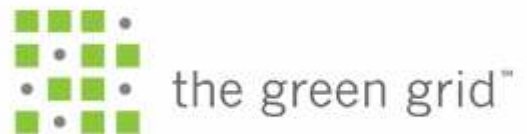


10/29/2007

The Green Grid Association  
Membership Agreement  
Version 15.0

# Membership Agreement

**Version 15.0**



## THE GREEN GRID ASSOCIATION

### Membership Agreement Version 15.0

This Agreement (the “Agreement”) is entered into by and between The Green Grid Association (the “Association”) and the undersigned entity (the “Member”). By executing the Agreement, the Member accepts Membership in The Green Grid Association in accordance with 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.

“**Compliant Portion**” means only those specific portions of systems, apparatus, devices, procedures, processes, materials, software, metrics and other structures and data that (a) implement and are compliant with all relevant portions of a Specification, and (b) are within the bounds of the Scope.

“**Contribution**” means a submission to or for a Committee or by a Member to add to or to modify a Specification or a Draft Specification or portion thereof, provided the submission is either (i) submitted in writing (including a writing in an electronic media or an electronic transmission signal) or (ii) if stated orally, memorialized with specificity in the written minutes of a Committee, attributed in the meeting minutes to the submitting Member, and promptly provided to the individual representing the submitting Member. In the case of subsection (ii) above, if a submitting Member withdraws its submission as soon as practicable and in any event, no later than forty-five (45) days following receipt of such written minutes, then such submission shall not be deemed a Contribution. Formal requirements and procedures for submission of Contributions are available from the Association.

“**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.

“**Necessary Claims**” means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which (i) a Member or its Affiliate(s) has the

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right, at any time during the term of this Agreement, to grant licenses of the nature agreed to be granted herein; (ii) are within the bounds of the Scope; and (iii) are infringed only when it is not possible to avoid infringing because there is no technically non-infringing alternative for implementing such portions of the Specification. Necessary Claims do not include any claims other than those set forth above, even if contained in the same patent as Necessary Claims.

**“Membership”** means the state of being a Member as defined in the Bylaws.

**“Platform”** means a flexible combination of commercially available systems, apparatus, devices, software, hardware and materials (“Components”) selected to interoperate such that they provide a specific set of features or functions; provided, however, that “Platform” does not include the Components or subsets thereof comprising the Platform or the features or functions performed by those Components except as explicitly required for interoperability of the Components to achieve the intended Platform functionality.

**“Processor”** means any integrated circuit or combination of integrated circuits capable of processing digital data, such as a microprocessor or coprocessor (including, without limitation, a math coprocessor, graphics coprocessor, or digital signal processor).

**“Scope”** means the metrics, structures, data center power management, procedures and processes used at the Platform-level, and Platform-level systems, apparatus, devices, software interfaces, hardware and materials solely to the extent disclosed with particularity in a Specification, where the purpose of the disclosure is to enable data center power management by enabling interoperation, interconnection, interaction, or communication or messaging in accordance with a Specification. Notwithstanding the foregoing, the Scope shall not include (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Specification, but are not themselves expressly set forth in the Specification (*e.g.*, semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, virtualization technology or the like), (ii) standards or any specifications, whether in whole or in significant part not developed by or for The Green Grid (such as, without limitation, but which are essential to, used to implement or referred to or incorporated in the Specification), or (iii) any Processor, integrated circuits or intra-circuit buses.

**“Specification”** shall have the meaning defined in The Green Grid Association Bylaws.

## **2. Member Benefits and Responsibilities**

### **2.1. Support for The Green Grid Association Bylaws**

During the term of its membership in the Association, the Member plans to support the design, 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 Member to manufacture, sell, or use products complying with the Specification or preclude the use of alternate or competing specifications.

## **2.2. Member Benefits**

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

## **2.3. Use of Name**

The Member may publicly disclose that it is a Member of the Association. However, the 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 Member's name in any lists of Members published by the Association and to announce that the Member has joined the Association.

## **2.4. Affiliates**

The Member acknowledges and agrees that it and its Affiliates, if any, shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. The Member also acknowledges and agrees that Section 3 below binds the Member and its Affiliates in accordance with its terms. Without limiting the foregoing, an Affiliate of a Member shall be free to join the Association as a Member; provided, however, any such Members and their Affiliates (including Affiliates of an Affiliate) shall be deemed one Member for purposes of any vote of the Members, or Committees or Working Groups of the Association (as defined by the Bylaws), as well as for representation on the BOD. In situations where a Member and its Affiliate(s) may otherwise have two or more eligible voters on a matter, the Member and its Affiliate(s) shall designate a voting contact in a written notice to the BOD.

## **2.5. Bylaws**

The 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 Member may make Contributions to the Specification, subject to the terms and conditions of this Agreement and the Bylaws.

## **2.7. Dues and Other Fees**

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

## **2.8. Expenses**

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

## **3. Intellectual Property**

### **3.1. Ownership**

The Member acknowledges and agrees that each Member shall retain ownership of all worldwide rights, titles, and interests in and to its Contributions made pursuant to the terms of the Agreement, subject to the licenses granted herein.

### **3.2. Patents**

#### **3.2.1. Compliant Portion**

For each Specification adopted by the Association, the Member, upon request, agrees to grant any other Members a worldwide, nonexclusive, non-sublicensable, nontransferable (except as provided in Section 7.10 of this Agreement or in the Bylaws) license under the Member's Necessary Claims under reasonable and nondiscriminatory terms to make, have made, use, import, offer to sell, sell, and otherwise distribute Compliant Portions; provided, however, such agreement to license shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself a Compliant Portion. Such license grant may be conditioned upon, among other things, the licensee Member's grant of a reciprocal license.

#### **3.2.2. Disclosures**

The Member shall make a good faith effort to disclose in writing to the Secretary as soon as reasonably practicable, any Necessary Claims or likely Necessary Claims of the Member with respect to a Draft Specification or any as yet unadopted revision or proposed update to a Specification which an individual representative of the Member, involved in the development of a Specification or revision or update is personally aware. These disclosures will be recorded by the Secretary. The obligation set forth above does not, however, impose any obligations on Members to perform or conduct patent or application searches. Further, nothing in this Agreement nor the act of a Member submitting, supporting or approving a proposal for a Specification will be construed or otherwise interpreted as any kind of express or implied representation that such Member does or does not hold patents or patent applications which contain Necessary Claims. Notwithstanding anything to the contrary herein, nothing shall be construed as requiring Member to disclose unpublished patent applications.

### **3.2.3. Anti-circumvention**

The Member agrees that it will not assign patent rights for any patents having Necessary Claims for the purpose or effect of circumventing this Section 3 of the Agreement or the Bylaws. Any such transfer by the Member to a third party of a patent having Necessary Claims shall be subject to the terms and conditions of this Agreement and the Bylaws. A Member may choose the manner in which it complies with this Section 3, provided that any agreement for transferring or assigning Necessary Claims includes a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed on the Member by standards bodies, specification development organizations, or similar organizations (or language of similar import).

### **3.2.4. Specification Opt-Out**

Upon submission of any Draft Specification to the BOD for final approval and release, the BOD shall provide the Members a period of ninety (90) days to review such Draft Specification prior to approval and release by the BOD. During the ninety- (90-) day review period, each Member should determine whether it or any of its Affiliates would be unwilling to provide other Members, and their respective Affiliates, with the licenses referred to in this Section 3. If a Member is unwilling to provide such licenses, it must promptly (but no later than the expiration of the ninety- (90-) day review period) notify the BOD in writing of its unwillingness to license and its decision to “opt-out” of participation concerning the Specification. If a Member opts-out of participation concerning a Specification, that Member shall have no rights or obligations with respect to that Specification including, but not limited to, reciprocity of licensing rights and obligations under this Agreement or the Bylaws. If a Member does not opt-out of participation concerning a Specification, it shall have all of the rights and obligations granted under this Agreement and the Bylaws with respect to that Specification without taking any additional affirmative action. The ability of a Member to opt-out of a particular Specification does not apply to any Contributions which that Member made to preparation of the Specification or Draft Specification. If a Member knowingly makes a Contribution to a Specification or Draft Specification, the Member may not during the review period then refuse to license the elements of the Contribution under the Member’s Necessary Claims as set forth in Section 3.2.1.

## **3.3. Copyrights**

The Member grants and agrees to grant to other Members and The Green Grid a worldwide, irrevocable, nonexclusive, nontransferable (except as otherwise provided in the Bylaws or this Membership Agreement), sublicensable, royalty-free copyright license to reproduce, create derivative works of, distribute, display, and perform the Contributions of the Member solely for the purposes of developing, publishing, and distributing (i) Specifications; and (ii) products incorporating Compliant Portions based on such Specifications. Subject to Section 3.1, The Green Grid shall own all right, title, and interest in the compilation of Contributions forming the released 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 Member a worldwide, nonexclusive, royalty-free copyright license to reproduce, distribute, display, and perform the Specification and the Contributions of any and all 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. BOD Members will have the right to create derivative works of

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the Specification and the Contributions of any and all 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.

### **3.3.1. 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.

### **3.3.2. Survival**

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

## **3.4. Trademarks**

### **3.4.1. 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 shall grant the Member a worldwide, nonexclusive, royalty-free, nontransferable (except as provided in Section 7.10 and the Bylaws) right, without the right to sublicense (except to third parties that are distributing and selling the Member's goods and services incorporating Compliant Portions), to use The Green Grid trademarks solely in conjunction with marketing, selling and distributing of the Member's goods and services. Members may only use The Green Grid trademarks when referring to a Compliant Portion, and that such references will be in accordance with the terms and conditions of this Agreement, the Bylaws, and the Association's trademark usage guidelines, which may be promulgated from time to time by the Association. However, nothing in this Agreement limits a 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. In the event of a conflict between the trademark usage guidelines and this Agreement or the Bylaws, the provisions of the Agreement and Bylaws shall prevail over the trademark usage guidelines. The 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 Member agrees that all use of The Green Grid trademarks will inure solely to the benefit of the Association. The Member may not use The Green Grid trademarks in any way as an endorsement or sponsorship of the Member's goods or services by the Association.

### **3.4.2. 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 Member will include the following legend in the same manner in which it uses its own trademarks:

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“‘The Green Grid’ and The Green Grid logo are licensed trademarks of The Green Grid Association in the U.S. and other jurisdictions.”

### **3.4.3. Quality**

The Member agrees to use reasonable efforts to maintain the quality of the 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 Member, if any.

### **3.5. Extension to Affiliates**

The licenses and obligations granted to Members shall extend to the Member’s Affiliates in existence during the period of membership, if any, provided that such Affiliates agree to be bound by the terms and conditions of the Bylaws and this Membership Agreement and that the Necessary Claims of such Affiliates are included in the Necessary Claims as defined in the Bylaws and the Membership Agreement. The extension of license rights and obligations granted to a Member’s Affiliates shall apply only so long as such Affiliate remains an Affiliate as defined in the Bylaws. If at any time an Affiliate of a 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 by complying with all then applicable prerequisites for Membership in the Association.

### **3.6. No Implied Licenses**

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

### **3.7. Enforcement of Intellectual Property Rights**

#### **3.7.1. 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 Membership agreement by any Members upon notice to the other Members. The Member agrees to cooperate with the Association and other Members’ reasonable requests in safeguarding the intellectual property of the Association.

#### **3.7.2. Enforcement by the Member**

Each Member retains the right to enforce its intellectual property rights. Upon notice to the Association, one or more Members (“Prosecuting Members”) may seek to enforce other Members’ compliance with the Bylaws and Section 3 of the Membership Agreement. Other Members may, at their discretion, join in the enforcement action to become Prosecuting Members or provide reasonable assistance in the prosecution of such enforcement action, at the expense of the Prosecuting Member (except for the value of the time of the assisting Members’ employees which cost shall be borne by the assisting Member), so as to become “Assisting Members”; provided, however, that none of the Assisting Members shall be required to be named as a party to such action

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unless its joinder is necessary to the maintenance of such action. In the event any Member does not wish to participate in the enforcement action and is nonetheless joined as a necessary party, the Prosecuting Member agrees to pay the reasonable expenses (including without limitation attorneys' fees and fees of other professionals) incurred by the "Joined Member" in such enforcement action (except for the value of the time of a Joined Member's employees, which cost shall be borne by the Joined Member). The Prosecuting Members will retain any recovery in such suit.

#### **4. Confidentiality**

##### **4.1. Confidentiality and Nondisclosure.**

All Contributions 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 Member agrees not to disclose Confidential Information, except as otherwise provided for under the terms and conditions of the Bylaws or this 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 Member's employees within the 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 Member's right to independently develop or acquire products or technology, including similar or competing products or technology, without the use of other 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 Members renewing annually upon the Member's payment of dues.

#### **6. Withdrawal and Termination of the Member**

##### **6.1. Withdrawal by the Member**

The Member may withdraw from 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 Member shall be obligated to pay dues, assessments, or fees, which accrued prior to the Effective Date of Withdrawal. After the Effective Date of Withdrawal, the Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Section 6.1.1 and Section 6.2.1.

##### **6.1.1. Survival of Agreement to Grant License if the Member Withdraws**

Upon a Member's withdrawal, the Member's agreement to grant licenses as provided in Section 3 shall remain in full force and effect: (i) for a Specification to which the BOD gave notice of its approval sixty (60) or more days before the Member's Effective Date of Withdrawal ("Pre-withdrawal Committed Specifications"); (ii) for any Contribution made by the withdrawing Member to a Specification prior to the Member's Effective Date of Withdrawal; and (iii) for unmodified portions of Pre-withdrawal Committed Specifications that are contained in a Specification approved by the BOD after the Member's Effective Date of Withdrawal. Such licenses and agreements to grant licenses shall extend to all Members of the Association, including Members who become Members after the Member's Effective Date of Withdrawal if such Members that join the Association after the Member's Effective Date of Withdrawal grant reciprocal licenses to the Member for the Member's products or product components that have been designed and released for fabrication prior to the Member's Effective Date of Withdrawal.

##### **6.2. Termination of the Member by Association**

The Association may terminate for cause the Member's status as a Member and the Member's rights under this Agreement or the Bylaws on written notice, if the Member breaches its material obligations under this Agreement or under the Bylaws, provided that the Member has been provided written notice (the "Termination Notice") and thirty (30) days to cure the breach. If the Member fails to cure the breach within thirty (30) days following receipt of the Termination Notice,

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the Member's status as a Member and the 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 Member shall be obligated to pay dues, assessments, or fees that accrued prior to the Effective Date of Termination. After the Effective Date of Termination, the Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in section 6.2.1.

#### **6.2.1. Survival of Agreement to Grant License if the Association Terminates the Member**

A terminated Member's agreement to grant licenses as provided in Section 3 shall remain in full force and effect: (i) for Specifications to which the BOD gave notice of its approval more than sixty (60) days before the Member's Effective Date of Termination ("Pre-termination Committed Specifications"); (ii) for any Contribution made by the Member prior to the Member's Effective Date of Termination; and (iii) for unmodified portions of Pre-termination Committed Specifications that are contained in Specifications approved by the BOD after the Member's Effective Date of Termination. Such licenses and agreements to grant licenses shall extend to all Members, including Members who become Members after the Member's 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 Member or Association) or expiration of this Agreement: Sections 1, 2.3 (second sentence), 2.5, 2.8, 3.1, 3.3, 3.5, 3.6, 4, 6.1.1, 6.2.1, 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. In addition, Section 3 shall survive to the extent provided in Section 6.1.1 and 6.2.1, as applicable.

#### **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 MEMBERS BY THE ASSOCIATION HEREUNDER (INCLUDING, WITHOUT LIMITATION, THE CONTRIBUTIONS) AND ALL MATERIAL, INFORMATION AND LICENSES PROVIDED TO THE ASSOCIATION BY MEMBERS (INCLUDING WITHOUT LIMITATION, THE SPECIFICATION AND CONTRIBUTIONS PROVIDED OR RELEASED TO THE ASSOCIATION BY A 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

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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 MEMBER BE LIABLE TO ANOTHER 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 MEMBER'S NEGLIGENCE, THE MEMBER AGREES THAT IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF THE ASSOCIATION OR ANY OF ITS MEMBERS FOR ANY CLAIMS, LOSSES, OR DAMAGES INCURRED BY THE ASSOCIATION OR ANY MEMBER EXCEED \$10,000. THIS LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF THE ASSOCIATION 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 MEMBER, ITS CUSTOMERS, OR ANY THIRD PARTIES. THIS LIMITATION OF LIABILITY REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN THE 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 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 MEMBER OR THIRD PARTY.

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## **7. General**

### **7.1. No Other Licenses**

Except for the rights expressly provided by this Agreement, none of the 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 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 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**

Members are independent companies and are not partners or joint venturers with each other with respect to the subject matter of this Agreement. While Members 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 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 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 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 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 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 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 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,

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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 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 is an intended third-party beneficiary to this Agreement.

**7.16. Compliance with Antitrust Laws**

The Member acknowledges that Members are committed to fostering competition in the development of new products and services based on the Specification. The Member further acknowledges that it may compete with other Members in various lines of business and that they will comply with all applicable antitrust laws pertaining to the Member’s Membership in the Association. Without limiting the generality of the foregoing, the 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 Member consents to the disclosure of its name as a 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 Member have executed this Agreement effective as of the date it is executed by the Association:

THE GREEN GRID ASSOCIATION

MEMBER

By:  
Name:  
Title: Administrator – The Green Grid  
Address:  
  
Facsimile No.:  
e-mail Address:  
Date:

Company Name:  
By:  
Name:  
Title:  
Address:  
Facsimile No.:  
e-mail Address:  
Date: