



## HIGH EFFICIENCY STREAMING PROTOCOL (HESP) ALLIANCE GOLD MEMBERSHIP AGREEMENT

THIS GOLD MEMBERSHIP AGREEMENT (the "**Agreement**") is effective as of \_\_\_\_\_, 202\_ (the "**Effective Date**") by and between HESP Alliance vzw (the "**HESP Alliance**" or "**Alliance**") and \_\_\_\_\_ (the "**Associated Member**"), and shall remain in force for one (1) year. This Agreement will automatically renew for consecutive one-year terms, unless otherwise terminated in accordance with the terms hereof.

### RECITALS

The goals of the Alliance are as set forth in the Alliance's Incorporation Documents, Bylaws, and IP Policy, and any other policies adopted by the Alliance (collectively, the "**Governance Documents**") as in amended from time to time.

**NOW THEREFORE**, the Alliance agrees to admit Associated Member on the terms and consideration contained herein, and Associated Member agrees to abide by the terms and conditions contained herein:

Upon execution of this Agreement, Associated Member will join the Alliance as a Gold Member.

### 1. DEFINITIONS.

All capitalized terms not defined in this Agreement shall have the respective meanings given to them in the Governance Documents.

Except where followed directly by the word "only", the terms "includes" or "including" shall mean "includes, but is not limited to" and "including, but not limited to" respectively, it being the intention of the Parties that any listing following thereafter is illustrative and not exhaustive.

### 2. MEMBERSHIP RIGHTS AND OBLIGATIONS

**2.1. General.** Associated Member agrees that, as of the Effective Date, it is bound by and will comply with the terms of the Governance Documents which contain Associated Member rights and obligations in addition to this Agreement. Associated Member further agrees, on behalf of its Affiliates, that all of such Affiliates are bound to the terms of the Governance Documents. To the extent the Associated Member cannot agree on behalf of its Affiliates, Associated Member shall make sure that all its Affiliates comply and adhere to the terms and conditions of this Agreement. Associated Member acknowledges that it has reviewed each of the Governance Documents and that it understands the contents of each of those documents. The current version of the Governance Documents can be found on the HESP Alliance website at <https://www.hespalliance.org/join>, which are herein incorporated by reference in its latest version including all amendments, if any.

Associated Member acknowledges that the Governance Documents may be revised from time to time in accordance with their terms, and Associated Member agrees to be bound to and comply with such revised Governance Documents unless Associated Member elects to withdraw from the Alliance pursuant to Section 7.2 (Resignation by Associated Member) of this Agreement. The Alliance will notify Associated Member of any amendments or new guidelines or policies that have been approved by the Board of Directors and with respect to which consent of Associated Member is not required.

**2.2. Dues, Fees and Expenses.** Associated Member agrees to pay an annual membership dues to the HESP Alliance. Associated Membership dues may be amended from time to time in accordance with the Bylaws. Associated Member agrees to pay all dues (as well as any other fees agreed to between the parties) within 30 days of receipt of an invoice therefore. Any engineering or non-engineering resources contributed by Associated Member to work on Alliance projects will be fully compensated by Associated Member and not by the Alliance. Current member fees, and the associated benefits, can be found on the Alliance website at <https://www.hespalliance.org/join>.

### 3. ALLIANCE ACTIVITIES

**3.1. Joint Activities.** The parties will conduct such marketing and promotional activities as they mutually agree from time to time. This Agreement does not establish or prescribe any minimum level of activities by either party.

- 3.2. Primary Representative.** Associated Member shall designate a person within its organization to act as the coordinator for Associated Member and to be the primary point of contact for the Alliance and provide relevant contact details (the "Primary Representative"). The Primary Representative shall be responsible for:
- 3.2.1. Acting as the primary interface for Associated Member in connection with any joint activities of Associated Member and the Alliance;
  - 3.2.2. Facilitating periodic meetings on any such joint activities, including telephone status calls on an as-needed basis with other Alliance Members, as applicable;
  - 3.2.3. Facilitating discussions to develop, modify or further any such joint activities;
  - 3.2.4. Coordinating requests for loaned materials and information (both as defined below) pursuant to and in conjunction with this Agreement and the providing of such loaned materials and information that the parties agree should be provided pursuant hereto;
  - 3.2.5. Coordinating any such joint activities; and
  - 3.2.6. Coordinating and helping to resolve any issues, concerns or disputes which arise with respect to any of the above.

#### **4. CONFIDENTIALITY**

All documents developed by the Alliance or by Members within the Alliance's Working Groups shall not be shared outside of an Associated Member's enterprise and shall be kept confidential in accordance with the terms and conditions of the Bylaws until the document is completed and approved by the Board of Directors for publication as a final HESP Alliance document. After the final document is approved and published, information shall not be considered internal-use only. The Board of Directors may approve sharing a working document on a case by case basis, under formal liaison activities with other organizations.

#### **5. INTELLECTUAL PROPERTY**

- 5.1. Pre-existing Intellectual Property Rights:** Nothing in this Agreement or in the Governance Documents will affect the prosecution and maintenance of any Intellectual Property Rights controlled, owned, developed by either party prior to the Effective Date of this Agreement or arising outside of the performance of this Agreement, including any updates, upgrades, derivative works, enhancements, modifications, inventions, developments or improvements thereof of any kind. Neither party will transfer any ownership or other interest in or to any of such pre-existing Intellectual Property Rights to the other party by reason of this Agreement, operation of law, or otherwise. Except as provided under this Agreement, nothing in this Agreement shall constitute any option, grant or license to the other party to use the such pre-existing Intellectual Property Rights.
- 5.2. IP Policy.** All Intellectual Property Rights developed and created by the HESP Alliance and the Associated Member in connection with this Agreement and the Purpose of the HESP Alliance after the Effective Date shall be governed by the IP Policy. The same applies for the Associated Member's pre-existing Intellectual Property Rights where the Associated Member provides a Submission, Essential Claim or a FRAND License under the IP Policy and the Bylaws.
- 5.3. Use of Marks.** Associated Member agrees to comply with the guidelines adopted by the Alliance from time to time for use of Alliance trademarks, including the applicable terms under the IP Policy. The Alliance agrees to comply with any written trademark usage guidelines or instructions provided by Associated Member with respect to use of Associated Member's trademarks. Neither party shall use the other party's marks in a manner that might jeopardize their validity or protectability, or damage or detract from the other party's goodwill or interest in any such marks.

#### **6. NO RELIANCE; NO WARRANTY, LIMITATION OF LIABILITY.**

- 6.1. No Reliance by Associated Member.** Associated Member agrees that it is entering into this Agreement based solely on its own judgment and assessment of the transactions contemplated by this Agreement and the economic or other benefits that it might receive, and that it is not relying or acting on any expression or implication of the Alliance or any other Member. The Alliance does not make, and hereby expressly disclaims, any actual or apparent promise, prediction, estimation, commitment, representation or warranty, and none shall be inferred, imputed or construed, as to the benefits that will or might be achieved.
- 6.2. No Warranty.** THE ALLIANCE AND ASSOCIATED MEMBER EACH ACKNOWLEDGE THAT, EXCEPT AS OTHERWISE AGREED IN WRITING, ALL INFORMATION, MATERIAL, DATA, SOFTWARE PROVIDED TO OR BY THE ALLIANCE UNDER THIS AGREEMENT IS PROVIDED "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND

THE ALLIANCE AND ASSOCIATED MEMBER EACH EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH INFORMATION.

- 6.3. Limitation of Liability.** IN NO EVENT AND UNDER NO LEGAL THEORY, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, UNLESS REQUIRED BY APPLICABLE LAW (SUCH AS DELIBERATE AND FRAUD) OR AGREED TO IN WRITING, SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER MEMBER FOR DAMAGES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER OR FOR ANY COMMERCIAL OR ECONOMIC LOSS OR DAMAGES INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF GOODWILL, INFRINGEMENT OR PRODUCT LIABILITY CLAIMS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES, LOST REVENUES, LOST SAVINGS, LOSS OF USE, OR LOSS OF DATA, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF SUCH DAMAGES WERE FORESEEN OR WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 7. TERM AND TERMINATION

- 7.1. Term.** The term of this Agreement shall begin on the Effective Date and shall have a one (1) year term; notwithstanding the foregoing, this Agreement shall automatically be renewed for consecutive one year terms unless either party hereto sends a termination notice not less than thirty days prior to the end of the term.
- 7.2. Resignation by Associated Member.** Associated Member may terminate its Associated Membership at any time (with or without cause) by giving written notice to the Alliance.
- 7.3. Termination for Failure to Pay Dues.** The Alliance reserves the right to terminate Associated Member's membership for failure to pay dues and may do so at any time after such dues are delinquent.
- 7.4. Termination for Conduct.** Associated Membership of Associated Member shall terminate upon the determination by a majority vote of the Board of Directors after a hearing duly held in accordance with this Section that Associated Member has: (a) failed in a material respect to observe the rules of conduct promulgated from time to time by the Board of Directors and applicable to members; or (b) breached in a material respect other obligations applicable to Associated Members under the Governance Documents. Following the determination by the Board of Directors that Associated Member should be expelled or suspended, the following procedures shall be implemented:
- A notice shall be sent by e-mail or prepaid, first-class, certified or registered mail to the most recent address of Associated Member as shown on the corporation's records, setting forth the expulsion or suspension and the reasons therefor. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the expulsion or suspension.
  - The Associated Member being expelled or suspended shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed suspension or expulsion. The hearing shall be held by the Board of Directors. The notice to the Associated Member of the proposed expulsion or suspension shall state that such Associated Member is entitled, upon request, to such hearing, shall state that a date, time and place of the hearing will be established upon receipt of request therefor, and shall state, that in the absence of such request, the effective date of the proposed suspension or expulsion.
  - Following the hearing, the Board of Directors shall vote upon whether the Associated Member should in fact be expelled, suspended, or sanctioned in some other way. The decision of the Board of Directors shall be final.
- 7.5. Survival.** The Termination of the Agreement for will not affect accrued rights, indemnities, existing commitments until fulfilment or any contractual provision that by their nature are intended to survive termination, including but not limited to Sections 4, 5 and 6. In addition, Associated Member shall be obligated to pay all costs, expenses and dues that accrued prior to the effective date of termination.

## 8. GENERAL

- 8.1. Authority to Execute Agreement.** Each party hereto represents, warrants and covenants to the other that (a) it has the authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution and performance of this Agreement does not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of such party, enforceable in accordance with its terms.
- 8.2. No Other Licenses.** Except as expressly provided herein or in any other Governance Document, by executing this Agreement, Associated Member neither grants nor receives, by implication, estoppel, or otherwise, any rights under any Intellectual Property Rights or under any other copyrights, patents or trademarks.
- 8.3. Governing Law; Dispute Resolution.** This Agreement shall be construed and controlled by Belgian law. Any disputes relating to this Agreement or any other matter relating thereto (including without limitation Associated Member's participation in the Alliance) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. All related proceedings, hearings, documents and the arbitration award shall be confidential. The language of the proceedings and all documents shall be English. Judgment on any award, or confirmation of the arbitrator's order for injunctive relief, may be made in any court of competent jurisdiction. The seat of Arbitration shall be Brussels.
- 8.4. Notices.** All notices or other communications to or upon any party shall be delivered to or at the addresses set forth on the signature page hereto. For purposes of this Section, notice can include notice by written mail or by facsimile and shall be deemed served when received or, in the case of transmission by facsimile, upon receipt of confirmation of transmission. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.
- 8.5. Complete Agreement; No Waiver.** This Agreement, including all attachments, and the other Governance Documents as in effect from time to time set forth the entire understanding of the Alliance and Associated Member with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings between the HESP Alliance and the Associated Member relating hereto and thereto. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.
- 8.6. Amendment.** No amendments, modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by authorized representatives of the Alliance and Associated Member. Additionally, the Alliance shall give Associated Member at least 30 days' prior written notice of the effective date of any amendment to any other Governance Documents in accordance with their respective terms. Associated Member reserves the right to withdraw from the Alliance during such 30-day time period; if Associated Member does not do so, then Associated Member shall be bound to the terms of such Governance Documents as so amended.
- 8.7. Rules of Construction.** As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against either party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of this Agreement will continue in effect.
- 8.8. Compliance with Laws.** Anything contained in this Agreement to the contrary notwithstanding, the obligations of the Alliance and Associated Member shall be subject to all laws, present and future, of any government having jurisdiction over the Alliance and Associated Member including, without limitation, all export and re-export laws and regulations. It is the intention of the Alliance and Associated Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.
- 8.9. Assignment.** Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto; provided, however, that either party may assign its rights and obligations hereunder without the consent of the other party (a) to any person that merges with, or otherwise acquires all or substantially all of the assets of, such party and (b) to any affiliate of such party (provided that such assignment pursuant to this clause (b) shall not relieve the assigning party of its obligations under this Agreement).

- 8.10. Independent Contractors.** The relationship of the Alliance and Associated Member established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever. Nothing in this Agreement is intended to give rise to an employer-employee relationship, including, but not limited to, the relationship between developers from Associated Member organizations and the Alliance.
- 8.11. No Third-Party Beneficiaries.** This Agreement is entered into for the benefit of Associated Member and the Alliance and not for the benefit of any third party.
- 8.12. Order of Precedence.** In the event of a conflict between or among any of the Governance Documents, the IP Policy shall take precedence over all other Governance Documents, followed by the Bylaws, the Incorporation Documents. However, in case of conflicts between this Agreement and the Governance Documents, this Agreement shall prevail.
- 8.13. Counterparts.** 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. Original signatures transmitted by fax or transmitted electronically (including in the form of Adobe Acrobat PDF files as attachments to e-mails), shall be valid as original signatures. The Alliance and Associated Member have executed this Agreement on the dates set forth below.

HESP Alliance vzw		Notice Information	
Name		Address	
Title		Telephone	
Date		Fax	
Signature		E-mail	

Associated Member		Primary Representative Notice Information	
Company		Address	
Name		Attention	
Title		Telephone	
Date		Fax	
Signature		E-mail	