

OPEN SCALABLE FILE SYSTEMS, INC.

MEMBERSHIP AGREEMENT

This Membership Agreement (the “Agreement”) constitutes a binding agreement between Open Scalable File Systems, Inc., a California nonprofit mutual benefit corporation (“OpenSFS”) and the undersigned member executing the signature page of this Agreement (“Member”), hereinafter referred to individually as “Party”, and collectively as “Parties”. This Agreement is effective as of the date on which it is signed by the last of the Parties (the “Effective Date”). All capitalized words not defined herein are defined in the Bylaws of OpenSFS, as such may be amended from time to time (the “Bylaws”). The current version of the Bylaws can be found at www.opensfs.org.

1. Compliance and Obligations

- 1.1 Bylaws: Member agrees to abide by the terms of the Bylaws. Member acknowledges that Member has received and reviewed the Bylaws and understands that certain of Member’s obligations under the Bylaws will survive the termination of Member’s membership in OpenSFS (the “Surviving Provisions”), including terms relating to Maintenance of and Modification to OpenSFS Stacks (Article 14), Intellectual Property (Article 16) and Confidentiality (Article 17), and any relevant successor provisions thereto.
- 1.2 Intellectual Property: Without limiting the generality of the foregoing, the provisions of the Bylaws relating to intellectual property and Member’s obligations relating thereto are attached hereto as **Exhibit A** and incorporated herein by reference, and Member hereby agrees to abide by the agreements and covenants set forth therein.
- 1.3 Policies and Procedures: Member agrees to abide by the terms of the Policies and Procedures of OpenSFS (the “Policies”), as they appear at www.opensfs.org as of the Effective Date or as amended thereafter by the Board of Directors of OpenSFS.
- 1.4 Dues: Member agrees to make timely payment of its annual dues. Member shall pay its initial dues upon or promptly following the execution of this Agreement, and in any event no later than five (5) business days after the Effective Date.
- 1.5 Contribution Agreement: Member has received and reviewed OpenSFS’ form of Contribution Agreement and, upon any Contribution by Member to OpenSFS, agrees to execute and deliver, and to abide by the terms of, the Contribution Agreement, as the same may be amended from time to time.
- 1.6 Compliance: In the event of Member’s failure to comply with Member’s obligations set forth herein or Member’s obligations in the Contribution Agreement, Member’s membership in OpenSFS may be terminated as provided in the Bylaws.

2. Term and Termination

This Agreement shall continue in effect until such time as Member's membership in OpenSFS is terminated by Member or by OpenSFS in accordance with the Bylaws. Notwithstanding such termination, Member shall continue to be bound by the Surviving Provisions.

3. Notices

Except to the extent otherwise explicitly required or permitted by the Bylaws or the Policies, all notices under this Agreement shall be in writing and shall be delivered personally (by reputable international courier) or sent by U.S. mail or electronic communication. Notices to OpenSFS shall be sent to OpenSFS at its address of record as provided on the OpenSFS website www.opensfs.org. Notices to Member shall be sent to Member at Member's address as it appears in the official membership records of OpenSFS. All notices shall be deemed given at the time defined in Section 5015 of the Corporations Code.

4. Consent to Electronic Communications

(a) Consent. By signing this Agreement, the undersigned Member consents and agrees with OpenSFS to receive communications from OpenSFS (which may include, without limitation, notices of member meetings, written ballots, annual reports and any other materials) by electronic transmission, including by facsimile or email transmission to the facsimile number or email address of Member on record with OpenSFS (which shall initially be the facsimile number and email address of the lead person indicated by Member on Member's Participation Application), by posting such communication on a designated message board or network, together with facsimile or email notice to Member of such posting, or by other electronic means. Member acknowledges and agrees that delivery by OpenSFS of such electronic communication shall constitute delivery for all purposes, with the same force and effect as though Member had received a written communication in tangible form. The foregoing consent shall apply to all communications, and OpenSFS may, but shall not be required to, convey any communication to Member by electronic means.

(b) Authenticity. Member also agrees that OpenSFS may rely on the authenticity of all communications and writings (including without limitation written ballots of Member or proxies of Member) sent by Member or its representatives to OpenSFS by electronic transmission from any of Member's electronic addresses for any and all purposes.

(c) Right to Receive Record. Member understands and agrees that a record of any electronic transmission that OpenSFS sends to Member will be provided or made available to Member by Open SFS in paper or other non-electronic form within a reasonable time only upon the written request of Member sent to OpenSFS in writing by mail to OpenSFS's address set forth below in this Section.

(d) Process for Withdrawal of Consent. Member acknowledges and agrees that Member's consent to receive communications by electronic transmission as provided above in this Section (the "Consent") shall remain in full force and effect until Member withdraws the Consent as follows. Member may withdraw or revoke its Consent by delivering to Open SFS, at its principal executive office (to the attention of OpenSFS's Secretary), tangible written notice (in non-electronic form) of such withdrawal or revocation of Member's Consent (which written notice must, include the complete contact name and physical address to which subsequent notices, ballots, materials and other communications to Member should be delivered by OpenSFS) and such withdrawal and revocation of Member's Consent shall not take effect until thirty (30) days after OpenSFS has actually received such written notice of withdrawal from Member complying with these provisions.

(e) Consent to Holding of Meetings. In addition, Member consents to the holding of regular and special meetings of Members by electronic communication or transmission, provided that if Member withdraws this consent upon thirty (30) days' prior written notice to OpenSFS, such meetings shall be held at a physical location.

5. Assignment

OpenSFS may assign its rights or obligations under this Agreement to the surviving entity in a merger, consolidation or conversion of OpenSFS or in connection with a transfer or sale of all or substantially all of the business or assets of OpenSFS. The rights and obligations of Member under this Agreement may not be assigned, except in connection with an assignment of Member's membership in OpenSFS, to the extent permitted and subject to the terms and conditions set forth in the Bylaws. For an assignment to be effective the acquiring or surviving entity must meet the then-required qualifications for the membership being assigned and must agree in writing to be bound by the terms of OpenSFS' then-current form of Membership Agreement.

6. General Provisions

This Agreement shall be construed under and governed by the laws of the State of California, USA, without reference to its conflict-of-laws principles. This Agreement, together with the referenced Bylaws, Policies, and any other documents entered into between Member and OpenSFS, sets forth the entire understanding of OpenSFS and Member relative to the subject matter hereof, and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by authorized representatives of OpenSFS and Member, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument. In the case of any conflict between the terms of this Agreement and the terms of the Bylaws and the Policies, the Bylaws and Policies shall supersede the terms of this Agreement.

In witness whereof, the parties have executed this Agreement as of the respective dates set forth below.

Member

Open Scalable File Systems, Inc.

(Entity Legal Name)

By: _____
(Signature)

Print Name: _____

Title: _____

Date: _____

By: _____
(Signature)

Print Name: _____

Title: _____

Date: _____

Exhibit A

Article 16 of Bylaws

ARTICLE 16. INTELLECTUAL PROPERTY

16.1 Contributions. Each Participant making a Contribution will enter into a Contribution Agreement. Each Contribution made by a Participant will be licensed to the Corporation under, and will be subject to the terms and conditions of, the Participant's Contribution Agreement.

16.2 Copyright Ownership of the OpenSFS Stack. Except as may be separately agreed, copyright ownership of an OpenSFS Stack (or portion thereof) contributed by a Participant remains with the Participant that contributed such OpenSFS Stack (or portion thereof) but only to the extent of the Contribution made by such Participant, which shall not extend to any copyright ownership rights of the Corporation or any other Participant that may have contributed works used in the OpenSFS Stack (or portion thereof). No rights of joint authorship or joint ownership of copyrights in any OpenSFS Stack (or portion thereof) shall be created solely by virtue of a Participant's act of contributing works that are included within such OpenSFS Stack (or portion thereof). As the creator of the compilation that shall comprise the whole of any OpenSFS Stack that has Contributions from more than one Participant, the Corporation shall own all compilation copyrights in each OpenSFS Stack (or portion thereof), provided such rights in the compilation shall only be as to the whole and not to the components contained in such whole that were contributed by the Participants.

16.3 Trademarks.

A. **Selection.** Each Participant agrees not to assert against any other Participant, the Corporation or licensee, any trademark, trade name, or similar rights it may have now or hereafter in the names "Open Scalable File Systems" or "OpenSFS" when used to identify or refer to an OpenSFS Stack. Subject to legal requirements and the legal rights of other parties, the Corporation may develop, own, and register trademarks ("Trademarks") relating to its activities or to an OpenSFS Stack.

B. **Use of the Trademarks.** Each Participant agrees to not use as a trademark "Open Scalable File Systems" or "OpenSFS" or any Trademarks that have been registered by the Corporation unless such use is either subject to the terms and conditions of a license agreement with the Corporation or otherwise permitted by law.