shall contain an appropriate copyright notice as determined by the Association from time to time. Additionally, public references to the Specifications shall attribute authorship to the Association to the extent appropriate and practical.

3.4.2. Survival

The licenses granted under this Section 3 shall survive termination of an Associate Member's participation and Associate Membership in The Green Grid.

3.5. Trademarks

3.5.1. The Green Grid Trademarks (Standard Character Mark and Logo)

The Association currently has full right, title, and interest in each of The Green Grid trademarks by virtue of an assignment from Advanced Micro Devices, Inc. The Association may grant the Associate Member a worldwide, nonexclusive, royalty-free, nontransferable (except as provided in Section 7.10 and the Bylaws) right, without the right to sublicense such trademarks pursuant to a separate agreement signed by the Associate Member and the Association. However, nothing in this Agreement limits an Associate Member's right to display The Green Grid trademarks in a nominative or referential manner if and as permitted without a license under applicable law. The Associate Member agrees that it shall not use The Green Grid trademarks in a manner that derogates from the Association's rights in The Green Grid trademarks, nor take any action that will

interfere with or diminish the Association's rights in The Green Grid trademarks, either during the term of this Agreement or thereafter. The Associate Member agrees that all use of The Green Grid trademarks will inure solely to the benefit of the Association. The Associate Member may not use The Green Grid trademarks in any way as an endorsement or sponsorship of the Associate Member's goods or services by the Association.

3.5.2. Attribution

On all items, including without limitation all products, packaging, technical documentation, brochures, advertisements, press releases, promotions, and other marketing materials, bearing or using The Green Grid trademarks, the Associate Member will include the following legend in the same manner in which it uses its own trademarks:

> "'The Green Grid' and The Green Grid logo are licensed trademarks of The Green Grid Association in the U.S. and other jurisdictions."

3.5.3. Quality

The Associate Member agrees to use reasonable efforts to maintain the quality of the Associate Member's products used in conjunction with The Green Grid trademarks at a level that meets or exceeds industry standards and is at least commensurate with the quality of similar products previously distributed by the Associate Member, if any.

3.6. Extension to Affiliates

The licenses and obligations granted to Associate Members shall extend to the Associate Member's Affiliates in existence during the period of Associate Membership, if any, provided that such Affiliates agree to be bound by the terms and conditions of the Bylaws and this Associate Membership Agreement. If at any time an Affiliate of an Associate Member ceases to meet all the requirements of an Affiliate as defined in the Bylaws, such entity may join The Green Grid as a Member or Associate Member by complying with all then applicable prerequisites for Membership or Associate Membership in the Association.

3.7. No Implied Licenses

Except as expressly provided by the Bylaws and in this Associate Membership Agreement, no other rights are granted or received hereunder by implication, estoppel or otherwise. All rights not expressly granted are reserved.

3.8. Enforcement by the Association

The Association shall have the primary responsibility for enforcing any intellectual property rights of the Association and for enforcing compliance with the terms of any Associate Membership agreement by any Member or Associate Members upon notice to the other Members and/or Associate Members. The Associate Member agrees to cooperate with the Association and other Associate Members' and Members' reasonable requests in safeguarding the intellectual property of the Association.

4. Confidentiality

4.1. Confidentiality and Nondisclosure.

All contributions or copyrightable submissions made by the Members or Associate Members shall be considered nonconfidential and nonproprietary information, regardless of any markings to the contrary included thereon or related thereto. Draft Specifications and Specifications approved, but not yet released, shall be considered Confidential Information. Each Associate Member agrees not to disclose Confidential Information, except as otherwise provided for under the terms and conditions of the Bylaws or this Associate Membership Agreement. Unless the BOD determines otherwise, this obligation of confidentiality will expire five (5) years from the date of disclosure of such information hereunder. Confidential Information shall not include any information that is: a) in the public domain other than by the recipient's breach of a duty; b) rightly received from a third party without any obligation of confidentiality; c) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party; d) independently developed by employees of the recipient without breach of the terms of this Agreement; e) disclosed as required by law to comply with applicable laws or regulations, or with a valid order of a court or other governmental body of the United States, provided a protective order is sought to minimize the required disclosure; f) made public by unanimous agreement of the BOD; or g) inherently disclosed in the marketing or sale of a product or service.

4.2. Survival

The obligations of this Section 4 shall survive termination of this Agreement.

4.3. Residuals

Any party shall be free to use the Residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "Residuals" means that Confidential Information in nontangible form that may be retained in the unaided memories of individuals who have had rightful access to such Confidential Information under this Agreement. It is understood that receipt of Confidential Information under this Agreement shall not create an obligation in any way limiting or restricting the assignment and/or reassignment of any of Associate Member's employees within the Associate Member's organization. However, this Section 4.3 shall not be deemed to grant to any party a license under any other party's copyrights, maskworks, patents or other intellectual property rights.

4.4. Independent Development

This Agreement and the terms of confidentiality hereunder shall not be construed to limit Associate Member's right to independently develop or acquire products or technology, including similar or competing products or technology, without the use of other Associate Members' Confidential Information, without breach of the terms of this Agreement.

5. Term

Unless terminated as provided herein and except as otherwise provided herein or in the Bylaws, the provisions of this Agreement shall remain in full force and effect as to the Associate Members renewing annually upon the Associate Member's payment of dues.

6. Withdrawal and Termination of the Associate Member

6.1. Withdrawal by the Associate Member

The Associate Member may withdraw from Associate Membership in the Association at any time upon giving sixty (60) days' written notice (the "Withdrawal Notice") to the Secretary of the Association or the BOD. The sixtieth (60th) day after receipt of the Withdrawal Notice by the Secretary of the Association is referred to herein as the "Effective Date of Withdrawal." The Associate Member shall be obligated to pay dues, assessments, or fees, which accrued prior to the Effective Date of Withdrawal.

6.2. Termination of the Associate Member by Association

The Association may terminate for cause the Associate Member's status as an Associate Member and the Associate Member's rights under this Agreement or the Bylaws on written notice, if the Associate Member breaches its material obligations under this Agreement or under the Bylaws, provided that the Associate Member has been provided written notice (the "Termination Notice") and thirty (30) days to cure the breach. If the Associate Member fails to cure the breach within thirty (30) days following receipt of the Termination Notice, the Associate Member's status as an Associate Member and the Associate Member's rights under this Agreement shall immediately terminate. The date of termination in accordance with the immediately preceding sentence is referred to herein as the "Effective Date of Termination." The Associate Member shall be obligated to pay dues, assessments, or fees that accrued prior to the Effective Date of Termination.

6.3. Termination upon Dissolution

This Agreement shall immediately terminate upon the dissolution of the Association.

6.4. Survival

The following Sections shall survive termination (whether by Associate Member or Association) or expiration of this Agreement: Sections 1, 2.3 (second sentence), 2.5, 2.8, Section 3, Section 4, Sections 6.1, 6.2, 6.4, 6.5, 6.6 and the provisions of Section 7, which by their nature are executory from and after the time of expiration or termination of this Agreement.

6.5. Warranty Disclaimer, Limitation of Liability

6.5.1 Disclaimer of Warranties

EXCEPT AS PROVIDED IN SECTION 6.7, ALL MATERIAL, INFORMATION, AND LICENSES PROVIDED TO ASSOCIATE MEMBERS BY THE ASSOCIATION HEREUNDER

(INCLUDING, WITHOUT LIMITATION, THE CONTRIBUTIONS) AND ALL MATERIAL, INFORMATION AND LICENSES PROVIDED TO THE ASSOCIATION BY ASSOCIATE MEMBERS (INCLUDING WITHOUT LIMITATION, THE SPECIFICATION AND CONTRIBUTIONS PROVIDED OR RELEASED TO THE ASSOCIATION BY AN ASSOCIATE MEMBER), ARE PROVIDED ON AN "AS IS" BASIS, WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, CONTRACTUAL OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE. FURTHERMORE, NO WARRANTY OR REPRESENTATION IS MADE OR IMPLIED RELATIVE TO THE VALIDITY OR ENFORCEABILITY OF ANY PATENT LICENSED HEREUNDER, OR RELATIVE TO FREEDOM FROM INFRINGEMENT OF ANY THIRD PARTY PATENTS.

6.5.2 Exclusion of Damages

IN NO EVENT WILL ANY ASSOCIATE MEMBER BE LIABLE TO ANOTHER ASSOCIATE MEMBER, MEMBER OR THE ASSOCIATION FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER FOR BREACH OF THIS AGREEMENT, INCLUDING BREACH OF WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE), EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6.6. Limitation of Liability

IF, AT ANY TIME, ANY LIABILITY ARISES FROM OR BY VIRTUE OF THIS AGREEMENT, AND THE PROVISIONS FOR EXCLUSION OF DAMAGES UNDER SECTION 6.5 OF THIS AGREEMENT DO NOT APPLY, AND WHETHER SUCH LIABILITY IS DUE TO THE ASSOCIATION'S OR ANOTHER ASSOCIATE MEMBER'S NEGLIGENCE, THE ASSOCIATE MEMBER AGREES THAT IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF THE ASSOCIATION OR ANY OF ITS ASSOCIATE MEMBERS OR MEMBERS FOR ANY CLAIMS, LOSSES, OR DAMAGES INCURRED BY THE ASSOCIATION OR ANY ASSOCIATE MEMBER OR MEMBER EXCEED $10,000. THIS LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF THE ASSOCIATION AND ASSOCIATE MEMBERS AND MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIMS, LOSSES, OR DAMAGES, AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OTHER REMEDIES POSSESSED BY THE ASSOCIATE MEMBER, ITS CUSTOMERS, OR ANY THIRD PARTIES. THIS LIMITATION OF LIABILITY REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN THE ASSOCIATE MEMBER AND THE ASSOCIATION IN VIEW OF THE NATURE OF THIS TRANSACTION; PROVIDED, HOWEVER, THAT THIS SECTION 6.6 SHALL NOT APPLY TO LIMIT OR WAIVE ANY REMEDY OTHERWISE AVAILABLE TO ANY PARTY FOR INJURY SUFFERED OR TO BE SUFFERED BY THAT

PARTY AS A RESULT OF ANOTHER PARTY'S BREACH OF SECTION 3 OR 4 OF THIS AGREEMENT.

6.7. Covenant

THE ASSOCIATE MEMBER COVENANTS THAT ITS REPRESENTATIVES TO THE ASSOCIATION SHALL NOT SUBMIT A CONTRIBUTION THAT ITS REPRESENTATIVES HAVE PERSONAL KNOWLEDGE (WITH NO OBLIGATION TO INVESTIGATE) VIOLATES THE INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER ASSOCIATE MEMBER OR THIRD PARTY.

7. General

7.1. No Other Licenses

Except for the rights expressly provided by this Agreement, none of the Associate Members grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

7.2. Limited Effect

This Agreement shall not be construed to waive any Associate Member's rights under law or any other agreement except as expressly set out herein.

7.3. Notices

Notices to the parties hereto or the Association shall be sent by personal delivery, regular mail, or facsimile to the address or facsimile number of such party listed on the signature page hereto. The Associate Member's address may be modified by sending written notice to the Secretary of the Association.

7.4. Governing Law

This Agreement shall be construed and controlled by the substantive laws of the State of Oregon, without regard to conflict of laws principles.

7.5. Not Partners

Associate Members and Members are independent companies and are not partners or joint venturers with each other with respect to the subject matter of this Agreement. While the parties may select an entity to handle certain administrative tasks for them, no party is authorized to make any commitment on behalf of all or any of them.

7.6. Complete Agreement; Amendment

This Agreement sets forth the entire understanding of the parties and supersedes and replaces all prior agreements and understandings between the Associate Member and the Association relating

hereto in their entirety, provided that this Agreement does not supersede file terms and conditions of any other agreements between individual Associate Members. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by an authorized representative of each party hereto.

7.7. Publicity

The Associate Member may not make any statement on behalf of the Association, without the prior approval of the BOD.

7.8. Execution in Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed and timely delivered shall be deemed an original, and such counterparts together shall constitute one instrument.

7.9. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

7.10. Assignment

The Associate Member may not transfer, assign, sublicense or otherwise delegate any of its rights or obligations under this Agreement without due prior written consent of the Association except in connection with the transfer of its Associate Membership in the Association as provided in the Bylaws, which consent shall not be unreasonably withheld. Any attempt to assign, transfer or otherwise delegate any of the rights, duties, or obligations under this Agreement without the prior written consent of the Association shall be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' permitted assigns and successors.

7.11. No Obligation to Enforce

Nothing contained in this Agreement shall be construed as imposing on the Associate Member any obligation to institute any suit or action for infringement of any of its intellectual property rights, or to defend any suit or action brought by a third party which challenges or concerns the validity of any of its intellectual property rights licensed under this Agreement, or to file any patent application or to secure any patent or maintain any patent in force.

7.12. No Waiver

The waiver by any party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or a subsequent breach of the same or a different provision.

7.13. Compliance with Export Laws

The Associate Members each agree to comply with all United States export laws in connection with the marketing, sale and distribution of products and services based on any Specification of The Green Grid, including without limitation the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State.

7.14. Force Majeure

No party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of material or supplies or any other cause beyond the control of such party, provided that such party gives the other Associate Members written notice thereof promptly and, in any event, within thirty (30) days of discovery thereof and uses good faith efforts to so perform or cure. In the event of such a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure but not in excess of six (6) months.

7.15. Third-Party Beneficiaries

The parties acknowledge and agree that each of the Members and Associate Members is an intended third-party beneficiary to this Agreement.

7.16. Compliance with Antitrust Laws

The Associate Member acknowledges that Members and Associate Members are committed to fostering competition in the development of new products and services based on the Specification. The Associate Member further acknowledges that it may compete with other Associate Members or Members in various lines of business and that they will comply with all applicable antitrust laws pertaining to the Associate Member's Associate Membership in the Association. Without limiting the generality of the foregoing, the Associate Member acknowledges that it will not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic which should not be discussed among competitors where such discussion would constitute a violation of antitrust or other applicable competition law. Accordingly, The Green Grid hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under this Agreement regarding the importance of limiting their discussions to subjects that relate to the purposes of the Agreement, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Furthermore, the Associate Member consents to the disclosure of its name as an Associate Member of the Association, for the purpose of permitting the Association to invoke the protection of the National Cooperative Research and Product Act of 1993 (15 U.S.C. §4301, et seq.).

IN WITNESS WHEREOF, the Association and the Associate Member have executed this Agreement effective as of the date it is executed by the Association:

THE GREEN GRID ASSOCIATION

Signature:
Printed Name:
Title: Administrator – The Green Grid
Address: 3855 SW 153rd Drive
Beaverton, OR 97006, USA
Phone No.: 503-619-0653
Facsimile No.: 503-644-6708
e-mail Address: admin@lists.thegreengrid.org
Date:

ASSOCIATE MEMBER

Company Name:
Signature:
Printed Name:
Title:
Address:

Phone No.:
Facsimile No.:
e-mail Address:
Date: