

CE Linux Forum MEMBERSHIP AGREEMENT
(“MEMBERSHIP AGREEMENT”)

The Articles of Incorporation, Bylaws and Intellectual Property Rights Policy of the CE Linux Forum (the “Corporation”), as from time to time in force, should be referred to as “Articles of Incorporation”, “Bylaws” and “Intellectual Property Rights Policy” respectively. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Bylaws.

By the signature of its authorized representative below, and subject to acceptance of this Membership Agreement by the Board of Directors of the Corporation, the party hereto (including its Affiliates as defined in the Bylaws) agrees to become a “Member” of the “CE Linux Forum” and agrees to be bound by the terms hereof as well as the terms and conditions of the Articles of Incorporation, Bylaws and Intellectual Property Rights Policy. The current Articles of Incorporation, Bylaws and Intellectual Property Rights Policy that are attached hereto as the following Exhibits are incorporated by reference.

Exhibit A: Articles of Incorporation
Exhibit B: Bylaws
Exhibit C: Intellectual Property Rights Policy

Further, by the signature of its authorized representative below, the Member agrees to the following:

1.0 Primary Contact.

The Member hereby identifies the following individual as its primary contact:

Name: _____
Contact Info: _____
Email Address: _____

2.0 Payment of Membership Fees; Renewal of Membership.

By signing below, the individual executing this Membership Agreement on behalf of the Member warrants that he or she has all requisite signing authority for and on behalf of the entity, association or individual seeking Membership.

The Member hereto agrees to pay to the Corporation its Membership Fee as set forth below, or as may be set from time to time by a Board Super Majority Vote in accordance with the Bylaws. There is no duty to renew any Membership.

Membership Description	Annual Membership Fee
Founding Member	\$16,000
Appointed Member	\$12,000
Associate Member	\$8,000
Supporting Member	\$4,000
Special Supporting Member	\$0

3.0 Governing Law; Jurisdiction; Venue

This Membership Agreement is governed by the laws of the State of California without regard to its conflict or choice of law provisions. All Members consent to personal jurisdiction in the State of California for resolution of disputes under this Membership Agreement and consent to exclusive venue in the United States District Courts in that state.

4.0 Entire Agreement

This Membership Agreement constitutes the entire agreement between the Corporation and the Member as to their express subject matter and expressly supersedes and replaces any prior or contemporaneous agreements, whether written or oral, relating to the subject matter of this Membership Agreement.

5.0 Compliance with Laws and Regulations

Members agree to comply at all times with all applicable laws, rules and regulations with respect to their performance under this Membership Agreement, Articles of Incorporation, Bylaws and Intellectual Property Rights Policy, including without limitation, export control and antitrust laws.

The Members of the Corporation are committed to fostering open competition in the development of products based on the Standardized Specifications, and utilizing Reference Implementations and material from the Forum Source Tree. The Members understand that in certain lines of business they are or may be direct competitors and that 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. Without limiting the generality of the foregoing, the Members acknowledge that this Membership Agreement prohibits any communication that would violate the antitrust laws.

6.0 No Partnership

By execution hereof, the Members do not create or form any partnership, joint venture or other special relationship other than as Members in the Corporation.

7.0 No Assignment

No Member may assign the Membership Agreement, its status as a Member, or any of its rights or obligations under this Membership Agreement, Articles of Incorporation, Bylaws and Intellectual Property Rights Policy or make any grants or other sublicenses to this Membership Agreement, Articles of Incorporation, Bylaws and Intellectual Property Rights Policy, except as expressly authorized under the Intellectual Property Rights Policy, without having first received the prior, written consent of the Board of Directors of the Corporation, which consent may be withheld in its sole discretion.

8.0 Severability

In the event that any provision of this Membership Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provisions will be deemed stricken from the contract, and (ii) the remaining terms, provisions, covenants and restrictions of this Membership Agreement will remain in full force and effect.

9.0 Amendment and Waivers

Any term or provision of the Membership Agreement may be amended, and the observance of any term of the Membership Agreement may be waived, only by a writing authorized by approval of a Board Super Majority Vote, subject to the more stringent provisions of applicable laws.

Any such amendment shall apply to those Members who do not withdraw within thirty (30) days from the date notice of such amendments is provided to the Members.

Any failure by a Member to insist upon or enforce performance by another Member of any of the provisions of this Membership Agreement, Articles of Incorporation, Bylaws or the Intellectual Property Rights Policy or to exercise any rights or remedies under this Membership Agreement, Articles of Incorporation, Bylaws, the Intellectual Property Rights Policy or otherwise by law shall not be construed as a waiver or relinquishment to any extent of the other Members' right to assert or rely upon any such provision, right or remedy in that or any other instance; rather the same shall be and remain in full force and effect.

10.0 Notice of Withdrawal

Any notice of a Member's withdrawal from the Corporation, shall be in writing and shall be effective only if deposited with an express or overnight air courier (e.g. Federal Express) and addressed to the Chair of the Board or other designated Corporation officer as the Board of Directors directs from time to time. All such communications shall be effective when they are received by the addressee, but in no event later than five (5) days after being deposited with the air courier. Any and all other communications pursuant to

this Membership Agreement shall be sent in the manner and form prescribed by the Board of Directors from time to time.

11.0 Third-Party Beneficiary Rights

The Member acknowledges and agrees that other Members are entitled to rights as a third-party beneficiary under this Membership Agreement, Article of Incorporation, Bylaws or Intellectual Property Rights Policy or certain provisions thereof.

12.0 Binding on Member Affiliates

Execution of this Membership Agreement by a Member in its capacity as a legal entity or association constitutes that legal entity's or association's agreement that its Affiliates are likewise bound to the obligations of being a Member hereunder, and are also entitled to the benefits of the rights of being a Member hereunder.

13.0 Limitations on Liability

IN NO EVENT SHALL ANY MEMBER OF THE CORPORATION BE LIABLE TO ANY OTHER MEMBER OR THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER MEMBERSHIP AGREEMENT, ARTICLES OF INCORPORATION, BYLAWS OR INTELLECTUAL PROPERTY RIGHTS POLICY, FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

IN THE EVENT A MEMBER OF THE CORPORATION IS ENTITLED TO RECOVER ACTUAL, DIRECT DAMAGES FROM ANOTHER MEMBER RELATED TO THAT MEMBER'S PERFORMANCE UNDER THE MEMBERSHIP AGREEMENT, ARTICLES OF INCORPORATION, BYLAWS, OR INTELLECTUAL PROPERTY RIGHTS POLICY, THEN IN SUCH INSTANCE, REGARDLESS OF THE BASIS ON WHICH A MEMBER MAY BE ENTITLED TO CLAIM DAMAGES FROM ANOTHER MEMBER, SUCH MEMBER IS LIABLE FOR NO MORE THAN SUCH ACTUAL DAMAGES FINALLY AWARDED BY A COURT, SUBJECT TO A CAP OF US\$25,000 PER CLAIM. HOWEVER, THIS CAP SHALL NOT APPLY TO ANY CLAIMS, ALLEGED BY A MEMBER OR NON-MEMBER, OF PATENT INFRINGEMENT, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT FINALLY ADJUDICATED BY A COURT OF LAW.

14.0 Defenses

With respect to any claim, action, injury, or liability, (hereinafter the "Action") which may be instituted against any Member, each Member will: 1) maintain its own defense;

2) assume its own costs and attorney fees associated with its defense; and 3) assume any liability resulting from a breach of the Membership Agreement, Articles of Incorporation, Bylaws, or Intellectual Property Rights Policy, and which is finally awarded against the Member, subject to the cap in Section 13, as applicable. Nothing herein prevents a Member from pursuing indemnification or contribution where such rights may be granted at law.

15.0 Term and Termination

- a) The term of this Membership Agreement shall be from the execution date of this Membership Agreement to the next June 25 whether in the present or next calendar year, unless extended by a Member pursuant to the Bylaws of the Corporation.
- b) Notwithstanding Section 15 a) above, this Membership Agreement shall terminate upon the first to occur of the following events:
 - i. Dissolution of the Corporation or of the Member (if a corporate entity)
 - ii. Member's withdrawal from the Corporation
 - iii. Termination of the term of this Membership Agreement without subsequent renewal by the Member
 - iv. A failure of the Member to abide by the provisions of the Articles of Incorporation and Bylaws of the Corporation
 - v. A material breach of this Membership Agreement or the Intellectual Proprietary Rights Policy of the Corporation
 - vi. The transformation of the Corporation into a non-member corporation as defined in Section 5056 of the California Nonprofit Corporation Law.
- c) Notwithstanding the foregoing, Sections 3, 4, 7, 9, 11, 12, 13, 14, and 15 of this Membership Agreement shall survive any termination of this Membership Agreement. For avoidance of doubt, such obligations of the Member as assumed and accrued under the Articles of Incorporation, Bylaws, or Intellectual Property Rights Policy on or before the termination date shall also survive any termination of this Membership Agreement.

16.0 Headings

The section headings herein are intended only for reference and shall not by themselves determine the construction or interpretation of this Membership Agreement and the Exhibits thereto.

By the signature of its duly authorized representative below, the Member acknowledges its agreement with the terms of this Membership Agreement, Articles of Incorporation, Bylaws and Intellectual Property Rights Policy, and such agreement is effective as of the date set forth on the first page of this Membership Agreement.

Acknowledged and Agreed:

Member: _____

Signature:

Printed Name:

Title:

Date: