

## *Terms and Conditions of Membership*

### *Review Carefully*

Membership to the PlanetLab Consortium (“PlanetLab”) shall be granted by PlanetLab in its sole and absolute discretion. Notice of Membership shall be sent to the above-named applicant (“Member”) within thirty (30) days of submission of this Membership Agreement to the address above. Such notice shall be sent to both the Primary Technical Contact and the Primary Administrative Contact.

Upon receiving such notice (the “Effective Date”), Member shall abide by and be subject to the terms and conditions as set forth in this Membership Agreement and as set forth in the PlanetLab Consortium Governance Plan (the “Governance Plan”), the Acceptable Use Policies (the “AUP”), and PlanetLab Design Notes (PDN), (collectively “PlanetLab Policies”), all of which are available at [www.planet-lab.org](http://www.planet-lab.org) (the “PlanetLab Website”), and are incorporated herein by reference. Member hereby represents that it has reviewed the PlanetLab Policies on the PlanetLab Website as of the date hereof.

***Term and Termination*** The term of Membership shall begin on the Effective Date, shall run for one (1) year (the “Initial Term”) and shall then automatically renew for two consecutive one-year terms (“Renewal Terms”) for a total of three (3) years, at which point the Member may apply again for an additional three (3) year term. This Membership Agreement shall be binding upon and inure to the benefit of the parties and their employees, agents, representatives and successors.

Member may terminate this Membership Agreement for any reason at any time upon thirty (30) days written notice to the PlanetLab Director; however, in the event of such termination, Member shall not have any right to fees or dues paid or owed to PlanetLab. PlanetLab may also terminate this Membership Agreement at any time upon thirty (30) days written notice to Member.

***Membership Dues*** Member shall pay dues as set forth in the Governance Plan within 30 days of the Effective Date for the Initial Term. Payments for the second and third years shall be due on the anniversary dates of the initial Effective Date. Dues shall cover membership fees for a 12 month period based on the Member’s Effective Date, and shall remain in effect as a firm non-revocable offer as to the initial one-year term.

***Membership Obligations*** Member’s duties and obligations are as set forth herein and as set forth in the PlanetLab Policies (collectively, “Membership Obligations”). The Membership Obligations may be amended from time to time by the Director (as approved by the Steering Committee) of PlanetLab, upon written notice to the Members of PlanetLab (provided that this Membership Agreement and the terms set forth herein shall control in the event of conflict). Member shall be given at least thirty (30) days’ prior written notice of the effective date of an amendment, and amendments shall be only prospective in their effect and application. Member shall be bound by a duly adopted amendment unless Member elects to terminate this Membership Agreement. Failure to abide by the PlanetLab Policies may result in disciplinary actions as deemed appropriate by the PlanetLab Director (as approved by the Steering Committee), including termination or suspension of Membership.

***Costs and Expenses*** Member shall bear its own costs and expenses related to its Membership, including, but not limited to, compensation payable to Member’s employees and consultants that participate in PlanetLab on behalf of Member, and all travel and other expenses associated with the Member’s participation in PlanetLab activities. Member shall have no right of reimbursement from PlanetLab.

***Intellectual Property*** PlanetLab shall maintain a repository of Software submitted by Members in support of PlanetLab’s mission and purpose. Software and other Intellectual Property made available to Members by PlanetLab is from one of five sources:

#### **I. Intellectual Property and Software Contributed by Members to PlanetLab**

- A. *Intellectual Property* If Member desires to contribute Intellectual Property to the PlanetLab infrastructure (except for Software contributions, which shall be governed by the terms of paragraph B below), Member may do so by submitting to the PlanetLab Director a written Intellectual Property assignment or license agreement, specifying in detail what Intellectual Property is being contributed, what terms and conditions

shall apply to the use of such Intellectual Property, and whether such Intellectual Property is subject to any obligations to third parties. In the absence of explicit written terms to the contrary, it shall be presumed that such Intellectual Property is non-exclusively licensed to PlanetLab and Members on a worldwide, perpetual, royalty-free basis (without the right to sublicense) to use for academic, non-commercial research purposes within the PlanetLab network. Contributing Members may reserve all patent rights and copyrights whatsoever, including the right to restrict or prohibit commercial use or distribution of any such Intellectual Property. PlanetLab is under no obligation to accept any such contribution; and no Member shall be compelled to make any such contributions; nor will the submission of any such contributions or licenses under this membership Agreement affect such Member's Intellectual Property rights in any non-contributed Intellectual Property or Intellectual Property owned by such Member. The Director shall notify the Membership of any accepted Intellectual Property.

- B. *Software* If Member desires to contribute Software to the PlanetLab infrastructure, the PlanetLab Director shall distribute such Software as “open source” under terms and conditions substantially similar to the BSD Open Source License Agreements available at [www.opensource.org](http://www.opensource.org) (the “BSD License”). Such distribution shall be subject to any third party obligations, to the contributing Member’s consent, and to any other applicable legal restrictions. If Member and PlanetLab agree to distribute the contributed code as “open source”, Member shall set forth its consent in a letter and shall submit the Software in source code form along with the letter. Further, if Member’s contributed Software is distributed as “open source”, Member shall also publish necessary associated research materials under terms and conditions consistent with the terms and conditions of the associated Software that it contributes. In the event Member wishes to use or include third party Software as part of its open source contribution that, to the Member’s knowledge, would impair the ability to publish under the BSD License, Member shall promptly inform the PlanetLab Director of its intention and the licensing terms to be used. Nothing herein shall be construed as to limit the ability to use or incorporate pre-existing software in the research that is provided under other license terms (e.g., a GPL License). Further, nothing herein shall compel Member to contribute its proprietary Software as described herein. PlanetLab is under no obligation to accept any such Software contribution; and no Member shall be compelled to make any such contribution; nor will the submission of any such Software contributions under this Membership Agreement affect such Member's Intellectual Property rights in any non-contributed Intellectual Property or Software owned by Member. The Director shall notify the Membership of any accepted Software.

## II. Intellectual Property and Software Created Solely Using PlanetLab Membership Fees

Intellectual Property and Software created solely as a result of the efforts of those solely funded by Consortium fees, as defined in the Governance Plan shall be used in furtherance of PlanetLab’s mission and goals. Such Intellectual Property shall be deemed to be contributed by way of a license to Member to use for such purpose on a royalty-free, perpetual, worldwide and non-exclusive basis. Software created solely as a result of these efforts will be distributed in source code form as “open source” under terms and conditions substantially similar to the BSD License. Such distribution shall be subject to any third party obligations and to any other applicable legal restrictions.

## III. Intellectual Property and Software Created Using PlanetLab Membership Fees in Collaboration with Member

- A. *Intellectual Property*. If during the term of this Membership Agreement any Intellectual Property is created jointly by Members and those solely funded by Consortium fees (excluding Software, which shall be governed by the terms of paragraph B below), the parties shall negotiate and decide between themselves as to whether a patent application will be filed and if so, who will file, prosecute and defend the application and resultant patent(s). Such Members shall retain all rights, title and interest in such jointly-created Intellectual Property for its own use (including the right to sublicense) without payment of any fee or accounting whatsoever to the other party or parties. The respective interest of Consortium in any such jointly-created Intellectual Property shall be treated as set forth in Paragraph II above.

- B. *Software.* If Software is jointly created by those funded solely by Consortium Fees and Member(s), such Software and documentation will be distributed in source code form as “open source” under terms and conditions substantially similar to the BSD License. Such distribution shall be subject to any third party obligations and to any other applicable legal restrictions.

#### **IV. Intellectual Property and Software Created Solely by Member**

If Member solely creates Intellectual Property or Software in connection with its use of the PlanetLab network, Member shall retain all property rights in such Software or Intellectual Property. Member may, in its discretion, contribute such Intellectual Property or Software in accordance with Paragraph I. Furthermore, Members may deploy and test their proprietary Software on the PlanetLab infrastructure provided that such use is in accordance with the terms of this Membership Agreement, including but not limited to the AUP posted on the PlanetLab Website.

#### **V. Intellectual Property and Software Created under Collaborations Between or Among Members**

Member may enter into collaborative research arrangements with other Members of PlanetLab provided that the terms and activities of such collaborations do not violate the terms and conditions of this Membership Agreement, including but not limited to PlanetLab’s AUP.

**No Other License** Except as expressly provided by this Membership Agreement, Member does not grant or receive, by implication, or estoppel, or otherwise, any intellectual property or other rights.

**Confidentiality** Although the technical and marketing issues and objectives of PlanetLab are not confidential, Member shall not provide non-Members with PlanetLab draft documents, disclose any content from the “Members Only” section of the PlanetLab Website, or disclose information relating to PlanetLab’s internal business or event planning without the express written approval of PlanetLab management. No other material or information exchanged between Members as part of PlanetLab activities shall be deemed confidential or proprietary unless disclosed under a previously executed written agreement between the parties present at time of disclosure.

**Publicity** During the term of this Membership Agreement, Member grants PlanetLab permission to identify Member as a member of PlanetLab in directories and marketing materials, including the PlanetLab Website and in any other PlanetLab communications unless Member sends PlanetLab written notice of its desire not to be so identified. Member may publicly identify its own membership in PlanetLab in documentation, press releases, brochures and other materials. All such identifications by either party shall be limited to the name and address of the Member or PlanetLab, as the case may be.

**No Warranty** ANY GOODS, SERVICES, AND WRITTEN MATERIALS PROVIDED BY PLANETLAB OR ITS AGENTS OR ANY MEMBER IN ANY FORM, WHETHER FURNISHED IN DRAFT OF FINAL FORM ARE PROVIDED "AS-IS WITH ALL DEFECTS" AND WITHOUT ANY WARRANTY OF ANY KIND. PLANETLAB DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

**Liability Limited** IN NO EVENT SHALL PLANETLAB OR ANY OTHER MEMBER BE LIABLE TO ANY OTHER MEMBER OF PLANETLAB FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR LOST PROFIT DAMAGES, OR FOR ANY DAMAGES ARISING OUT OF LOSS OF USE OR LOSS OF DATA, TO THE EXTENT THAT SUCH DAMAGES ARISE OUT OF THE ACTIVITIES OF PLANETLAB OR THIS AGREEMENT OR ANY BREACH THEREOF EVEN IF MEMBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES Nothing contained in this Agreement shall be deemed as creating any rights or liabilities in or for third parties who are not Members of PlanetLab.

**No Implied Joint Venture** This Agreement does not create a joint venture, partnership or other form of business association between the Members nor an obligation to develop, make available, use, license, buy or sell any information, product, services or technology.