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# MEMBERSHIP AGREEMENT OF OPENACC-STANDARD.ORG

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This MEMBERSHIP AGREEMENT (“Agreement”) is made this \_\_ day of \_\_\_\_\_, 2012 by and between the undersigned parties (“Member”) and OPENACC-STANDARD.ORG, a Minnesota nonprofit corporation (the “Corporation”).

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## RECITALS

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The Corporation is organized exclusively for the purpose of promoting common business interests of its members pursuant to IRS Section 501(c)(6). The purpose of this Corporation is to develop and promote directives based parallel-programming standard for heterogeneous CPU/GPU computing systems (“OpenACC”);

Member hopes to receive benefits described in this Agreement and the Bylaws of the Corporation and Member desires to support the Corporation’s activities through the provision to the Corporation of financial and other resources of Member; and

The Corporation and Member wish to define the rights and obligations of Member with regard to the Corporation.

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## AGREEMENT

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In consideration of the above recitals, and the promises set forth in this Agreement, the parties agree as follows:

1. **Member Rights.** Member shall have only those rights defined in the Bylaws and Articles of Incorporation.
2. **Dues and Assessments.** Under the terms outlined in the Bylaws and Articles of Incorporation, The Board of Directors of the Corporation, provided it also receives the unanimous consent of the Permanent Members of the Corporation, shall have the power to impose dues, levy assessments and solicit contributions from Member. Any assessment levied on Member shall be approved by the Permanent Members of the Corporation as set forth in the Bylaws of the Corporation. Member will pay such dues and assessments within ninety (90) days of the Corporation’s delivery of notice of such due or assessment. The Board of Directors shall have the power (but not the obligation) to suspend Member for failure to pay dues and assessments on time. While suspended, Member shall not be entitled to exercise any of its rights as Member.
3. **Resignation/Removal.** Member may resign as a member of the Corporation or be removed as a member of the Corporation in the manner described in the Bylaws of the Corporation. If a Member resigns in the middle of a dues year, the Member shall

receive no refund of dues which have been paid, nor shall such resignation relieve the resigning Member of any unfulfilled obligations to pay dues which have accrued prior to the effective date of such resignation.

4. **Intellectual Property Rights.**

No license, rights or title in or to any software or any intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise, except as expressly provided in this Agreement and as provided in Attachment A (OPENACC-STANDARD.ORG INTELLECTUAL PROPERTY ("IP") RIGHTS POLICY).

5. **Antitrust.** Each Member and the Corporation, in their relations with each other and with any and all other Members, are committed to fostering open competition in the development of products and services and the OpenACC specifications are intended to foster and promote such competition. In such relations each Member and the Corporation understands and agrees that: (i) for certain lines of business they are or may be direct competitors, (ii) it is imperative that they and their representatives act in a manner which does not violate any state, federal or international antitrust laws and regulations, and (iii) they will not, through their membership, engage in conduct that violates any such laws.

6. **Miscellaneous.**

6.1. **Definitions.** For purposes of this Agreement the terms defined in this Agreement have the meanings described herein. Any other terms that are defined in the Articles of Incorporation or Bylaws of the Corporation and are not defined in this Agreement have the meanings ascribed to them in such other document.

6.2. **Governing Law.** This Agreement and the rights and obligations of the parties shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota without reference to the choice of law doctrine of such state.

6.3. **Assignment.** The rights and/or obligations of any Member may not be assigned by such party, except as provided in the Bylaws of the Corporation. Any attempt by the Member to assign its rights or obligations except as provided in the Corporation's Bylaws or by written consent of the Board of Directors is void.

6.4. **Amendment.** This Agreement may be amended at any time by the approval of a two-thirds majority of the Permanent and Auxiliary Members. All amendments shall be proposed in writing to the Board of Directors at least thirty (30) days prior to the vote of the Members.

6.5. **Entire Agreement.** This Agreement contains the entire understanding of the parties regarding membership in the Corporation, and they acknowledge that there is no other written or oral understanding or promise between them with respect to the matters addressed by this Agreement except for the Articles of Incorporation and Bylaws of the Corporation. This Agreement may not be altered, amended, or revoked, except pursuant to Section 6.4. In case of any conflict between the terms of this Agreement and either the Articles of

Incorporation or the Bylaws of the Corporation, the Articles of Incorporation or the Bylaws of the Corporation, whichever the case may be, shall prevail.

**6.6. Signatures.** This Agreement may be executed and delivered by original signature or facsimile, and in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

*<Remainder of page intentionally blank – Individual signature pages below>*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below.

<b>OPENACC-STANDARD.ORG</b>	<b>Member:</b>
By: _____	Sign: _____
Its: _____	Name: _____
Date: _____	Title: _____
	Date: _____
	<b>Membership Class:</b>

This is a separate signature page for the above referenced Member for the \_\_\_\_\_  
OPENACC-STANDARD.ORG Membership Agreement.

## ATTACHMENT A

### OPENACC-STANDARD.ORG

#### INTELLECTUAL PROPERTY (“IP”) RIGHTS POLICY

##### 1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party to this agreement, so long as such Control exists. For purposes of this definition, Control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of an entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for such entity.

“Compliant Portion” means a portion of a product, where such portion is fully compliant with all relevant portions of a Ratified Specification. Any portion of a product that is not fully compliant with all relevant portions of a Ratified Specification shall not constitute a Compliant Portion

“Contribution” means information submitted to Company for the purpose of consideration and adoption by Company for inclusion in a Draft Specification.

“Draft Specification” means a draft of a Specification produced by a Company working group.

“Encumbered Technology” means technology with respect to which a patent holder is unwilling to grant the Reciprocal License.

“Final Draft Specification” means a final Draft Specification produced by a Company working group that will be forwarded to the Board for Ratification and subsequent public release.

“IP Disclosure Certificate” means a written Notice delivered to the Managing Director and the chair of any affected working groups that identifies specific Necessary Patent Claims together with a statement as to whether or not those Necessary Patent Claims will be made available under the Reciprocal License with respect to a Draft Specification, Final Draft Specification or Ratified Specification. An IP Disclosure Certificate must identify in writing:

a) the patent holder(s); b) for each issued patent and published patent application containing a Necessary Patent Claim the patent number or publication number, respectively;

c) for a pending unpublished patent application containing a Necessary Patent Claim, the technology covered by the application; d) reasonable identification of the specific parts of Draft Specifications whose implementation may be covered by the Necessary Patent Claims if applicable. If the identified Necessary Patent Claims are not to be made available under the Reciprocal License then the IP Disclosure Certificate must contain reasonably sufficient detail so as to enable Company and Members either to

exclude the subject inventions from a Draft Specification or to develop a commercially reasonable non-infringing implementation.

An IP Disclosure Certificate may be accompanied by submitting any of the following, in the Member's sole discretion: (i) Specific License Terms for any Necessary Patent Claims not to be made available under the Reciprocal License; (ii) any relevant entire patent applications including amended and newly added claims, as well as the effective filing date.

"Company" means OPENACC-STANDARD.ORG, a Minnesota Not for Profit Corporation

"Company Representative" means any employee or contractor of a Member who attends at least one Company working group meeting or is otherwise substantially involved in the development of any Draft Specification within that Company working group.

"Managing Director" means the Managing Director of Company.

"Member" means any Member of Company

"Membership Agreement" means the agreement signed by a Member to join Company and to which this Attachment A is attached.

"Necessary Patent Claims" means claims of a patent or patent application, other than design patents and design registrations, issued or filed in any country, to which a Member or its Affiliates has the right to grant licenses in accordance with the terms and conditions of this Attachment A at any time during the term of the Agreement, and which are necessarily infringed by any Compliant Portion. Necessary Patent Claims do not include any claims (i) other than those set forth above even if contained in the same patent or patent application as Necessary Patent Claims; (ii) that read solely on (1) any implementation of any portion of the Ratified Specification that is not a Compliant Portion, or (2) any Compliant Portion that is not within the bounds of the Scope; or (iii) that it is possible to avoid infringing because there is a commercially plausible non-infringing alternative for implementing such portions of the Ratified Specification.

"Notice" means a written notice as defined by the Company Group Membership Agreement.

"Ratification" means the Board approving a Final Draft Specification for public release.

"Ratified Specification" means a Final Draft Specification ratified by the Board for public release.

"Reciprocal License" means the perpetual, royalty-free, fully paid, worldwide, nonexclusive, non-transferable license under any Necessary Patent Claims to make, have made, use, import, offer to sell and sell Compliant Portions, together with the right without royalty or fee to sublicense to third parties (a) the right to distribute Compliant Portions through the normal tiers of distribution to end users or to resellers, distributors, dealers and authorized manufacturers and others in the distribution

channel, and (b) the right to reproduce Compliant Portions solely in connection with the distribution permitted under paragraph (a) of this definition, provided, however, that the royalty-free provisions shall not apply to Necessary Patent Claims that, if licensed would require payment by licensor to unaffiliated third parties.

“Scope” means the application program interfaces and data structures solely to the extent disclosed with particularity in a Ratified Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect, or communicate as defined within a Ratified Specification. Notwithstanding the foregoing, the Scope does not include:

(a) any enabling technologies that may be necessary to make or use any product or portion of any product that complies with the Ratified Specification, but are not themselves expressly set forth in the Ratified Specification (e.g. semiconductor manufacturing technology, hardware architecture, processor architecture or microarchitecture, compiler technology, object oriented technology, basic operating system technology, compression technology, algorithms, and so on); or

(b) the implementation of other published specifications developed elsewhere but referred to in the body of the Ratified Specification;

or (c) any portions or combinations of any product whose purpose is not required for compliance with the Ratified Specification. For purposes of this definition, the Ratified Specification will include only interconnection requirements and will not include any implementation examples or any information pertaining to the architecture, design or operating principles of any implementations unless such implementation examples or information are expressly identified as being included as part of the Ratified Specification, and provided that the Member or Members submitting the Contributions including such implementation examples or information provide their consent to such identification.

“Specific License Terms” means a minimal set of terms and conditions that a license must address in order for Company to consider incorporating Encumbered Technology into a Ratified Specification. The minimal set of terms shall include: price (fees and royalties), geographical scope, revocability, whether license is perpetual, definition of licensed patents, sublicense conditions (if any), term of license agreement, termination conditions, whether licensor can defensively terminate or suspend license upon suit against them by licensees, and reciprocity. Notwithstanding any of the foregoing, however, in all instances the Specific License Terms shall otherwise be under reasonable and non-discriminatory terms.

## 2. RECIPROCAL LICENSES

### 2.1 Copyright License

Each Member grants to Company a worldwide, irrevocable, non-exclusive, non-transferable, royalty free copyright license for any Ratified Specification on the date of Ratification to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing

Ratified Specifications and related materials, as well as products based on such documents.

## 2.2 Reciprocal License Grant

Each Member agrees to grant a Reciprocal License under any of its Necessary Patent Claims not excluded in accordance with the following sections for any Ratified Specification on the date of Ratification in reciprocity to all other Members that also grant a Reciprocal License to Member. Such Reciprocal License is granted whether or not the licensor or licensee Member ever had any knowledge of the existence of such Necessary Patent Claims. Further, any Member shall have the right to suspend any Reciprocal License granted by that Member to any other Member ("Plaintiff") in the case that the Plaintiff initiates any lawsuit or other legal proceeding against the Member alleging patent infringement within the Scope.

## 3. DISCLOSURE OF NECESSARY PATENT CLAIMS

### 3.1 Company Responsibility

Company shall not be responsible for identifying patent rights for which a license may be required, or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

### 3.2 No Member Disclosure Necessary

A Member is not required to disclose a Necessary Patent Claim if the Member commits to license such Necessary Patent Claim according to the terms and conditions of the Reciprocal License.

### 3.3 IP Disclosure Certificates for Draft Specifications

If any Company Representative of a Member organization has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to that Member's Contributions or any other aspect of a Draft Specification that will not be licensed under the Reciprocal License, the Company Representative of such Member must submit an IP Disclosure Certificate with the submission of a Contribution or as soon as is reasonably possible. In satisfying the disclosure obligation set forth herein, Members are not required to conduct searches of their patent portfolios, nor are they required to disclose Necessary Patent Claims of other Members or other third party patents.

### 3.4 Procedure for IP Disclosure Certificates

Company shall post all received IP Disclosure Certificates on a Company website, which is accessible only by Members, promptly after receipt and send an email notification the Board and all Members.

### 3.5 Waiver of Disclosure Obligation

The disclosure obligation set forth in the previous sections shall not apply if confidentiality obligations in a joint development agreement between a Member and a third party prohibits disclosure of the unpublished application, provided, however, the



unpublished application must be disclosed upon publication, upon issuance or to the extent that other circumstances render it non-confidential.

### 3.6 IP Disclosure Binding

If the Member proposes Specific License Terms in the IP Disclosure Certificate that are subsequently accepted by Company, and are required by the Final Draft, then the Member is irrevocably required to grant a license under such Specific License Terms or under terms that are materially similar to such Specific License Terms for the Necessary Patent Claims.

### 3.7 Confidentiality of IP Disclosure Certificates

Prior to the date on which a Ratified Specification relating to an IP Disclosure Certificate is made public, Members and Company shall not make public the content of any Member's IP Disclosure Certificate outside of Company. IP Disclosure Certificates received with respect to a particular Draft Specification shall be made public after such Specification has been ratified. Each Ratified Specification shall include suitable Company approved disclaimer language.

### 3.8 Termination of Disclosure Obligations

The disclosure obligations described in this section for a Draft Specification terminate upon Ratification of the Specification by Company or when a working group or Company formally indicates in writing that work on the Draft Specification has terminated without Ratification by Company.

### 3.9 No Notice

Receipt of IP Disclosure Certificates by any Member shall not be deemed to be notice of any patent listed therein for purposes of damages or willfulness.

## 4. RATIFICATION PERIODS

### 4.1 Notice of Ratification Period

Promptly upon a working group's issuance of a Final Draft, the working group chair shall request that the Board issue a Notice of Ratification Period to all Members notifying that an announced period of time not shorter than thirty (30) days and not to exceed sixty (60) days (the "Ratification Period") has commenced. The Notice of Ratification Period shall clearly indicate the location of the Final Draft on the Company web-site and the deadline for the receipt of any IP Disclosure Certificates from any Member. At the end of the Ratification Period the Board will vote for Ratification of the Final Draft or establish an IP Committee as defined below.

### 4.2 Failure to Submit IP Disclosure Certificate

If a Member fails to submit an IP Disclosure Certificate prior to the expiration of an applicable Ratification Period, the Member shall be deemed to have granted the Reciprocal License for that Final Draft.

## 5. WORKING GROUP EXCLUSION CERTIFICATE

### 5.1 Working Group Exclusion Certificate

Any Member may deliver a Notice to the Managing Director notifying that the Member shall not grant a Reciprocal License for any future Ratified Specifications produced by particular working group or working groups ("Working Group Exclusion Certificate"). The Working Group Exclusion Certificate shall be effective on the date of the posting of the certificate if accepted by the Board as below. Any previously granted licenses for any Ratified Specifications shall not be affected. The Board shall accept said certificate if no Company Representative of the Member has attended any working group meetings since the formation of the working group or since the last Final Draft was produced by the Working Group. On acceptance Company shall notify the Member in writing and shall post the Working Group Exclusion Certificate on a Member-only accessible Company website.

### 5.2 Meeting Attendance

If any Company Representative of a Member that has submitted a Working Group Exclusion Certificate attends, in person or by teleconference, but not inadvertently, any meeting of that working group then that Working Group Exclusion Certificate shall be rescinded at the date of the first attendance and that Member shall be subject to licensing requirements for any subsequent Ratified Specifications produced by that working group and the Certificate removed from the Company web-site. After rescinding a Working Group Exclusion Certificate through attendance, the Member may re-submit a Working Group Exclusion Certificate after the working group has produced any subsequent Ratified Specification.

### 5.3 Ongoing Requirement for IP Disclosure

A Working Group Exclusion Certificate does not exclude a Company Representative of a Member that has actual knowledge of claims that may be Necessary Patent Claims of that Member with respect to any aspect of any Company Draft Specification that will not be licensed under the Reciprocal License from submitted an IP Disclosure Certificate as specified above.

### 5.4 Failure to Submit Working Group Exclusion Certificate

If a Member fails to submit a Working Group Exclusion Certificate (a) prior to the expiration of an applicable Ratification Period, or (b) within sixty (60) days of becoming a Member, the Member shall be deemed to have granted the Reciprocal License for any Ratified Specifications.

## 6. RECIPROCAL LICENSE CERTIFICATE

At any time during the creation of a Draft Specification or during the Ratification Period for a Final Draft any Member may choose to issue an IP Disclosure Certificate accompanied by a signed certificate ("Reciprocal License Certificate") certifying Member's grant of the Reciprocal License for disclosed Necessary Patent Claims for, or expected to be for, a Final Draft. A Reciprocal License Certificate may be accompanied by, in the Member's sole discretion, the results of any IP searches conducted by the

contributor, or any prior publicly available prior art. As an example, a Member may choose to issue a Reciprocal License Certificate for a Contribution that it wishes to see incorporated into a Draft Specification to assist the working group in deciding whether to incorporate that Contribution.

## 7. EXISTING RATIFIED SPECIFICATIONS

### 7.1 New Member Reciprocal License Grant

By signing and submitting a Membership Agreement, a new Member agrees to grant a Reciprocal License for all Ratified Specifications as of the joining date of the Member, unless, within sixty (60) days of the submission of the Agreement, the Member submits IP Disclosure Certificates or Working Group Exclusion Certificates as set forth herein.

### 7.2 Member Patent Purchase

An existing Member purchasing a patent agrees to grant the Reciprocal License for all Ratified Specifications for which the Member has not an accepted Working Group Exclusion Certificate as of the date of purchase, unless, within sixty (60) days after purchase of the patent the Member submits an IP Disclosure Certificate or Working Group Exclusion Certificate as set forth herein, that excludes the obligation to grant a Reciprocal License for the patent. After such period any non-excluded Necessary Patent Claims that shall be deemed to be licensed under the Reciprocal License.

## 8. MEMBER INITIATED DISCLOSURE REQUEST

### 8.1 Member Request

A Member may, in Good Faith, request in writing that the Managing Director issue a written request from the Board delivered to another Member requesting that the other Member issue an IP Disclosure Certificate for specific patent or patents owned or controlled by that Member relevant to a Draft Specification being discussed in a working group ("Disclosure Request"). For clarification, the Disclosure Request must specifically identify the respective patent or patents by providing the corresponding patent numbers. Further, the number of patents included in any Disclosure Request must be reasonable, and the Board shall act in good faith when issuing any particular Disclosure Request or combination of Disclosure Requests. A Disclosure Request is subject to approval by the Board. If approved, the Disclosure Request shall be sent as a Notice by the Managing Director on behalf of Company to the applicable Member and shall include Company' reasons for making the request, the Draft Specification in question, and any relevant meeting minutes and other documents.

### 8.2 IP Disclosure Certificate in Response to a Disclosure Request

Any Company Representative in a Member organization who has received from the Managing Director a Disclosure Request with respect to a Draft Specification, or any person in a Member organization who has received, either directly or indirectly, a Disclosure Request from a Company Representative of that Member organization; and who has actual knowledge of claims included in the patent or patents specifically identified in the Disclosure Request that are Necessary Patent Claims of that Member

organization must issue an IP Disclosure Certificate in accordance with this policy as soon as reasonably possible after receipt of a Disclosure Request.

### 8.3 Failure to Comply to a Disclosure Request

A Member who does not comply with the disclosure obligations set forth in this section automatically grants the Reciprocal License for any Necessary Patent Claim(s) that the Member failed to disclose. Any attempt to exclude any such undisclosed Necessary Patent Claim(s) is ineffective and null and void.

## 9. WITHDRAWAL

### 9.1 No Withdrawal

Contributions, once accepted by Company, may not be withdrawn.

### 9.2 Survival of License

A Member's obligations to license made prior to withdrawal from Company shall survive such withdrawal, and shall extend to all licensees, including Members that join Company after the withdrawing Member's withdrawal.

### 9.3 Exclusion upon Withdrawal

If a Member withdraws from Company prior to the expiration of an applicable Ratification Period, then the Member may exclude patents the Member is not already obligated to license before the expiration of an applicable Ratification Period. Failure to exclude will result in the former Member granting the Reciprocal License. Upon withdrawal from Company, the Member may submit at any time any and all IP Disclosure Certificates that the Member chooses to submit pursuant to the foregoing clause of this section, without the obligation to wait until a Ratification Period is defined by Company with respect to any particular Draft Specification.

### 9.4 Rights after Withdrawal

Except as explicitly described in this Attachment A, a prior Member shall have no other obligations to Company or to Members as to technologies or IP rights developed by the Member after its withdrawal from Company.

## 10. THIRD PARTY TECHNOLOGY

Nothing in the Membership Agreement shall compel nor prevent Company from including in a Draft Specification or Ratified Specification a reference to, or suggestion to adopt or employ, a non-Member technology, whether or not such third party technology must be licensed on a royalty-bearing or royalty-free basis in order to avoid infringement or intellectual and/or proprietary rights.