

**Membership Agreement**

**OF**

**AIRFUEL ALLIANCE,**

**a California nonprofit mutual benefit corporation**

## **Membership Agreement**

THIS MEMBERSHIP AGREEMENT (this “**Agreement**”) is by and between AIRFUEL ALLIANCE, a California nonprofit mutual benefit corporation (the “**Corporation**”) and the member or participant of the Corporation identified in the signature block below (“**Member**”). The entities that (a) are accepted and approved by the Corporation as its members or other participants pursuant to the Bylaws of the Corporation, as may be amended from time to time (the “**Bylaws**”), in accordance therewith, and, (b) have executed [a/an] AIRFUEL ALLIANCE Membership Agreement in substantially the same form as this Agreement are referred to herein collectively with Member as “**Members**.” Capitalized terms that are used but not defined in this Agreement shall have the meanings provided in the Bylaws or the Corporation’s Intellectual Property Rights Policy (the “**IPR Policy**”), as the case may be; provided, however, that the use of the term “Member” in this Agreement shall not refer to the capitalized term “Member” as defined in the Bylaws or be deemed to grant such person or entity any of the voting or other rights specified in Section 5056(a) of the California Corporations Code.

WHEREAS, Member desires to advance the Corporation’s stated purpose as described in the Bylaws and the Articles of Incorporation of the Corporation, as amended (the “**Articles**”), and desires to work with the Corporation in furtherance of such purpose;

WHEREAS, the purpose of the Corporation shall be realized through the open collaboration of its Members as described in this Agreement, the Articles, the Bylaws and the policies of the Corporation; and,

WHEREAS, Member and the Corporation desire to enter into this Agreement to set forth certain rights, privileges and obligations with regards to Member’s membership or participation in the Corporation.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

### **Agreement**

1. **Class of Member; Rights; Obligations.** Member has applied for membership in the member or participant class set forth in Member’s membership application, which is hereby incorporated into this Agreement by this reference (the “**Application**”). In the event of any conflict between the terms of this Agreement and the Application, this Agreement shall control. Member shall be entitled to, and the Corporation shall provide to Member, all of the rights, benefits and privileges of the member or participant class of the Corporation of which Member is a part, as set forth in the Bylaws and this Agreement (for voting members within the meaning of Section 5056 of the California Corporations Code) or as determined by the Corporation’s Board of Directors (for non-voting participants, if any). Member has received, read, understands and agrees to be bound by and comply with the obligations of the member or participant class of which Member is a part, as set forth in the Bylaws (for voting members within the meaning of Section 5056 of the California Corporations Code) or as determined by the Corporation’s Board of Directors (for non-voting participants, if any). Member acknowledges and agrees that the Bylaws of the Corporation, including the provisions relating to Member’s rights, benefits and privileges, may be amended

from time in accordance therewith and subject to and in accordance with the California Nonprofit Mutual Benefit Corporation Law. Member agrees, subject to Member's right to withdraw from membership or participation in the Corporation, as the case may be, to comply with such amendments. In the event of any conflict between the terms of this Agreement and the Bylaws, the Bylaws shall control. Member shall not engage in activities that may adversely affect the nonprofit and/or tax-exempt status of the Corporation under applicable federal and state laws.

2. Compliance with Corporation Policies. Member has received, read, understands and agrees to be bound by and comply with the following policies of the Corporation (each a "**Policy**" and collectively, the "**Policies**"): (i) the IPR Policy; (ii) the Corporation's Antitrust Guidelines; (iii) the Code of Conduct; and, (iv) any other policies and procedures of the Corporation as may be set forth by the Board of Directors of the Corporation from time to time. Member acknowledges and agrees that each of the Policies may be amended from time to time in accordance with their respective terms and the Bylaws. The Corporation shall provide Member with a copy of any such Policy amendment within thirty (30) days of the effective date thereof. Member agrees, subject to Member's right to withdraw from membership or participation in the Corporation, as the case may be, to comply with such amendments. Member hereby represents and warrants that it has the power to cause all intellectual property owned or controlled by it and all of its Affiliates to be licensed as set forth in the IPR Policy. Member acknowledges and agrees that any discussions about sales levels, methods, channels of distribution, markets, customers, prices or profitability or any other topic which would restrict use of technologies or which would violate any antitrust laws are prohibited, all as more particularly described in the Corporation's Antitrust Guidelines.

3. Specifications.

3.1 Compliance. From time to time, the Corporation shall approve Specifications. The Corporation does not own or license any patents or any other intellectual property rights connected with the technologies described in any Specification other than copyrights in such Specifications. Compliance with the Specifications promoted by the Corporation should be voluntary, provided, however, that any product that a Member chooses to submit for certification will be required to successfully pass the certification and/or interoperability test requirements and the Member seeking certification will be required, as a condition of using the certification marks owned by the Corporation, to comply with all rules pertaining to the certification process and to the use of the certification marks.

3.2 Use. Nothing in this Agreement shall be construed as requiring Member to use or implement any Specification, or limit Member from competing in any way, including engaging in activities, independently or with others that may be deemed competitive with any final Specification, subject to each party's confidentiality obligations.

3.3 No Warranty. ALL INFORMATION PROVIDED TO MEMBER AS PART OF ANY SPECIFICATION OR AS A PART OF ANY PROPOSED OR FINAL SPECIFICATION IS PROVIDED TO MEMBER "AS IS", "WITH ALL FAULTS", WITH NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, VALIDITY OF PATENT CLAIMS, WHETHER ISSUED OR

PENDING, OR THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

4. Membership Fees; Member Assessments; Member Expenses. Member shall pay to the Corporation the applicable Membership Fees for Member's member or participant class. Member agrees that the Corporation may condition continued membership or participation, as the case may be, upon payment of such Membership Fees as well as any applicable Member Assessments, as described in the Bylaws. The failure to pay such Membership Fees and/or any Member Assessments may subject the Member to termination or suspension of membership or participation in the Corporation, as the case may be, as provided in the Bylaws (for voting members within the meaning of Section 5056 of the California Corporations Code) or as determined by the Corporation's Board of Directors (for non-voting participants, if any). Member shall bear its own costs and expenses for its participation in member or participant activities, such as travel, employee compensation, and incidental expenses.

5. Term, Suspension & Termination.

5.1 Term. The term of this Agreement shall begin on the date that Member receives written notice from the Corporation that the Corporation has accepted and approved Member's membership or participation in the Corporation (the "**Effective Date**"), and shall continue thereafter until the termination of Member's membership or participation in the Corporation, whether by non-renewal, withdrawal, or expulsion, each in accordance with the Bylaws.

5.2 Effects of Termination.

5.2.1 No Refunds. Member will not be entitled to a refund of any Membership Fees, Member Assessments or any other amounts paid to the Corporation prior to the date of termination of this Agreement, including without limitation if the termination of this Agreement arises out of Member's withdrawal as a member or participant of the Corporation.

5.2.2 Continuing Effect of Agreements. The termination of this Agreement shall not affect any agreement that Member entered into with any other Member(s) prior to the date of such termination of this Agreement, including without limitation any license agreement entered into pursuant to the IPR Policy. All such agreements shall continue in full force and effect in accordance with their terms.

5.2.3 Confidential Information. Upon termination of this Agreement, Member shall, within thirty (30) days of the Disclosing Party's request, return to the Disclosing Party or destroy all documents and information containing Confidential Information. If the Disclosing Party requests that such documents or information be destroyed, Member shall destroy same and provide the Disclosing Party with written certification of such destruction.

5.3 Effect of Suspension of Membership. The suspension of any Member's membership in the Corporation as provided in the Bylaws shall not diminish the obligations and duties of such suspended Member under the terms of this Agreement, provided that such Member shall have no rights or benefits under this Agreement during such suspension.

5.4 Survival. The following Sections will survive any termination of this Agreement: Sections 5.2 (Effects of Termination), 5.4 (Survival), 4 (Membership Fees; Member Assessments; Member Expenses) for any post due amounts owed by the Member, 3.3 (No Warranty), 7 (Confidentiality), 8 (Limitation of Liability), and 9 (General). If any Policy has specific provisions which survive after termination of either this Agreement or Member's membership in the Corporation, then such provisions shall survive the termination of this Agreement.

6. Publicity.

6.1 Press Releases & Other Public Announcements. Subject to the terms and conditions of this Section 6, Member may make a press or other public announcement regarding its activities as a member or participant of the Corporation, as the case may be, provided that Member shall not use, name or include the identities of any other Member in any form of publicity or public announcement without the prior written consent of such other Member. Member is not authorized to provide quotes or comments on behalf of the Corporation.

6.2 Use of Member's Name & Logo. Subject to written notice of revocation by such Member to the Corporation upon termination of this Agreement, the Corporation may publish and display Member's name and logo on the Corporation's website(s) and in other Corporation collateral prepared and approved by the Board of Directors or duly authorized committee, and such use will be made in accordance with (i) the name and logo usage policy to be established by the Board of Directors or any duly authorized committee and (ii) any reasonable name and logo usage policy of Member communicated in writing by Member to the Corporation.

7. Confidentiality.

7.1 Definition. "**Confidential Information**" means all information that is provided by or on behalf of the Corporation or another Member (each, a "**Disclosing Party**") to Member in connection with Member's activities as a member or participant of the Corporation, as the case may be. The term Confidential Information shall not be deemed to include information that: (i) becomes generally available to the public other than as a result of unauthorized disclosure or use by Member; (ii) was already in possession of Member on a non-confidential basis prior to its disclosure by or on behalf of the Disclosing Party; (iii) becomes available to the Member on a non-confidential basis from a source other than the Disclosing Party provided that such source is lawfully in possession of such Confidential Information and under no obligation of confidentiality to the Disclosing Party or any third party; or, (iv) is approved in writing in advance by the Disclosing Party for Member to use or disseminate free of any ongoing obligations hereunder.

7.2 Member's Obligation. Member shall not use Confidential Information for any purposes other than the sole purposes of (i) carrying out the necessary work and obligations of Corporation and/or (ii) providing feedback between suborganizations within the Corporation, including, but not limited to the Board of Directors, Committees and Subgroups. Member shall not disclose Confidential Information to third parties except as necessary to fulfill the foregoing purposes and under an agreement by the third party to be bound by the obligations of this Section 7. Without limiting the generality of the foregoing, Member agrees to disclose to its employees, agents, service providers, legal advisors, consultants, or independent contractors (collectively, "**Representatives**") only such Confidential Information as is necessary to each such

Representative's responsibilities in performing the acts allowed by this Agreement. Member shall safeguard Confidential Information with the same standard of care that is used with respect to Member's own confidential information, but in no event less than reasonable care. If Member receives a subpoena or court or governmental order to produce any of the Confidential Information or otherwise determines that Member is legally required to disclose or produce any of the Confidential Information in its possession or control, Member shall: (a) promptly notify the Disclosing Party in writing of such required disclosure; (b) allow the Disclosing Party a reasonable opportunity to seek a protective order or other relief to prevent, restrict and/or limit such disclosure and cooperate with the Disclosing Party in seeking any such relief; and, (c) disclose only that portion of the Confidential Information that is legally required to comply with the subpoena, order or other disclosure requirement.

7.3 Trade Secret Protection. At all times from the Effective Date and thereafter, Member will, and will cause all Representatives to, hold in strictest confidence and not disclose, use, lecture upon or publish any Confidential Information that is a trade secret except as such disclosure, use or publication may be required or is permitted by this Agreement and then only upon advance written consent by the Corporation and/or the other Member, as the case may be.

8. Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED BELOW, IN NO EVENT WILL THE MEMBERS OR THE CORPORATION BE LIABLE, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, TO MEMBER OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, BRACH WARRANTY OR OTHERWISE, WHETHER OR NOT MEMBER OR THE CORPORATION HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO ANY SEPARATE AGREEMENT BETWEEN OR AMONG MEMBERS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO A BREACH OF CONFIDENTIALITY HEREUNDER OR A BREACH OF THE IPR POLICY RELATED TO THE OBLIGATION NOT TO ASSERT OR TO LICENSE INTELLECTUAL PROPERTY RIGHTS AS PROVIDED IN THE IPR POLICY.

9. General.

9.1 Governing Law. This Agreement shall be construed and controlled, and the legal relations of the parties hereto shall be determined, in accordance with the substantive laws of the State of California, United States of America, without regard to the conflict of law principles thereof. Any suit, action or proceeding, including without limitations actions by and between Members, arising from or relating to this Agreement must be brought in either Federal or State court for the County and City of San Francisco, California, USA, and each party irrevocably consents to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. Notwithstanding the foregoing, such jurisdiction shall be non-exclusive with respect to actions seeking injunctive or other equitable relief, including without limitation injunctions sought to stop any activities infringing patents or other intellectual property rights.

9.2 Notices. All notices hereunder shall be in writing and sent to Member at the address indicated in the Application, and to the Corporation at the address indicated on the signature page below or at such address as either party may later specify by such written notice. Such notices shall be deemed made and given three (3) days after sending, if mailed by registered or certified mail, postage prepaid, return receipt requested, or one (1) day after sending, if sent by express courier service or facsimile/electronic transmission.

9.3 Not Partners. Member and the Corporation are independent companies, and no employment, agency, or partnership relationship shall be construed to exist between the parties. Member may not enter into any contract, commitment or agreement binding the Corporation or any other Member.

9.4 Third Party Beneficiary. Members are and shall be intended third party beneficiaries of this Agreement with the right to enforce the terms of this Agreement against Member. For the avoidance of doubt, Members, or any one of them, may commence an action against Member if Member is in breach of this Agreement.

9.5 Complete Agreement; Amendments. This Agreement, any documents incorporated by reference herein, sets forth the entire understanding of the parties and supersedes all prior agreements, representations and understandings relating hereto. Subject to the terms of Sections 1 and 2 above, this Agreement may be amended only upon the written agreement of Member and the Corporation.

9.6 No Waiver. Any waiver of a party's rights hereunder must be set forth in a writing executed by a duly authorized representative of such party, and absent such writing, the failure by either party to exercise any of its rights under this Agreement will not be deemed to constitute a waiver of any of such rights, or other rights or remedies available to such party.

9.7 Severability. If any provision of this Agreement is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions; provided, however that if the parties are unable to so change the provision, then the affected party may terminate this Agreement upon thirty (30) days' notice.

9.8 English. This Agreement is prepared and executed in the English language only and any translations of this Agreement into any other language shall have no effect. All proceedings related to this Agreement shall be conducted in the English language.

9.9 Assignment. Member may not assign this Agreement to any third party by operation of law, as a result of a change in control, or otherwise and any attempted assignment in violation of this Section will be void.

9.10 Counterparts and Electronic Signatures. This Agreement may be executed in identical counterparts all of which taken together shall constitute one single agreement between the parties. This Agreement may be executed and delivered by facsimile signature, PDF or any

electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., [www.docusign.com](http://www.docusign.com)).



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER:**

**CORPORATION:**

\_\_\_\_\_

AIRFUEL ALLIANCE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

[address]

[address]

[email]