

## **MEMBERSHIP AGREEMENT**

This MEMBERSHIP AGREEMENT ("**Membership Agreement**"), dated as of September 18, 2020 ("**Effective Date**"), is entered into by and among Crypto Open Patent Alliance ("**COPA**"), and each counterparty who becomes a party to this Membership Agreement and a member of COPA in accordance with Section 4.3. Each counterparty enters into this Membership Agreement on behalf of itself and its Controlled Entities. COPA or each Member may be referred to herein as a "**Party**" or collectively as the "**Parties**".

COPA seeks to promote the adoption and success of Cryptocurrencies. Open and collaborative innovation is stifled when foundational technologies are locked up in patents and when patents are used offensively to stifle innovation and raise barriers to research, new products and technology improvements. Such conduct reduces competitive options and value for consumers. COPA operates on the principle that open access to patents covering foundational Cryptocurrency technologies is necessary for the community to grow, freely innovate, and to build new and better products. COPA and its Members seek to accomplish this objective through a two-step approach.

First, to provide open access to Crypto Patents, each Member makes the pledge set forth in the Patent Pledge (as defined below in Section 2) providing, as further detailed therein, that it will never assert its Crypto Patents against anyone, except for defensive purposes.

Second, to deter patent litigation, each Member contributes its Crypto Patents to the Shared Patent Library (as defined below in Section 3) and all such Crypto Patents in the Shared Patent Library may be used by any Member defensively if it is subject to a patent lawsuit by a patent aggressor.

Each Member has made its own assessments regarding whether to participate in COPA and believes that COPA will promote competition and the advancement of Cryptocurrencies and Crypto Technology by reducing the risks and burdens associated with unnecessary patent infringement assertions.

In consideration of the promises and covenants contained in this Membership Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COPA and each Member agrees as follows:

### **1 Definitions; Interpretation**

- 1.1 Definitions. Capitalized terms used but not defined in this Section 1.1 or in Exhibit A (Additional Definitions) will have the meanings given elsewhere in this Membership Agreement.

"**Crypto Patent**" means any patent that would be infringed by an Entity making, having made, developing, using, selling, offering to sell, leasing, licensing, exporting, importing, distributing, or otherwise practicing any Crypto Technology.

"**Crypto Technology**" means any technology that is either:

- (a) technology that enables the creation, mining, storage, transmission, settlement, integrity, or security of Cryptocurrencies, but only as used in connection with Cryptocurrencies. This includes, as they apply to Cryptocurrencies, any technology relating to cryptography, networks, ledger and smart contract architectures and infrastructure, analytics, protocol and reference implementations, token generation, key creation and transfer, authentication, hot and cold storage infrastructure, cross-platform libraries and connectors, and Cryptocurrency programming languages and platforms, and in general, solutions relating to improving the scalability, security, network/computing efficiency, and transaction speed thereof; or

- (b) any technology owned and released by an Entity as Free and Open Source Technology for use in connection with Cryptocurrency.

**“Cryptocurrency”** means a digital asset that:

- (a) is generated, verified, and transferred using cryptographic techniques; and
- (b) operates on the principle of a decentralized system or outside of a government controlled banking system.

**“Member”** means any:

- (a) Entity that has accepted and executed a Membership Agreement to become a member of COPA while that Entity remains a member of COPA; and
- (b) such Entity’s Controlled Entities.

A list of current and past Members will be maintained at [open-patent.org/](http://open-patent.org/).

**“Pledged Patent”** means any Crypto Patent that:

- (a) is owned by a Member (i) at the time that Member becomes a Member, or (ii) while they remain a Member; or
- (b) issues from a patent application that is owned by a Member (i) at the time that Member becomes a Member, or (ii) while they remain a Member.

A list of Pledged Patents will be maintained at [open-patent.org](http://open-patent.org). For clarity, the list maintained by COPA on its Internet website is for informational purposes and all patents that fall within the definition of “Pledged Patents” will be considered to be so whether or not it is listed on COPA’s Internet website.

- 1.2 **Interpretation.** The section headings and gray section annotations contained in this Membership Agreement are for reference purposes only and will not in any way control the meaning or interpretation of this Membership Agreement. The term “including” means “including without limitation.” Any reference herein to “reasonable” conduct, a determination made “reasonably,” or any other similar reference, refers to undertaking such conduct or making such a determination as an ordinarily prudent person in a similar position would use under similar circumstances. Any references herein to laws, regulations, instruments, agreements or documents will be deemed to include such laws, regulations, instruments, agreements or documents as they may be amended, supplemented, modified, or restated from time to time in accordance with their respective terms.

## 2 Patent Pledge

*We’ve included annotations in these gray boxes here and other portions of the agreement in everyday language for your reading convenience. These annotations are not meant as substitutes or summaries of the provisions and have no legally binding effect by themselves, so please read through everything!*

*Patent Pledge -- Members agree to never assert their crypto-technology patents offensively against anyone, except under the following limited set of situations: (1) in self-defense (if the member gets sued for IP infringement and the member wants to use its patents defensively against the initial aggressor); (2) in defense of the community (if anyone else in the crypto community is attacked by a patent aggressor and the member wants to use its patents against such an aggressor); or (3) in defense against an impersonator who causes harm to the member’s customers (e.g., a copycat scammer of the member’s products). Members also grant a non-exclusive and perpetual license to their crypto-technology patents, subject to the above exceptions.*

- 2.1 **Patent Pledge.** COPA and the Members desire to encourage further development in, to reduce barriers to innovation and use of, and to facilitate investment to advance Crypto Technology and its adoption. In order for the Cryptocurrency community to freely build and innovate and to expand competitive options, a goal of the Membership Agreement is to provide open access to the Pledged Patents. In furtherance of this goal, so long as an Entity and its Controlled Entities do not engage in the conduct described in Sections 2.1(a), (b), or (c) below, each Member agrees to the following with respect to its Pledged Patents: each Member (i) covenants not to assert a claim of infringement of its Pledged Patents against such Entity; and (ii) grants such Entity, if it wishes to accept it, a perpetual, royalty-free, non-transferable, non-sublicensable, worldwide, non-exclusive license to develop, make, have made, use, sell, export, import, distribute, or otherwise practice any claimed invention of its Pledged Patents (both (i) and (ii) collectively the “**Patent Pledge**”). A Member’s Patent Pledge is subject to the following exceptions:
- (a) **Member’s Self-Defense:** A Member’s Patent Pledge does not extend to an Entity if that Entity or any of its Controlled Entities offensively assert any of their patents against that Member.
  - (b) **Defense of the Community:** A Member’s Patent Pledge does not extend to an Entity if that Entity or any of its Controlled Entities offensively assert any of their Crypto Patents against any other Entity.
  - (c) **Defense Against an Impersonator:** A Member’s Patent Pledge does not extend to an Entity if that Entity develops, markets, or sells, or assists in the development, marketing, or selling of, a product or service that impersonates the products or services of that Member in a manner that could mislead or otherwise harm the customers or users of such products or services.
- 2.2 **Effect of the Exceptions:** If an Entity or any of its Controlled Entities engage in the conduct described in Sections 2.1 (a), (b), or (c), each Member’s Patent Pledge that extends to such Entity and its Controlled Entities shall cease to be effective and shall terminate with respect to such Entity and its Controlled Entities as if such Patent Pledge had never been made with respect to such Entity and its Controlled Entities.
- 2.3 **All Other Rights Reserved:** Except as expressly stated in the Patent Pledge, all other rights of the Members are hereby reserved with respect to their Pledged Patents.
- 2.4 **COPA Patent Pledge.** COPA also agrees to the Patent Pledge with respect to any Transferred Patents (as defined below in Section 3.2) it becomes the owner, co-owner, or an exclusive licensee of in accordance with Section 3.
- 2.5 **Publication of Patent Pledge.** COPA shall maintain a copy of the Patent Pledge along with its related definitions and provisions (in the form set forth in Exhibit B (Patent Pledge) attached hereto and as may be subsequently amended from time to time) on its public facing Internet website (currently available at: [open-patent.org](http://open-patent.org)).

### 3 Shared Patent Library

*Shared Patent Library -- Members agree to contribute their crypto-technology patents to a “shared patent library” so that another member that is subject to a patent lawsuit can request to use one or more of those crypto-technology patents defensively against the patent aggressor. The member seeking to use a crypto-technology patent from the shared patent library will make a request to the owner of the patent, who must not unreasonably deny the request. The members will then negotiate specific terms for granting the requesting member the necessary rights in accordance with the process described in Exhibit C. In some circumstances, the members may decide to involve COPA, as a neutral party that is able to act in the members’ collective interests, in the rights transfer process.*

- 3.1 **Shared Patent Library.** Another goal of the Membership Agreement is to create a collective shield of patents that provides Members access to each other’s Pledged Patents for the purposes of

defensively asserting the Pledged Patents against Asserting Entities. Such a collective shield provides each Member access to a larger number of patents to use defensively against Asserting Entities (relative to the patents they may individually own) and helps deter such Asserting Entities from initiating lawsuits in the first place because of the possibility that the Pledged Patents can be used against them. Accordingly, the function of the Shared Patent Library is to provide Members, who are the subject of an Offensive Patent Assertion by an Entity ("**Asserting Entity**") with the necessary rights to do any of the following (collectively such conduct will be referred to as "**Defensive Patent Assertion**"):

- (a) assert any Transferred Patents in a defensive manner (or have them asserted in a defensive manner) against the Asserting Entity;
- (b) bring a legal proceeding (or have a legal proceeding brought) asserting that the Asserting Entity has infringed any Transferred Patents;
- (c) subject to applicable legal limitations, collect damages in connection with the legal proceeding described in Section 3.1(b); and
- (d) take any lawful action reasonably necessary to defend, protect, or enforce any Transferred Patent.

In furtherance of this goal, each Member agrees to make their Pledged Patents available for Other Members to request to use in accordance with this Section 3.

- 3.2 Requesting Access to a Pledged Patent. It is COPA's and the Members' intention that if an Other Member makes a request to use one or more of the Pledged Patents from the Shared Patent Library in accordance with Exhibit C (Shared Patent Library procedures) attached hereto, the Owner Member will consider the request in good faith and not unreasonably deny the request as set forth in Section 2 of Exhibit C. If and once the Owner Member approves the request, the Owner Member will enter into negotiations with the Other Member and COPA (if applicable) in accordance with Exhibit C to transfer the necessary rights in the requested Pledged Patent(s) to the Other Member or to COPA (if applicable). Once such an agreement is reached, the Other Member will become a "**Defending Member**," and each approved Pledged Patent that has been transferred to or licensed to the Defending Member or COPA (as applicable) to be asserted against the Asserting Entity will become a "**Transferred Patent**."
- 3.3 COPA as the Party Receiving Rights to the Transferred Patent. It is acknowledged and agreed by the Members that COPA is a neutral party and may, in certain circumstances, be in the best position to act on behalf of the Members' collective interests. As set forth in Section 3 of Exhibit C (Shared Patent Library procedures), and as may be negotiated by an Owner Member, Other Member and COPA, COPA may receive rights to a Transferred Patent from an Owner Member either as a co-owner, owner, or an exclusive licensee. It is COPA's and the Members' intention that if COPA receives the rights to assert the Transferred Patent, COPA will (i) assert the Transferred Patent against the Asserting Entity, and (ii) pursue the assertion for the benefit of the Defending Member with respect to the Defending Member's Offensive Patent Assertion.
- 3.4 Extension of Patent Pledge. For clarity, the obligations set forth in this Section 3 are in addition to the Patent Pledge and without limiting any of the obligations thereunder. To the extent a Defending Member or COPA has acquired rights to one or more Transferred Patents under this Section 3, such Transferred Patent(s) will be deemed to be included in the "Pledged Patents" that are subject to COPA's or that Defending Member's Patent Pledge. For clarity, the original Owner Member of the Transferred Patent(s) would still be able to develop, make, have made, use, sell, export, import, distribute, or otherwise practice any claimed invention of such Transferred Patent(s).

#### 4 Membership; Amendments to Membership Agreement

*This section contains the rules about COPA membership, including, how an entity becomes a member, what*

*happens if they acquire or otherwise get control over other entities, how they can withdraw from COPA or be expelled from COPA, and what continuing rights and obligations they have if this occurs.*

*This agreement can be amended by the Board and members from time to time in accordance with the process described in this section.*

*Periodically, the COPA board will seek feedback from members and meet to discuss whether to continue operations or dissolve COPA.*

- 4.1 Administration. COPA is authorized, on behalf of the Members, to administer and organize the programs contemplated by this Membership Agreement, to perform all actions necessary (including initiating legal proceedings against an Asserting Entity) to fulfill the purposes of Section 3 in connection with an Other Member's Defensive Patent Assertion, and to take all such other actions as may be otherwise directed by the Board. Such administrative responsibilities may include organizing Member meetings, reviewing membership applications, collecting information regarding Pledged Patents and the Members' compliance with the Membership Agreement, and collecting Membership Fees as the Board may require from time to time. COPA shall maintain an Internet website that publishes a list of the current and former Members (currently available at: [open-patent.org](http://open-patent.org)) and the Shared Patent Library (currently available at: [open-patent.org](http://open-patent.org)).
- 4.2 Membership. Membership admission will be administered by COPA in accordance with this Membership Agreement, including with any rules promulgated by the Board from time to time, and as may be otherwise directed by the Board. No party seeking to become a Member will be deemed a Member until such time that its Signature Page is accepted and formally acknowledged by COPA marking it with the Member's Acceptance Date.
- 4.3 Acceptance of New Members. By paying any applicable Membership Fees and submitting a signed Signature Page that is accepted and formally acknowledged by COPA, a counterparty becomes a Member and is bound by this Membership Agreement, regardless of whether such counterparty holds any Pledged Patents. This Membership Agreement will commence applying to a particular Member with effect from the applicable acceptance date specified on the Signature Page ("**Acceptance Date**") and will end on the effective date of the deemed or voluntary withdrawal or expulsion of such Member (as set forth in Sections 4.6, 4.7, or 4.8) ("**Membership Term**").
- 4.4 Notification Obligation. Each Member that has executed a Signature Page must notify COPA if:
- (a) it undergoes a Change of Control within thirty (30) days of the effective date of such Change of Control;
  - (b) an Entity that was previously a Controlled Entity of a Member ceases to be a Controlled Entity of the Member, within thirty (30) days of such cessation; or
  - (c) an Entity becomes a Controlled Entity of a Member, within thirty (30) days of the Entity becoming the Member's Controlled Entity.
- 4.5 Acquisition of Asserting Entities. In the event that any Member (including, for clarity, any of its Controlled Entities) acquires or comes to control an Asserting Entity, such that the Asserting Entity becomes a Controlled Entity of that Member:
- (a) the Asserting Entity will not become a Member for so long as that Entity is an Asserting Entity; and
  - (b) the Asserting Entity's conduct will not be deemed a violation of the acquiring Member's Patent Pledge, provided that the acquiring Member and Asserting Entity settle, dismiss or otherwise resolve the Asserting Entity's Offensive Patent Assertion within sixty (60) days of the Asserting Entity becoming a Controlled Entity of the acquiring Member ("**Corrective**



**Action**). In the event Corrective Action is not taken in a timely manner, such Asserting Entity's conduct will be imputed to the acquiring Member for purposes of Section 4.8.

4.6 Deemed Withdrawal. A Member will be deemed to have withdrawn from COPA and this Membership Agreement in the following circumstances:

- (a) if there is a Change of Control with respect to a Member that has executed a Signature Page during such Member's Membership Term, such Member (and, for clarity, all of its Controlled Entities) will be deemed to have withdrawn from this Membership Agreement sixty (60) calendar days after the Change of Control comes into effect, except where the Entity that controls or acquires such Member is or decides to become a Member during such sixty (60) calendar days; or
- (b) if an Entity ceases to be a Controlled Entity of a Member that has executed a Signature Page, then such Entity will be deemed to have withdrawn from this Membership Agreement with effect on the date it ceases to be a Controlled Entity of such Member; provided, however, that if such Entity decides to execute a Signature Page and become a Member in its own capacity within sixty (60) calendar days of when it ceased to be a Controlled Entity of such Member it will be deemed to have been a Member starting on the day it ceased to be a Controlled Entity.

4.7 Voluntary Withdrawal. A Member may voluntarily withdraw from COPA and this Membership Agreement, subject to the following conditions: (i) such Member has been a Member for a minimum of three (3) years; and (ii) such Member is not a co-owner of a Transferred Patent or otherwise benefiting from the Shared Patent Library as a Defending Member under an arrangement entered under Section 3.2 at the time of its withdrawal. To voluntarily withdraw from COPA, the Member must submit a written notice to COPA signed by an authorized representative of the Member and declaring the Member's intention to withdraw. The withdrawal will take effect with respect to the Member (including, for clarity, each of its Controlled Entities) sixty (60) days after the date it submits such written notice to COPA. COPA will publish the existence and effective date of the Member's withdrawal on its website.

4.8 Expulsion. The Board will expel a Member from COPA ("**Expelled Entity**") if:

- (a) the Board determines that such Member (including, for clarity, any of its Controlled Entities) has violated the Patent Pledge, or
- (b) in the case of an Owner Member (other than COPA), the Board determines that such Owner Member has unreasonably denied an Other Member's request to use one or more of the Owner Member's Pledged Patents from the Shared Patent Library in violation of Section 2 of Exhibit C (Shared Patent Library procedures) or in a manner that displays flagrant disregard for the goals and objectives of COPA, including specifically, the Shared Patent Library. The Board shall consider the totality of the circumstances in making this determination, including the Owner Member's prior conduct and participation within COPA and whether there were any reasonable grounds to deny the request as set forth in Section 2 of Exhibit C.

In each case, the Board, in its sole discretion, will make the final decision on the expulsion and set the effective date of expulsion.

4.9 Effect of Withdrawal or Expulsion.

- (a) Termination of Other Members' Patent Pledge with respect to Expelled Entities. Each Expelled Entity (including, for clarity, each of its Controlled Entities) will no longer receive the benefit of the Patent Pledges made by other Members. Each Member's Patent Pledge shall cease to be effective and shall terminate with respect to an Expelled Entity (and each of its Controlled Entities) starting on the effective date of the Expelled Entity's expulsion.

- (b) Patent Pledge. The Patent Pledge granted by a Withdrawn Entity or Expelled Entity will remain in effect and will continue with respect to (i) all of its Pledged Patents existing as of the effective date of its withdrawal or expulsion (as applicable) and (ii) all of its Crypto Patents that issue after such date and that were the subject of a patent application such Withdrawn Entity or Expelled Entity owned as of or prior to such date. Each such Crypto Patent will be deemed to be a Pledged Patent. With respect to each Pledged Patent of a Withdrawn Entity or Expelled Entity, each Patent Pledge will continue for the term of the Pledged Patent. For clarity, Pledged Patents do not include Crypto Patents that are the subject of an application filed or acquired by a Withdrawn Entity or Expelled Entity after the effective date of its withdrawal or expulsion (as applicable).
  - (c) Shared Patent Library. If a Withdrawn Entity or Expelled Entity is the Owner Member to of a Transferred Patent that is the subject of an arrangement entered into under Section 3.2, such arrangement will survive and continue in accordance with the terms of the agreement entered into by the Withdrawn Entity or Expelled Entity with the Defending Member.
- 4.10 Amending the Membership Agreement. This Membership Agreement may be amended from time to time pursuant to a vote of either the Board or the Members as set forth in this Section 4.10. A Member may propose an amendment to this Membership Agreement by submitting a written proposal to the Board (a “**Member Amendment Proposal**”). The Board may, in its sole discretion, determine if a Member Amendment Proposal should be disclosed to the Members and/or voted upon. A Member Amendment Proposal or a Board-initiated proposal to amend this Membership Agreement (each an “**Amendment Proposal**”) will be deemed to be a “**Material Amendment Proposal**” if it proposes to (i) amend the meaning of the term “Pledged Patent,” (ii) amend the meaning of the terms “Crypto Technology,” (iii) revise any obligations regarding the Membership Agreement with respect to a Defensive Patent Assertion or the obligation to reach an agreement regarding a Defensive Patent Assertion, (iv) amend the Patent Pledge, or (v) negatively impact or encumber the patents of any Member. A Material Amendment Proposal (including, for clarity, any such Board-initiated amendment proposals) will be deemed adopted if it was voted on and approved by seventy-five percent (75%) of the Members. All other Amendment Proposals will be deemed adopted if voted on and approved by a majority of the Board. All adopted Amendment Proposals will be promptly published and distributed to the Members. The Board, in its sole discretion, will determine the date on which an adopted Amendment Proposal will take effect, but such date will not be earlier than sixty (60) calendar days following the date on which the Board publishes and distributes the adopted Amendment Proposal to the Members. If a Member objects to the adoption of an Amendment Proposal, the Member may immediately withdraw from this Membership Agreement as provided in Section 4.7 (regardless of how long it has been a Member for) and if it does so before the effective date of the adopted Amendment Proposal, the terms in the Amendment Proposal will not apply to that Member.
- 4.11 Corporate Amendments that Require Material Amendments to the Membership Agreement. If the Board desires to make an amendment to its Bylaws or its Articles of Incorporation (as amended or restated from time to time) that would require or otherwise result in one or more of the changes described in Section 4.10(i) to 4.10(v) (“**Material Corporate Amendment**”), the Board will promptly publish and distribute such Material Corporate Amendment to the Members at least sixty (60) calendar days prior to such Material Corporate Amendment coming into effect. If a Member objects to a Material Corporate Amendment, the Member may immediately withdraw from this Membership Agreement as provided in Section 4.7 (regardless of how long it has been a Member for) and if it does so within sixty (60) calendar days of the Board’s publication of such Material Corporate Amendment, the Material Corporate Amendment will not apply to that Member.
- 4.12 COPA Dissolution and Termination of Membership Agreement. The Board will meet on or about five (5) years after the Effective Date, and thereafter every three (3) years, to discuss whether to continue COPA or to dissolve COPA and terminate the Membership Agreement. The Board will provide all Members with at least three (3) months prior notice before meeting to discuss this issue, and invite Members to provide their feedback on this issue. If the Board unanimously decides to dissolve COPA, the Board will promptly publish and distribute its decision to the Members. The

Board, in its sole discretion, will determine the date on which the Membership Agreement will terminate for all Parties. If the Membership Agreement is terminated under this Section 4.12, all Members will be treated as having voluntarily withdrawn from the Membership Agreement on and from the effective date of such termination.



## 5 Warranties

*COPA and the members each provide their crypto-technology patents (if any) as-is, without warranties, and are not responsible for how other members or COPA use those patents. However, COPA and the members each promise that they are who they say they are, that they have power to enter into this agreement for themselves (and in the case of members, on behalf of their controlled entities), and that they will not try to get around their obligations under this agreement.*

- 5.1 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 5.2, ALL RIGHTS AND LICENSES PROVIDED UNDER THIS AGREEMENT ARE “AS IS,” WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER IT IS EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, THE OWNER MEMBERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY, ENFORCEABILITY, OR NON-INFRINGEMENT.
- 5.2 **Representations and Warranties.** Notwithstanding Section 5.1, COPA and each Member that executes a Signature Page represents, warrants, and covenants that:
- (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and that it has the full legal power and authority to grant the licenses, waivers, immunities, covenants, and releases set forth in this Membership Agreement;
  - (b) (i) this Membership Agreement has been duly executed and delivered by it, (ii) constitutes a legal, valid, and binding obligation on it (and in the case of a Member, its Controlled Entities), and (iii) is enforceable against it (and in the case of a Member, its Controlled Entities);
  - (c) it has authority to enter into this Membership Agreement on behalf of itself (and in the case of a Member, its Controlled Entities), and in the case of a Member, that it will continue to have and exercise the rights necessary to cause its Controlled Entities to be bound by the obligations of this Membership Agreement;
  - (d) it is the owner of all right, title and interest in and to its Pledged Patents (if any) and grants the rights provided for in this Agreement;
  - (e) it has independently considered the benefits of collaborating as a Member, and it believes that participating in COPA and entering this Agreement (including making the Patent Pledge and making its Pledged Patents available as part of the Shared Patent Library) is procompetitive and will facilitate its ability to innovate and work to introduce new and better services and products;
  - (f) it will not use COPA for any coordination contrary to applicable competition law; and
  - (g) it will not use or cooperate with any other Members or third parties for the purpose of circumventing its obligations under this Membership Agreement.

## 6 Disclaimer of Liability

*As described below, if something bad happens relating to this agreement, the members’ patent crypto-technology patents, or any of the licenses granted under this agreement, COPA and the members will not be liable to the extent permitted by applicable law, unless the bad thing was caused by gross negligence or willful misconduct by COPA or the relevant member.*

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND OTHER THAN WITH RESPECT TO WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT WILL COPA OR A MEMBER (INCLUDING, FOR CLARITY, ANY OF THE MEMBER'S CONTROLLED ENTITIES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR OTHER INTANGIBLE LOSSES, RELATING TO OR ARISING IN ANY MANNER OUT OF THIS AGREEMENT, THE PLEDGED PATENTS, OR THE RIGHTS GRANTED HEREUNDER, EVEN IF COPA OR SUCH MEMBER (INCLUDING, FOR CLARITY, ANY OF THE MEMBER'S CONTROLLED ENTITIES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED. IF COPA OR A MEMBER BREACHES ITS PATENT PLEDGE, COPA AND THE MEMBERS SHALL NOT BE JOINTLY AND SEVERALLY LIABLE FOR SUCH BREACH.

## 7 Dispute Resolution.

*This section provides details about how disputes relating to this agreement will be resolved. The dispute will first be raised with the COPA board, and if it cannot be resolved by the COPA board, the dispute will be resolved through a mediation and arbitration process.*

- 7.1 Resolution by the Board. Any dispute, controversy or claim arising out of, relating to, or in connection with this Membership Agreement, including the formation, interpretation, breach or termination thereof ("**Dispute**") will first be raised with the Board for dispute resolution. The Board's decision with respect to any Dispute (or part thereof), to the extent they concern the matters set forth in Exhibit D (Board matters) attached hereto, will be final and binding on the applicable Parties. Subject to the foregoing, the Parties agree that the mediation and arbitration process set forth in Section 7.2 and Section 7.3 will exclusively apply to resolving any Dispute.
- 7.2 Mediation by JAMS. If the Dispute is not resolved by the Board in accordance with Section 7.1, the applicable Parties may proceed as follows:
- (a) The Dispute will be submitted to JAMS, or its successor, for mediation first, and if the matter is not resolved through mediation, then it will be submitted to JAMS, or its successor, for a final and binding confidential arbitration pursuant to Section 7.3.
  - (b) Any Party may commence mediation by providing to JAMS and the other applicable Parties a written request for mediation, setting forth the subject of the Dispute and the relief requests.
  - (c) Such Parties will cooperate with JAMS and with each other applicable Party in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. Such Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.
  - (d) All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of such Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
  - (e) Any such Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("**Earliest Initiation Date**") in accordance with Section 7.3. The mediation may continue after the commencement of arbitration if the Parties so desire.

(f) At no time prior to the Earliest Initiation Date shall any such Party initiate an arbitration or litigation related to this Agreement, except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the Parties. However, this limitation is inapplicable to any such Party if any of the other applicable Parties refuses to comply with the requirements of Section 7.2(c).

(g) All statutes of limitation and defenses based upon the passage of time (if any) shall be tolled until 15 days after the Earliest Initiation Date. Such Parties will take such action, if any, required to effectuate such tolling.

7.3 Arbitration by JAMS. Any Dispute, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by final and binding arbitration in San Francisco, California, United States of America before three (3) arbitrators. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, unless the applicable Parties agree otherwise. Judgment on the award may be entered in any court having jurisdiction. Costs to be paid by each applicable Party equally.

## 8 Miscellaneous

8.1 Relationship of the Parties. This Membership Agreement does not create any relationship of agency, partnership or joint venture between or among COPA, and/or any the Members, and/or their Controlled Entities.

8.2 Release for COPA. Each Member releases COPA and its past, present, or future directors, representatives and successors (COPA and all such parties, the “**Released Parties**”) from, and covenants not to take action against any of the Released Parties, with respect to any liability associated with the administration of this Membership Agreement.

8.3 Beneficiaries. Controlled Entities are intended third-party beneficiaries of this Membership Agreement. Each Controlled Entity has the right to enforce the terms of this Membership Agreement against other Parties and their Controlled Entities. The Patent Pledge is a binding contract between the Members and each beneficiary of the Patent Pledge (“**Pledge Beneficiary**”). Each Member agrees that each such Pledge Beneficiary has the right to enforce the terms of the Patent Pledge against each Member and its Controlled Entities.

8.4 Trademark Use. COPA grants to each Member, subject to such Member’s compliance with this Membership Agreement and all brand guidelines provided by COPA, a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to use COPA’s trademarks, in word mark and design form (collectively, the “**COPA Trademarks**”) only: (a) to identify itself as a Member, and (b) subject to obtaining COPA’s prior written approval in each case, to promote the existence of COPA and encourage others to join COPA. Any and all use of the COPA Trademarks by Members shall inure to the benefit of COPA. COPA Trademarks are and shall remain the sole property of COPA. A Member will immediately cease all use of the COPA Trademarks upon a written request from COPA, which may be made in COPA’s sole discretion, or upon such Member’s withdrawal or expulsion from COPA.

8.5 No Implied Licenses. Except as expressly provided in this Membership Agreement, the Owner Members do not grant any right or license under their respective intellectual property rights to any Entity, including any Other Member or Pledge Beneficiary, whether by implication, estoppel or otherwise.

8.6 No Indication of Value or Reasonable Royalty. The Parties agree that this Membership Agreement is not an indication of the value of an arms-length negotiated license or reasonable royalty. For clarity, nothing in this Membership Agreement limits in any way any Entity’s discretion to determine unilaterally how to value the Pledged Patents or what royalties (if any) to charge for its Pledged Patents. No agreement among Members is contemplated hereby with respect to royalty terms, whether or not to deal or how to deal with any Asserting Entity, or as to any pricing or other competitively relevant aspect of any Member’s products or services.

- 8.7 **Bankruptcy.** All rights, licenses and releases granted by each Owner Member to each Other Member and/or COPA under this Membership Agreement are, and will otherwise be deemed to be, for the purposes of Section 365(n) of the United States Bankruptcy Code, as amended (“**Bankruptcy Code**”), licenses of rights to “intellectual property” as defined under Section 101 of the Bankruptcy Code. All Other Members, as licensees of rights granted under this Membership Agreement, will retain and may fully exercise all of their rights and elections under the Bankruptcy Code. If any proceeding is instituted by or against an Owner Member (i) seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts, under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors, or (ii) seeking an entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or any substantial part of its property, or if an Owner Member take any action to authorize any of the foregoing actions, the Other Members will have the right to retain and enforce their rights under this Membership Agreement, provided that they remain in full compliance with the terms and conditions of this Membership Agreement.
- 8.8 **Assignment.** The provisions of this Membership Agreement will be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. Except as expressly permitted in this section, no Member or its respective Controlled Entities may assign this Membership Agreement or its rights or delegate its obligations hereunder, including by operation of law, and any attempt to do so will be void. A Member may assign this Membership Agreement to one of its Controlled Entities solely as necessary to effect a corporate reorganization of such Member where such reorganization is not part of a Change of Control of such Member or the Controlled Entity.
- 8.9 **Notice.** All notices and communications pursuant to this Membership Agreement will be in writing, and signed by the Entity giving such notice. Notices may be sent by email or by priority or express courier, postage prepaid, and will be deemed effective as follows: (a) if sent by email, twenty-four (24) hours after the time such email was sent; and (b) if sent by mail, when the mail is actually received. Notices to a Member will be sent to the email and/or mailing address specified on the Member’s Signature Page. A Member may update its contact information by providing notice thereof to COPA. Notices to COPA will be sent to the email and/or mailing addresses listed on COPA’s Internet website, as of the date such notice is sent.
- 8.10 **Severability.** If any provision of this Membership Agreement is unenforceable, that provision will be changed and interpreted to accomplish its original objectives to the greatest extent possible under applicable law and the remaining provision will continue in full force and effect.
- 8.11 **Governing Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law principles.
- 8.12 **Entire Agreement.** This Membership Agreement constitutes the entire agreement and understanding of COPA and each of the Members and their respective Controlled Entities with respect to the subject matter contained in this Membership Agreement, and supersedes and cancels all prior agreements, negotiations, correspondence, undertakings, and communications that are regarding such subject matter, whether oral or written, and that are between or among COPA and/or any the Members (including, for clarity, any of its Controlled Entities).

IN WITNESS WHEREOF, the party below has caused its duly authorized signatory to execute this Membership Agreement on its behalf, as of the date set forth below.

**CRYPTO OPEN PATENT ALLIANCE**

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

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

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

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

## **EXHIBIT A**

### **Additional Definitions**

**“Board”** means the board of directors of COPA.

**“Bylaws”** means the bylaws of COPA, as amended or restated from time to time.

**“Change of Control”** means, with respect to a first Entity:

- (a) an acquisition of the first Entity by another Entity by means of any transaction or series of related transactions (including any reorganization, stock or other equity purchase, merger, consolidation, or recapitalization), or
- (b) a sale of all or substantially all of the assets of the first Entity to another Entity,

which results in the first Entity no longer possessing the power to make decisions for itself, the surviving Entity or acquiring Entity after completion of the above events.

**“Controlled Entity”** means, with respect to a first Entity, any Entity that is directly or indirectly controlled by such first Entity, but only for so long as such control exists, where “control” means the possession of the power to make decisions for such Entity, whether through ownership of voting securities, contract, or other means.

**“Entity”** means an individual, corporation, trust, partnership, joint venture, limited liability company, association, unincorporated organization, or other legal or governmental entity.

**“Free and Open Source Technology”** means any software or hardware that is licensed or otherwise distributed to the public in such a way that satisfies any version of “The Open Source Definition” provided by the Open Source Initiative at [opensource.org/osd](https://opensource.org/osd), any version of “The Free Software Definition” provided by the Free Software Foundation at [gnu.org/philosophy/free-sw.html](https://gnu.org/philosophy/free-sw.html), or any version of the “Open Source Hardware (OSHW) Definition” provided by the Open Source Hardware Association at [oshwa.org](https://oshwa.org).

**“Membership Fee”** means the membership fee (if any) payable by a Member as published by COPA on its Internet website (currently available at: [open-patent.org](https://open-patent.org)), as amended by COPA from time to time in accordance with its Bylaws.

**“Offensive Patent Assertion”** means an assertion initiated by an Entity (including another Member) against a Member alleging infringement of a Crypto Patent (including a threatened claim of patent infringement based on a Crypto Patent or a legal proceeding asserting patent infringement based on a Crypto Patent), but only if such Member is not in violation of its Patent Pledge at the time of such an assertion.

**“Other Member”** means, with respect to each Pledged Patent, each Member other than the relevant Owner Member. For clarity, a specific Member may be both an Owner Member and an Other Member depending on the Pledged Patent being referred to.

**“Owner Member”** means, with respect to each Pledged Patent, the Member that owns or otherwise holds, or the Members and/or COPA that together own or otherwise hold, the applicable Pledged Patent at any given time.

**“Shared Patent Library”** means the catalog of Pledged Patents made available by their respective Owner Member for use by Other Members in accordance with Section 3.

**“Signature Page”** means a signature page in the form of Exhibit E (Form of Signature Page) attached hereto.

**“Withdrawn Entity”** means an Entity that has voluntarily withdrawn or been deemed to have withdrawn from COPA in accordance with Section 4.6 or Section 4.7.



## **EXHIBIT B**

### **Patent Pledge**

#### **1. Crypto Open Patent Alliance Objectives**

The Crypto Open Patent Alliance (“**COPA**”) seeks to promote the adoption and success of cryptocurrencies. Open and collaborative innovation is stifled when foundational technologies are locked up in patents and when patents are used offensively to stifle innovation and raise barriers to research, new products and technology improvements.. COPA believes that open access to patents covering foundational cryptocurrency technologies is necessary for the cryptocurrency community to freely build and innovate and to expand competitive options.

COPA Members make this Patent Pledge -- to make their patents on foundational cryptocurrency technology freely available -- for the purposes of encouraging further development, reducing barriers to innovation and use, and facilitating investment to advance mass adoption of cryptocurrencies. This Patent Pledge is legally binding, irrevocable and enforceable against all Members.

#### **2. Key Terms**

For purposes of this Patent Pledge, the following terms are defined as follows.

“**Controlled Entity**” means, with respect to a first Entity, any Entity that is directly or indirectly controlled by such first Entity, but only for so long as such control exists, where “control” means the possession of the power to make decisions for such Entity, whether through ownership of voting securities, contract, or other means.

“**Crypto Patent**” means any patent that would be infringed by an Entity making, having made, developing, using, selling, offering to sell, leasing, licensing, exporting, importing, distributing, or otherwise practicing any Crypto Technology.

“**Crypto Technology**” means any technology that is either:

- (a) technology that enables the creation, mining, storage, transmission, settlement, integrity, or security of Cryptocurrencies, but only as used in connection with Cryptocurrencies. This includes, as they apply to Cryptocurrencies, any technology relating to cryptography, networks, ledger and smart contract architectures and infrastructure, analytics, protocol and reference implementations, token generation, key creation and transfer, authentication, hot and cold storage infrastructure, cross-platform libraries and connectors, and Cryptocurrency programming languages and platforms, and in general, solutions relating to improving the scalability, security, network/computing efficiency, and transaction speed thereof; or
- (b) any technology owned and released by an Entity as Free and Open Source Technology for use in connection with Cryptocurrency.

“**Cryptocurrency**” means a digital asset that:

- (a) is generated, verified, and transferred using cryptographic techniques; and
- (b) operates on the principle of a decentralized system or outside of a government controlled banking system.

“**Entity**” means an individual, corporation, trust, partnership, joint venture, limited liability company, association, unincorporated organization, or other legal or governmental entity.

“**Free and Open Source Technology**” means any software or hardware that is licensed or otherwise distributed to the public in such a way that satisfies any version of “The Open Source Definition” provided by the Open Source Initiative at [opensource.org/osd](https://opensource.org/osd), any version of “The Free Software Definition” provided by the Free Software Foundation at [gnu.org/philosophy/free-sw.html](https://gnu.org/philosophy/free-sw.html), or any

version of the “Open Source Hardware (OSHW) Definition” provided by the Open Source Hardware Association at [oshwa.org](http://oshwa.org).

“**Member**” means any:

- (a) Entity that has accepted and executed a membership agreement to become a member of COPA while that Entity remains a member of COPA; and
- (b) such Entity’s Controlled Entities.

A list of current and past Members will be maintained at [open-patent.org](http://open-patent.org).

“**Pledged Patent**” means any Crypto Patent that:

- (a) is owned by a Member (i) at the time that Member becomes a Member, or (ii) while they remain a Member; or
- (b) issues from a patent application that is owned by a Member (i) at the time that Member becomes a Member, or (ii) while they remain a Member.

A list of Pledged Patents will be maintained at [open-patent.org](http://open-patent.org). For clarity, the list maintained by COPA on its Internet website is for informational purposes and all patents that fall within the definition of “Pledged Patents” will be considered to be so whether or not it is listed on COPA’s Internet website.

### 3. Patent Pledge

*Patent Pledge -- Members agree to never assert their crypto-technology patents offensively against anyone, except under the following limited set of situations: (1) in self-defense (if the member gets sued for IP infringement and the member wants to use its patents defensively against the initial aggressor); (2) in defense of the community (if anyone else in the crypto community is attacked by a patent aggressor and the member wants to use its patents against such an aggressor); or (3) in defense against an impersonator who causes harm to the member’s customers (e.g., a copycat scammer of the member’s products). Members also grant a non-exclusive and perpetual license to their crypto-technology patents, subject to the above exceptions.*

So long as an Entity and its Controlled Entities do not engage in the conduct described in paragraphs (a), (b) or (c) below, each Member agrees to the following with respect to its Pledged Patents: each Member (i) covenants not to assert a claim of infringement of its Pledged Patents against such Entity; and (ii) grants such Entity, if it wishes to accept it, a perpetual, royalty-free, non-transferable, non-sublicensable, worldwide, non-exclusive license to develop, make, have made, use, sell, export, import, distribute, or otherwise practice any claimed invention of its Pledged Patents (both (i) and (ii) collectively the “**Patent Pledge**”). A Member’s Patent Pledge is subject to the following exceptions:

- (a) Member’s Self-Defense: A Member’s Patent Pledge does not extend to an Entity if that Entity or any of its Controlled Entities offensively any of their patents against that Member.
- (b) Defense of the Community: A Member’s Patent Pledge does not extend to an Entity if that Entity or any of its Controlled Entities offensively assert any of their Crypto Patents against any other Entity.
- (c) Defense Against an Impersonator: A Member’s Patent Pledge does not extend to an Entity if that Entity develops, markets, or sells, or assists in the development, marketing, or selling of, a product or service that impersonates the products or services of that Member in a manner that could mislead or otherwise harm the customers or users of such products or services.

If an Entity or any of its Controlled Entities engage in the conduct described in paragraphs (a), (b), or (c) above, each Member’s Patent Pledge that extends to such Entity and its Controlled Entities shall

cease to be effective and shall terminate with respect to such Entity and its Controlled Entities as if such Patent Pledge had never been made with respect to such Entity and its Controlled Entities.

Except as expressly stated in the Patent Pledge, all other rights of the Members are hereby reserved with respect to their Pledged Patents.

## EXHIBIT C

### Shared Patent Library procedures

#### 1. Request to Use by Other Member.

*If a member that is subject to a patent lawsuit wishes to use one or more of the crypto-technology patents included in the shared patent library defensively against the patent aggressor, they must make a written request to the owner of the patent and provide the patent owner with the information described below.*

If an Other Member who is the subject of an Offensive Patent Assertion has identified one or more Pledged Patents within the Shared Patent Library that may be used in a Defensive Patent Assertion against the applicable Asserting Entity, then that Other Member may request to use the Pledged Patent(s) by submitting to the applicable Owner Member and the Board the following information:

- (a) confirmation that the Other Member is the subject of an Offensive Patent Assertion, with non-confidential and non-privileged details of the Offensive Patent Assertion and the Asserting Entity;
- (b) details of the Owner Member's Pledged Patent(s) it desires to assert in good faith against the Asserting Entity and an identification of the Asserting Entity's products, services or conduct that the Other Member reasonably believes to be infringing the Pledged Patent(s);
- (c) identification of the Other Member's retained (or proposed) counsel; and
- (d) a representation that the Other Member has sufficient capability and resources to comply with the minimum conditions set forth in Section 5 of this Exhibit C.

#### 2. Owner Member Shall Consider Requests in Good Faith.

*The owner of the requested crypto-technology patent must consider the request in good faith, and must not unreasonably deny the request. Some reasons for which the patent owner may reasonably deny a request include: (1) the requesting member has not provided a reasonable basis for using the patent, (2) the requesting member does not have sufficient capital to enforce and defend the patent, (3) the patent is already being used by the patent owner, or it is likely the patent owner will need to use it imminently, (4) the patent is already being used by another member and entry into a new arrangement would prejudice the existing proceedings, and (5) the patent owner believes in good faith that it would not be in its best interests to give the requesting member access to the patent.*

When an Owner Member and the Board receive a request from an Other Member in accordance with Section 1 of this Exhibit C, the Owner Member shall consider the request in good faith and not unreasonably deny the request. The Parties agree that the following circumstances are reasonable grounds for the Owner Member to deny a request from the Other Member:

- (a) the Other Member has failed to demonstrate a good faith basis, based on reasonable investigation and evidence, for use of the identified Pledged Patent(s) for the desired Defensive Patent Assertion;
- (b) the Other Member is insolvent or is otherwise unable to demonstrate that it has sufficiently capitalized and able to comply with the minimum conditions set forth in Section 5 of this Exhibit C;
- (c) the Owner Member is already asserting the identified Pledged Patent(s) as permitted by the Patent Pledge, or the Owner Member reasonably believes it could be the subject of an Offensive Patent Assertion itself and could use the identified Pledged Patent(s) to defend itself in connection with such Offensive Patent Assertion;

- (d) the identified Pledged Patent(s) are already in use in connection with one or more other Defensive Patent Assertions, and it would be prejudicial to the existing Defensive Patent Assertions to add another party;
- (e) any existing agreements concerning the identified Pledged Patent(s) (including, any patent pledges, defensive patent licenses, open source licenses, and other licenses): (i) preclude the Owner Member from giving the Other Member access to the identified Pledged Patent(s); (ii) would be breached by the Owner Member giving the Other Member access to the identified Pledged Patent(s); (iii) provides that the Owner Member's rights may be lost or impaired by giving the Other Member access to the identified Pledged Patent(s); or (iv) would preclude the Other Member from asserting the Pledged Patent(s) against the Asserting Entity, even if the Other Member were granted access to the Pledged Patent(s) by the Owner Member; or
- (f) the Owner Member reasonably believes in good faith that it would not be in the best interests of the Owner Member to give the Other Member access to the identified Pledged Patent(s).

### 3. Legal Mechanisms for Transferring Rights in Transferred Patents.

*COPA recommends the following options for transferring the necessary rights under the requested crypto-technology patents to the requesting member: (1) assignment in part so that the original patent owner and requesting member are co-owners of the patent, (2) assignment of the patent to COPA so that COPA can then co-own the patent with the requesting member, (3) exclusive license of the patent to COPA so that COPA can use the patent defensively for the benefit of the requesting member, and (4) exclusive license to the requesting member within a field of exclusivity to be agreed between the parties. The parties may also consider alternative mechanisms in consultation with COPA. There are pros and cons to each mechanism, and ultimately, the patent owner will decide which mechanism to use, subject to certain conditions.*

Subject to Section 2 of this Exhibit C, if and once the Owner Member approves a request from an Other Member made in accordance with Section 1 of this Exhibit C, the Owner Member, Other Member and Board will discuss the appropriate legal mechanism for providing the Other Member with access to the identified Pledged Patent(s) for a Defensive Patent Assertion, and the Owner Member will negotiate in good faith with the Other Member and COPA (if applicable) reasonable terms for implementing such mechanism. If any legal mechanism would be reasonably likely to jeopardize COPA's status as a not-for-profit Entity, the applicable Parties shall take whatever steps are necessary (including by using an alternative legal mechanism) to mitigate the risk that COPA might lose such status. Subject to the foregoing sentence, the Owner Member will have the final decision, at its sole discretion, as to which of the following legal mechanisms will be employed:

- (a) the Owner Member assigns its right, title, and interest in and to the Transferred Patent(s) to the Defending Member in part, so that the Defending Member co-owns the Transferred Patent(s) with the Owner Member;
- (b) the Owner Member assigns its entire right, title and interest in and to the Transferred Patent(s) to COPA such that COPA is the sole owner of the Transferred Patent(s), enabling COPA to then assign its right, title, and interest in and to the Transferred Patent(s) in part to the Defending Member, so that the Defending Member co-owns the Pledged Patent(s) with COPA;
- (c) the Owner Member exclusively licenses or assigns its entire right, title, and interest in and to the Transferred Patent(s) to COPA, enabling COPA to independently initiate and manage the applicable Defensive Patent Assertion(s) on behalf of and for the Defending Member's benefit;
- (d) the Owner Member exclusively licenses the Transferred Patent(s) to the Defending Member within a field of exclusivity to be agreed upon by the Parties; or
- (e) any alternative legal mechanism for providing a Defending Member with access to the Transferred Patent(s) in consultation with, and as approved by, the Board.

#### 4. Further Assurances and Documentation.

*The patent owner, requesting member and COPA (if applicable) will take all other necessary actions and enter into all necessary documents required to implement the legal mechanism selected by the patent owner. Such documentation may include some of the topics described below.*

Once the terms for the selected legal mechanism are agreed among the relevant Parties, the Owner Member, the Defending Member and COPA (if applicable) will take all such further actions and enter into, execute or sign such further agreements and documents as may be required in order to implement the mechanism selected by the Owner Member. Such further agreements and documents will include at least the minimum conditions set forth in Section 5 of this Exhibit C, and may also, depending on the Parties' agreed mechanism and the requirements needed to confer the Defending Member and/or COPA standing to sue for the purposes of the Defensive Patent Assertion, include terms covering the following topics:

- (a) confidentiality and protection of attorney-client privilege and work product immunities for all applicable Parties;
- (b) the appointment of appropriate counsel to represent the Defending Member in the Defensive Patent Assertion and/or any proceeding concerning the validity of any Transferred Patent;
- (c) control of litigation strategy concerning the validity of any Transferred Patent;
- (d) the circumstances under which the arrangement between the Owner Member, the Defending Member and COPA (if applicable) may be terminated; and
- (e) in the sole discretion of the Owner Member, whether rights to the Transferred Patent(s) will revert to the Owner Member, or continue to be held by the Defending Member or COPA (if applicable and so long as any such reversion would not be reasonably likely to jeopardize COPA's status as a not-for-profit Entity) after termination of the arrangement.

#### 5. Minimum Conditions for Using Shared Patent Library.

*Any arrangement entered into by the patent owner, requesting member and COPA (if applicable) must include at least the following requirements: (1) patent owner will join any defensive legal proceeding initiated by or for the benefit of the requesting member as necessary, (2) patent owner will provide reasonable cooperation and assistance, (3) if the patent owner needs to use the patent, the requesting member and COPA (if applicable) will provide reasonable cooperation and assistance, (4) the requesting member will diligently enforce and defend the requested crypto-technology patents, (5) the requesting member will be responsible for all costs, and (6) damages will be pooled and applied first to reimburse the requesting member for the costs it incurred, with the remaining to be transferred to the patent owner.*

The Parties agree that any arrangement entered into between the Owner Member, Defending Member and COPA (if applicable) under Section 4 of this Exhibit C will include at least the following conditions:

- (a) Owner Member as Co-Plaintiff. The Owner Member will join in any action brought by a Defending Member or COPA (as applicable), at the request of the Defending Member or COPA (as applicable), to enforce the Transferred Patent(s) unless the Owner Member reasonably believes it is not a necessary party to the litigation and that the Defending Member or COPA, as applicable, independently has standing to bring and maintain the action. However, if during the litigation it is reasonably determined that the Owner Member is likely a necessary or indispensable party for purposes of establishing standing for the Defending Member or COPA (as applicable) to enforce the Transferred Patent(s) against the Asserting Entity, then the Owner Member will join as a party to the litigation.
- (b) Cooperation and Assistance by Owner Member. The Owner Member will provide reasonable cooperation and assistance, at the Defending Member's expense, including providing access



to relevant documents (e.g., patent prosecution files, relevant notebooks, patent prosecutor files and the like) and other evidence narrowly tailored for the particular situation, and making relevant personnel (e.g., employees, contractors, inventors) available at reasonable business hours for reasonable amounts of time as may be required during the litigation.

- (c) Cooperation and Assistance by Defending Member or COPA. Provided the Owner Member still has standing to assert the Transferred Patent, if the Owner Member desires to enforce a Transferred Patent as permitted by the Patent Pledge, the Defending Member or COPA (as applicable) will join in any action brought by the Owner Member and provide all reasonable cooperation and assistance to ensure the Owner Member's ability to enforce the Transferred Patent.
- (d) Diligent Enforcement and Defense of the Transferred Patent(s). The Defending Member will diligently:
  - (i) enforce the Transferred Patent(s) in the Defensive Patent Assertion; and
  - (ii) defend any Transferred Patent that has been challenged by the Asserting Entity or other Entity (including to defend the identified Pledged Patent(s) to counter any invalidity assertions).
- (e) Cost and Fees. The Defending Member will bear all of its own costs and fees associated with the Defensive Patent Assertion (including all litigation expenses, legal fees, fees related to any United States Patent and Trademark Office or similar non-U.S. government agency action, and expert and consultant fees). The Defending Member will indemnify the Owner Member and COPA (if applicable) for all reasonable costs, attorneys' fees, expenses, judgements, awards and other amounts incurred by the Owner Member or COPA (if applicable) with respect to the Defensive Patent Assertion. If there are more than one Defending Members involved in a particular Defensive Patent Assertion, they may agree on the allocation of costs and fees among themselves. In the absence of an agreement, all costs and fees will be shared equally among the Defending Members.
- (f) Allocation of Damages.
  - (i) Subject to Section 5(g)(ii) of this Exhibit C, any recovery, damages, or settlement derived from the Defensive Patent Assertion will be pooled and then applied first in satisfaction of any costs and expenses relating to the Defensive Patent Assertion, including by way of the Defending Member recovering amounts reimbursed to Owner Member under Section 5(b) of this Exhibit C, and amounts incurred by the Defending Member under Section 5(f) of this Exhibit C. Any remaining amounts will be provided to the Owner Member.
  - (ii) Notwithstanding Section 5(g)(i) of this Exhibit C, if the arrangement entered into by the Owner Member, Other Member and COPA (if applicable) under Section 4 of this Exhibit C results in COPA being awarded damages in connection with the Defensive Patent Assertion, such amounts will not be paid to the Owner Member. Instead, such amounts will be retained by COPA and used as working capital for COPA.

## **EXHIBIT D**

### **Board Matters**

The Board will have final and binding authority over all Disputes to the extent they concern the following matters:

1. Any amendments to the Membership Agreement;
2. Dissolution and termination of the Membership Agreement;
3. Whether an exception to the Patent Pledge as set forth in Section 2.1 of the Membership Agreement applies;
4. Any other decisions relating to the Patent Pledge and Section 2 of the Membership Agreement;
5. Whether an Owner Member's denial of an Other Member's request to use one or more of the Owner Member's Pledged Patents made in accordance with Section 3 of the Membership Agreement is unreasonable;
6. Any other decisions relating to the Shared Patent Library and Section 3 of the Membership Agreement;
7. Expulsion of Members under Section 4.8 of the Membership Agreement (and the effects of such expulsion); and
8. Any decisions relating to Membership Fees and the fee structure for Members.

**EXHIBIT E****Form of Signature Page****Signature Page to****Membership Agreement**

The party specified below acknowledges and agrees with COPA and the Members that, as of the Date specified below, it is a signatory and party to the Membership Agreement dated September 18, 2020 by and among COPA and the Members and thus subject to all terms and conditions of the Membership Agreement applicable to each Member.

IN WITNESS WHEREOF, the party below has caused its duly authorized signatory to execute the Membership Agreement on its behalf, as of the date set forth below.

**Member:** \_\_\_\_\_

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

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

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

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

**Contact information for notices to Member:**

Mailing address: \_\_\_\_\_

Email address: \_\_\_\_\_

Attention: \_\_\_\_\_