

**FOURTH AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HEDERA HASHGRAPH, LLC**

Dated as of April 6, 2022

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**FOURTH AMENDED AND RESTATED  
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OF  
HEDERA HASHGRAPH, LLC**

**THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this “**Agreement**”) is entered into as of April 6, 2022, by and among the members of Hedera Hashgraph, LLC set forth in Schedule 1 attached hereto (each a “**Member**” and, collectively, the “**Members**”) for the purpose of continuing Hedera Hashgraph, LLC (the “**Council**”), a limited liability company organized under the Delaware Limited liability company Act, 6 Del. C. § 18-101, et seq., as amended (the “**Act**”).

**WHEREAS**, the Council was formed as a limited liability company in accordance with the Act on September 8, 2017;

**WHEREAS**, the Council has been formed for the purpose of acting as the governing body for a distributed public ledger based on the hashgraph consensus algorithm (the “**Hedera Network**”);

**WHEREAS**, it is not the purpose of the Hedera Network to transmit and store personal data;

**WHEREAS**, the parties desire to admit the Entities identified on Schedule 1 hereto as Members from time to time and to amend the Third Amended and Restated Limited Liability Company Agreement of the Council, dated as of December 1, 2020, and amended as of June 1, 2021, as set forth herein to provide for the foregoing; and

**WHEREAS**, the Members desire to continue the Council in accordance with the Act and pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
ORGANIZATIONAL MATTERS**

**Section 1.1 Continuation.** The Members hereby agree to continue the Council as a limited liability company under the Act for the purposes and upon the terms and conditions hereinafter set forth. The rights and liabilities of the Members shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern.

**Section 1.2 Name.** The name of the Council is Hedera Hashgraph, LLC. The Council may also conduct business at the same time under one or more fictitious names if the Board of Directors of the Council (the “**Board**”) determines that such is in the best interests of the Council.

The Board may change the name of the Council, from time to time, in accordance with Applicable Law.

**Section 1.3 Places of Business.** The Council may maintain offices and places of business at such places within or outside the State of Delaware as the Board deems advisable.

**Section 1.4 Business Purpose.** The Council will engage in the business of maintaining the Hedera Network and various activities related to that business. The Council may also engage in any and all other lawful business, purpose or activity related thereto in which a limited liability company may be engaged under Applicable Law (including, without limitation, the Act).

**Section 1.5 Certificate of Formation; Filings.**

(a) The Certificate has been filed with the Secretary of State of the State of Delaware, and the Council thus has been formed as a limited liability company subject to the provisions of the Act.

(b) The Council hereby (i) confirms that the person who signed the Certificate as filed with the Secretary of State of the State of Delaware (the “**Organizer**”) was an “authorized person” (as such phrase is used in the Act) for the purposes of signing and so filing the Certificate at that time and (ii) agrees that the Council will indemnify the Organizer for, and hold the Organizer harmless from and against, all costs, expenses, claims, damages, liabilities, losses, and threatened, pending and completed actions, suits and proceedings (whether civil, criminal, administrative or investigative) incurred or suffered by or brought against the Organizer based upon, or arising out of or in connection with, any act taken by the Organizer in connection with forming the Council, including without limitation all fees and expenses incurred by the Organizer in connection with causing the Certificate to be filed in the office of the Secretary of State of the State of Delaware, all court costs, attorneys’ fees and other costs relating in any way to the Organizer’s defense and/or settlement of any such claim, action, suit or proceeding, and all judgments rendered against the Organizer in connection with any such claim, action, suit or proceeding.

**Section 1.6 Designated Agent for Service of Process.** So long as required by the Act, the Council shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Council in the State of Delaware. As of the date of this Agreement, the registered agent is Capitol Services, Inc. and the registered office of the Council shall be at is c/o Capitol Services, Inc., 1785 South State Street, Suite B, Dover, DE 19901.

**Section 1.7 Term.** The term of the Council commenced on the date that the Certificate was filed with the Office of the Delaware Secretary of State and shall continue until the Council is dissolved in accordance with Article 10 (“*Dissolution, Liquidation, and Termination of the Council*”). Notwithstanding the dissolution of the Council, the existence of the Council shall continue for the purposes set forth in Article 10 until termination pursuant to this Agreement.

**Section 1.8 Board, Board Designees, and Officers as “Authorized Persons”.** The Board (as defined in Section 1.2), all individuals and entities (if any) designated by the Board from time to time as “authorized persons”, and the officers, if any, of the Council, hereby are each designated an “authorized person” (as such phrase is used in the Act) to execute, deliver and file any amendments and restatements of the Certificate and any other certificates and other documents

and instruments necessary or desirable in order for the Council to comply with the laws of the State of Delaware or to qualify to do business in any jurisdiction in which the Board or an appropriate officer of the Council shall deem it desirable for the Council to conduct business or, whenever the Board or an appropriate officer of the Council shall deem it appropriate for the Council to cease doing business in any such jurisdiction and withdraw therefrom, to revoke any related appointments of agents or attorneys for service of process or surrender such qualification or authority to do business in such jurisdiction.

## **ARTICLE 2** **DEFINITIONS**

Capitalized words and phrases used and not otherwise defined elsewhere in this Agreement shall have the following meanings:

**Section 2.1** “Act” is defined in the Preamble.

**Section 2.2** “Affiliate” means (a) with respect to a specified Entity or person, any Entity or person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Entity or person or (b) with respect to a person, any member of the Immediate Family of such specified person. For purposes of this definition, “control,” when used with respect to any specified Entity or person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Entity, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms “controlling” and “controlled” shall have correlative meanings.

**Section 2.3** “Applicable Law” means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

**Section 2.4** “Bankruptcy” means, with respect to any Entity, the occurrence of any event described in Section 18-304 of the Act with respect to such Entity.

**Section 2.5** “Capital Contribution” means, with respect to any Member, cash contributed to the Council by such Member at any time in accordance with Article 3, which may include the Initial Capital Contribution.

**Section 2.6** “Cause” means, with respect to any Member, any of the following: a violation of any Applicable Laws (including, for the avoidance of doubt, designation as a Specially Designated National and Blocked Person by the Office of Foreign Assets Control), a material breach of this Agreement or the Hedera Node Policy: Hosting Terms & Deployment Guide set forth on Exhibit B (“Hedera Node Policy”) as amended from time to time, a material breach of the Governing Member Joinder Agreement, a material breach of any Hedera Policies (as defined below), or any Bankruptcy of a Member. A Member Change of Control will also be considered “Cause” if (a) such Member Change of Control was not reported by the Member to the Council

within a period of time not later than seven (7) calendar days after becoming public information, or (b) the Board determines that such Member Change of Control qualifies as “Cause” within thirty (30) days of becoming aware of the Member Change of Control.

**Section 2.7 “Certificate”** means the Certificate of Formation of the Council filed on September 8, 2017, under the Act in the Office of the Secretary of State of the State of Delaware for the purpose of forming the Council as a Delaware limited liability company, as amended on June 20, 2018, and any duly authorized, executed and filed amendments or restatements thereof.

**Section 2.8 “Council Change of Control”** means the sale, exclusive license or other disposition of all or substantially all the assets of the Council; any merger, consolidation or acquisition of the Council with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the Council, other than through the admission and withdrawal of Members in accordance with the provisions of Article 4 (“Members”).

**Section 2.9 “Code”** means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

**Section 2.10 “Encumbrance”** means a pledge, alienation, mortgage, hypothecation, encumbrance or similar collateral assignment by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings).

**Section 2.11 “Entity”** means and includes a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof or any entity similar to any of the foregoing.

**Section 2.12 “Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

**Section 2.13 “Interest”** means the entire ownership interest of a Member in the Council at any particular time, any and all rights to vote and otherwise participate in the Council’s affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

**Section 2.14 “Immediate Family”** means, and is limited to, an individual person’s current spouse, parents, current parents-in-law, grandparents, children, siblings and grandchildren and any trust, estate or other estate-planning vehicle, all of the beneficiaries or beneficial owners of which consist of such individual person and/or such person’s current spouse, parents, current parents-in-law, grandparents, children, siblings or grandchildren.

**Section 2.15 “Malfeasance”** means with respect to any Entity or person, any act or omission which constitutes fraud, bad faith, willful misconduct or gross negligence, whether in respect of the Council or otherwise.

**Section 2.16 “Member Change of Control”** means the sale of all or substantially all the assets of a Member; any merger, consolidation or acquisition of a Member with, by or into another corporation, other than a merger, consolidation or acquisition effected for internal reorganization purposes, provided that, following such merger, consolidation or acquisition the direct or indirect owners of the outstanding voting securities of the Member immediately prior to such transaction have sufficient rights to direct or vote 50% or more of the outstanding voting securities of the surviving or acquiring entity following such transaction entity or person; or any change in the ownership of more than fifty percent (50%) of a Member.

**Section 2.17 “Members”** means, collectively, the Entities designated as either the Original Member or the Governing Members, as reflected in the books and records of the Council, as amended from time to time, each in its capacity as a member of the Council.

**Section 2.18 “Transfer”** means a sale, transfer, assignment, gift, bequest or disposition by any other means, whether for value or no value (and by merger, derivative interest or otherwise) and whether voluntary or involuntary (including, without limitation, by realization upon any Encumbrance or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings). The term “Transferred” shall have a correlative meaning.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

**Section 3.1 General.** Except as otherwise required by law or pursuant to Sections 3.2 and 3.3, no Member shall be permitted or required to make any additional Capital Contributions to the Council. The Members’ aggregate Capital Contributions shall be set forth at all times on the Council’s books and records.

**Section 3.2 Initial Capital Contributions.** Each Member shall purchase its Interest for an initial capital contribution of US\$100.00 (the “**Initial Capital Contribution**”) and other good and valuable consideration, the receipt of which is acknowledged by the addition of such Member to Schedule 1 upon the date of such Member’s admission to the Council, which schedule shall be amended by the Secretary to reflect the admission of Members pursuant to this Agreement.

**Section 3.3 Additional Capital Contributions.** Upon the approval of at least eighty percent (80%) of the Members, the Members shall be required to make Capital Contributions to the Council on a pro rata basis in accordance with their respective Interests as and when necessary to satisfy extraordinary expenses or other similar liabilities of the Council. Notwithstanding anything else in this Agreement, any Member that has not approved such additional Capital Contribution may immediately withdraw from the Council by providing the Chair with written notice thereof within five (5) days of any such approval of such additional Capital Contribution and, in connection with such withdrawal, shall not be required to make such additional Capital Contribution.



**Section 3.4 Member Capital.** Except as otherwise provided in this Agreement or with the prior written consent of the Board: (a) no Member shall demand or be entitled to receive a return of, or interest, on its Capital Contributions, and (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Council as a return of capital on account of such Capital Contributions.

**Section 3.5 Member Loans.** No Member shall be required to make any loans or otherwise lend any funds to, act as a surety or endorser for, assume one or more specific obligations of, provide collateral for, or enter into other credit, guarantee, financing or refinancing arrangements with, the Council.

## **ARTICLE 4** **MEMBERS**

**Section 4.1 Classes of Interests.** The Council may establish classes of Interests from time to time with the approval of at least two-thirds of the Members. Each such class shall have the relative rights, powers, duties, and obligations specified with respect to such class. A schedule of all Members and classes of Interests shall be attached hereto on Schedule 1.

**Section 4.2 Original Member.** The Original Member is Swirls, Inc. The Original Member shall have the same rights and responsibilities as every Governing Member of the Council, except as otherwise provided in this Agreement. The Original Member shall have one vote on all issues submitted for Member votes. The Original Member shall be a permanent Member of the Council and the nomination, term, renewal and other terms set forth in Section 4.3 shall not apply to the Original Member, unless specified; provided, however, that the Original Member shall be entitled to vote to elect Governing Members in the same fashion as any other Member.

### **Section 4.3 Governing Members.**

(a) Number, Initial Appointment. The Council may issue up to thirty-nine (39) Interests to Members who will each participate in the Council's governance and operate a Node pursuant to Section 8.1 (each such Member, other than the Original Member, a "**Governing Member**"). Each Governing Member shall have one vote on all issues submitted for Member votes. One of the thirty-nine (39) Interests shall be reserved for the Original Member in all cases. The initial twenty-five (25) Governing Members were appointed by the Original Member for the term set forth opposite such initial Governing Member's name in Schedule 1. After April 6, 2022, Governing Members shall be nominated by the Membership Committee and elected to the Council by the Members as described herein.

(b) Member Terms. Subject to Sections 4.3(i), 4.3(j) and 4.3(k) and other than the terms of the initial thirty-nine (39) Governing Members set forth on Schedule 1, Members shall serve for terms of not less than three years (each a "**Term**") with each Governing Member's Term to end on December 31 of the year in which the three-year anniversary of such Member's admission to the Council falls. For the avoidance of doubt, the Original Member shall not have a Term that ends and shall serve indefinitely. Each Governing Member may be re-elected for a second consecutive Term upon the approval of at least two-thirds of the Members obtained

according to the procedure outlined in Section 4.3(d). No Governing Member shall serve for more than two Terms consecutively. For the avoidance of doubt, a Governing Member that has served two consecutive Terms shall be eligible for reelection to the Council on the three-year anniversary of the expiration of its second Term.

(c) Membership Criteria; Nominations. After the appointment of the initial Governing Members, Governing Members shall be nominated in accordance with this clause (c). The Membership Committee of the Council (the “**Membership Committee**”) will propose a set of objective qualifications and criteria for admission to the Council (the “**Membership Criteria**”), which shall be subject to approval by a majority of the Members. The Membership Committee of the Council shall nominate Entities to participate in the Council as Governing Members (such Entities, “**Nominees**”) by submitting written recommendations for Council membership to the Chair from time to time. Nominees that do not fulfill the Membership Criteria approved by the Members may still be nominated by the Membership Committee if all missing criteria is clearly identified and explained to the Members as part of the recommendation of such Nominee. The Membership Committee may submit recommendations at any time.

(d) Council Elections. Upon the recommendation of the Membership Committee, the Chair (or Chair’s designee) shall timely notify the current Members of any Nominees and fix the time, place, and manner of a vote on the admission of the Nominees to the Council (the “**Council Election**”), subject to Section 4.3(e). Such voting procedures shall be generally in accordance with Section 7.4 (“*Actions by the Members*”), subject to the provisions of this Section 4.3(d). Each Member shall have one (1) vote for every Governing Member vacancy (or upcoming vacancy) and may not vote more than once for any particular Nominee. For each Governing Member vacancy, the Nominee receiving the most votes shall be admitted to the Council; provided, however, that to be admitted a Nominee must receive the votes of at least one-third of the Members. If no Nominee receives the votes of at least one-third of the Members, the Chair (or Chair’s designee) shall eliminate the applicant who received the lowest number of votes, and the Members shall vote again. This process may repeat as many times as necessary until either there are no more Nominees or the available Interests have been distributed. The total number of Governing Members can be any number (including zero) provided that the total number of Members, including the Original Member, shall not exceed thirty-nine (39).

(e) Voting Period, Notice Thereof. The Chair (or Chair’s designee) is entitled to fix the time, place, and manner of a Council Election; provided, however, that electronic voting shall always be allowed; and provided further that each Member shall have at least fourteen (14) days from receipt of notice of a Council Election pursuant to Section 4.3(d) during which to cast its vote.

(f) Admission. Each Entity elected as a Governing Member pursuant to Section 4.3(d) shall execute, and be bound by the terms and conditions of, a Governing Member Joinder Agreement substantially in the form attached hereto as Exhibit A. The Term of each Governing Member shall begin on the first day that such Entity is listed as a Governing Member on the Council’s website (such date, a Member’s “**Admission Date**”); provided, however, that no Entity elected for admission to the Council may assume its role as a Governing Member unless one of the Governing Member positions is vacant. Upon admission to the Council, each Member shall designate a primary representative to the Council (the “**Primary Council Representative**”) and

an alternative representative to the Council (“**Alternate Council Representative**” and, together, the “**Council Representatives**”). The Council Representatives shall be natural persons who are employees, officers, directors, or authorized agents of the designating Member or any of its Affiliates.

(g) Renewal Terms. At the end of a Governing Member’s first Term within any consecutive six-year period, such Governing Member shall automatically be nominated for a subsequent three-year Term (a “**Renewal Term**”). The vote for a Governing Member’s Renewal Term (“**Renewal Vote**”) shall follow the procedure set forth in Sections 4.3(d) and 4.3(e), except that the approval of at least two-thirds of the Members shall be necessary to approve a Renewal Term. The Chair (or Chair’s designee) may hold a Governing Member’s Renewal Vote no more than six months in advance of the expiration of such Member’s first Term.

(h) Expiration of Interests of Governing Members. On the final day of each Governing Member’s Term that has not been renewed pursuant to Section 4.3(g), the Council shall purchase such Governing Member’s Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions.

(i) For-Cause Removal and Termination of Interests. Any Governing Member can be removed for Cause. If the Board finds that an event has occurred which constitutes Cause with respect to a Governing Member (each, a “**Breaching Member**”), the Board may call for the repurchase of such Breaching Member’s Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions. In such instance, the Chair (or Chair’s designee) shall timely notify the current Members and fix the time, place, and manner of a vote on whether to retain the Breaching Member as a Member of the Council (a “**Retention Vote**”). The Retention Vote shall require the approval of at least two-thirds of the Members to retain the Member on the Council. If the Breaching Member fails to garner the requisite Retention Vote in support of its position on the Council, the Council shall be entitled to repurchase the Breaching Member’s Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions.

(j) Removal of Member; Termination of Interests. Any Governing Member can be removed from the Council in the event that at least two-thirds of the Members approve the removal of such Member. If such Member is removed, the Council will repurchase such Member’s Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions.

(k) Withdrawal. Any Member shall be entitled to withdraw from being a Member of the Council at any time by providing the Chair with 30 days’ prior written notice thereof. Upon a Member’s withdrawal, the Council will repurchase such withdrawing Member’s Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions. Additionally, in the event that the holding of an Interest, the operation of a Node, or the transmission or storage of data on a Node would cause a Member to violate Applicable Laws, such Member shall be entitled to withdraw from the Council with immediate effect by providing written notice to the Chair.

(l) No Employment Relationship. Unless otherwise determined by the Board, a Governing Member, Council Representative, or Committee Delegate shall not be an employee of

the Council, and neither the Council nor the Board shall be under any obligation to make such Governing Member, Council Representative, or Committee Delegate an employee or to participate in or continue any business relationship in the future with the Council or its respective Affiliates. No Governing Member, Council Representative, or Committee Delegate shall hold itself out as an employee or agent of the Council in any forum or for any purpose without the written consent of the Board. Unless otherwise determined by the Board, a Governing Member, Council Representative, or Committee Delegate shall not be treated as an “employee” of the Council for federal or applicable state or local income tax purposes, but rather as a “partner” of the Council. Except as otherwise specifically provided herein, no Governing Member, Council Representative, or Committee Delegate shall have any right to act for the Council or to bind the Council under agreements or arrangements with third parties.

**Section 4.4 Liability of the Members.** Except as otherwise required by any non-waivable provision of the Act or other Applicable Law: (a) no Member shall be personally liable in any manner whatsoever for any debt, liability or other obligation of the Council, whether such debt, liability or other obligation arises in contract, tort, or otherwise (including, without limitation, with respect to any loans made by a Member); and (b) no Member shall in any event have any liability whatsoever in excess of the following (without duplication) (i) the amount of its Capital Contributions, (ii) the amount of any unconditional obligation of such Member to make additional Capital Contributions to the Council pursuant to this Agreement or other payments expressly required to be made by this Agreement, and (iii) the amount of any wrongful distribution to such Member, if, and only to the extent the return of such wrongful distribution is required by a non-waivable provision of the Act.

**Section 4.5 Outside Activities of the Members.** Nothing herein contained shall prevent or prohibit the Members, Council Representatives, Committee Delegates, or any Affiliates of the Members from entering into, engaging in or conducting any other activity or performing for a fee any service; acting as a director, officer or employee of any corporation, as a trustee of any trust, as a general partner of any partnership, or as an administrative official of any other business entity; or receiving compensation for services to, or participating in profits derived from, the investments of any business, property, corporation, trust, partnership or other entity, regardless of whether such activities are competitive with the Council (collectively, the “**Outside Activities**”). In addition, nothing herein shall require any Member, Council Representative, Committee Delegate, or any Affiliates of any Member to offer any interest in such Outside Activities to the Council or any other Member.

## **ARTICLE 5** **TAX MATTERS**

**Section 5.1 Tax Treatment.** The Council has elected to be treated as a corporation for U.S. federal and applicable state and local income tax purposes. Any change to the Council’s corporate structure that would change the Council’s status under U.S. federal tax law will require the approval of at least three-quarters of the Members.

**Section 5.2 Tax Payments.** The Council shall pay all taxes imposed on the Council.

## **ARTICLE 6**

### **DISTRIBUTIONS**

**Section 6.1 Distributions Upon Liquidation.** The Council shall make no distributions other than those made in conjunction with the final liquidation of the Council as provided in Article 10 (“*Dissolution, Liquidation, and Termination of the Council*”) hereof.

**Section 6.2 Withholding.** The Council does not intend to make distributions other than in accordance with Section 6.1. In the event that a distribution is made, the Council may withhold distributions or portions thereof if the Board determines that it is required to do so by any applicable rule, regulation, or law, and each Member hereby authorizes the Council to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Board determines at its sole discretion that the Council is required to withhold or pay with respect to any amount distributed or allocable, if any, to such Member pursuant to this Agreement. Any amounts withheld pursuant to this Section 6.2 shall be treated as having been distributed to such Member.

**Section 6.3 Distributions in Kind.** No right is given to any Member to demand or receive property other than in cash and only to the extent provided in this Agreement.

**Section 6.4 Limitations on Distributions.** The Council does not intend to make distributions other than in accordance with Section 6.1. In the event that a distribution is made and notwithstanding anything to the contrary contained in this Agreement, neither the Council nor the Board, on behalf of the Council, shall be required to make a distribution to any Member on account of its Interest in the Council (as applicable) in violation of the Act or other Applicable Laws. Notwithstanding anything in this Article 6 to the contrary, and in furtherance thereof, the Council may, from time to time, make payments to individual Members through a Council Member engagement program approved by the Members for the purpose of offsetting the costs incurred by Members who permit their employees and contractors to spend time on Council matters, which payments shall not be considered “distributions” to the Members.

## **ARTICLE 7**

### **OPERATIONS**

#### **Section 7.1 Board of Directors.**

(a) **Board Size.** The Council has established a Board of Directors, which shall consist of up to seven (7) natural persons who shall have the right to vote on a per capita basis (each such person, a “**Voting Director**”) and one natural person who shall serve on the Board in a non-voting governance capacity as chairperson (the “**Chair**”, and together with the Voting Directors, the “**Board Members**”). Board Members shall be selected in accordance with the provisions of Section 7.1(c).

(b) **Board Authority.** The Board shall generally advise the Council with respect to the management and operation of the Council and may make certain recommendations to the Council regarding actions that would be subject to the Members’ consent. The Board shall also have the right to vote on matters and take actions as set forth herein. For the avoidance of doubt, no

individual Board Member shall have authority to bind the Council unless pursuant to authority delegated by the Council or the Board. The specific powers of the Board include:

- (i) appointing officers of the Council as set forth in Section 7.2;
- (ii) approving Council policies (“**Hedera Policies**”);
- (iii) approving Council budgets;
- (iv) employing, at the Council’s expense, such agents or third parties in connection with the management or operation of the business of the Council as the Board shall deem appropriate; and
- (v) the ability to update the list of Members set forth on Schedule 1 hereto in order to admit new Governing Members following any new issuance, redemption, repurchase or Transfer of Interests in accordance with this Agreement without the consent of or execution by the Members; and
- (vi) establishing committees of the Board and delegating to Board committees such powers and authority otherwise vested in the Board;
- (vii) such other actions the Voting Directors deem necessary in connection with the proper governance of the Council.

(c) Composition and Rules of the Board.

- (i) [RESERVED]
- (ii) *Composition of Board.* The Board shall consist of up to seven (7) Voting Directors and one non-voting Chair. The Voting Directors shall be elected by the Members as set forth in clause (iii) below.
- (iii) *Nomination and Election of Voting Directors.* The Members will elect up to seven (7) Voting Directors. Each Member may nominate one (1) candidate for the Board, who must be a natural person. The Chair (or Chair’s designee) shall timely notify the current Members of any nominations to the Board and fix the time, place, and manner of a vote on the open Voting Director positions. Each Member shall have one vote for every Voting Director position that has not been filled and may not vote more than once for any candidate. The candidate receiving the most votes shall be admitted to the Board for each Voting Director vacancy, provided that candidates must receive at least one-third of votes cast to be elected to the Board. If no candidate receives at least one-third of votes cast, the candidate with the lowest vote total will be eliminated from consideration, and the Members will vote again, with the process repeating itself until all Board vacancies are filled.
- (iv) *Nomination and Election of the Non-Voting Chair.* A non-voting Chair will be elected by the Voting Directors according to this Section 7.1(c)(iv) at a time of their choosing. Each such Voting Director may nominate one (1) candidate for the Chair, who must be a natural person who is not affiliated with any of the Members. The Chair must be elected by a majority of

the votes cast by the Voting Directors, provided that if no candidate receives a majority of votes cast, the candidate with the lowest vote total will be eliminated from consideration, and the Voting Directors will vote again, with the process repeating itself until a candidate receives a majority of the votes cast. In the absence of a duly elected Chair, the Board shall assign the duties of the Chair to an officer or agent.

(v) *Board Member Terms.* Each Voting Director elected by the Members shall serve a term of two (2) years, which may be extended for an additional year upon the approval of a majority of the Members. The term of the Chair shall be set by the Board at the time of the Chair's election.

(vi) *Board Member Resignation.* Any Board Member may resign his or her position by delivering a written resignation, which may be by e-mail, to the Chair or the Secretary of the Council; any such resignation shall be effective on the later of the effective date, if any, specified in such resignation and the date such resignation is received by the Board or by the Secretary of the Council, and unless the resignation expressly states otherwise, action by the Board or Members formally accepting the resignation shall not be required in order for the resignation to become effective.

(vii) *Removal and Replacement of Board Members.* Any Voting Director elected by the Members may be removed at any time by the approval of at least two-thirds of the Members. The Chair may be removed at any time with the approval of at least two-thirds of the Voting Directors. Any Board Member vacancy may be filled in accordance with clauses (iii) and (iv) above, as applicable.

(viii) *No Employment Relationship.* Unless otherwise determined by the Board, no Voting Director shall be an employee of the Council. Neither the Board nor the Council and its Affiliates shall be under any obligation to employ or continue any business relationship in the future with any Board Member. Unless otherwise determined by the Board, no Board Member shall be treated as an "employee" of the Council for federal or applicable state or local income tax purposes.

(d) Meetings of the Board; Notice of Meetings; Waiver of Notice.

(i) *Quarterly Board Meetings.* The Board shall meet quarterly, unless otherwise determined by the Board. The Board may hold meetings within or outside the State of Delaware. The Chair or the Chair's designee shall give at least thirty (30) days' notice to each Board Member of quarterly Board meetings.

(ii) *Additional Board Meetings.* Other than the regular quarterly meetings, additional meetings of the Board may be called by the Chair or the Chair's designee by notice given to each Board Member at least seven (7) days before the meeting.

(iii) *Notice of Board Meetings.* Notice of Board meetings shall be given by the Chair or the Chair's designee to each other Board Member by overnight courier service, email or other electronic transmission, or personal delivery. Notices shall be deemed to have been given: if given by courier service, when deposited with a courier service for overnight delivery with charges therefor prepaid or duly provided for; if given email or other electronic transmission, at the time

of sending; and if given by personal delivery, at the time of delivery. Notices given by personal delivery may be in writing or oral. Written notices shall be sent to a Board Member at the postal address, email address or address for other electronic transmission, designated by him or her for that purpose or, if none has been so designated, at his or her last known residence or business address, email address or address for other electronic transmission. Except to the extent required by applicable law, no notice of any meeting of the Board need state the purposes of the meeting.

(iv) *Waiver of Notice.* No notice of a meeting of the Board need be given to any Board Member who signs a written waiver thereof (whether before, during, or after the meeting) or who attends the meeting without protesting his or her lack of notice prior to or at the commencement of the meeting.

(v) *Quorum; Acts of the Board; Adjournments.* At all meetings of the Board, a majority of the Voting Directors then in office shall constitute a quorum for the transaction of business; provided, however, that, when the number of Voting Directors constituting the whole Board is only one Voting Director, the number of Voting Directors constituting a quorum for the transaction of business shall be one. Except as otherwise specifically provided in any other provision of this Agreement, the act of a majority of the Voting Directors present at any meeting of the Board at which a quorum is present shall constitute the act of the Board. If a quorum shall not be present at any meeting of the Board, the Voting Directors present at the meeting, though less than a quorum, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

(vi) *Attendance by Telephone or Videoconference.* Board Members may participate in meetings of the Board by means of conference telephone, videoconference, or similar communications equipment by which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(vii) *Action by Written Consent in Lieu of Meeting.* Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting and without prior notice if consented to or approved in writing by electronic transmission (which may include voting by electronic ballots) or by any other means permitted by law by at least five Voting Directors; provided, however, that if there are less than five Voting Directors, then any action taken without a meeting and without prior notice may be taken if written consents (which may be by electronic transmission, including electronic ballots) setting forth the action so taken are executed by all of the Voting Directors in office. All such written consents in either case must set forth the action to be taken and be filed with the minutes of the proceedings of the Board.

(e) Responsibility for Filings. The Board shall be responsible for filing, or causing to be filed, all regulatory, tax and other reports, returns and other filings that the Council is required to file.

(f) Directors as Agents. To the extent of their powers provided in this Agreement, the Board Members are agents of the Council for the purpose of the Council's business, and the actions of the Board Members taken in accordance with such powers shall bind the Council. No Board Member acting alone (in his or her capacity as a Board Member) may bind the Council notwithstanding the last sentence of Section 402 of the Act.



(g) Outside Activities of Board Members. If a Board nominee is engaged in Outside Activities that are competitive with the Council, such Board nominee shall notify the Chair of the general competitive nature of such Outside Activities promptly after his or her nomination and, in any event, prior to the Board election in which such nominee is a candidate. If a Board Member is not engaged in Outside Activities that are competitive with the Council prior to his or her election to the Board, he or she shall notify the Chair of the general competitive nature of any such activities prior to engaging in any such competitive Outside Activities while a Board Member. For the avoidance of doubt, there is no restriction on Board Members engaging in Outside Activities, regardless of whether such activities are competitive with the Council, and any Board Member involved in Outside Activities shall remain bound by the confidentiality obligation of Section 11.14 hereof in connection with such Outside Activities.

## **Section 7.2 Officers.**

(a) Appointment of Officers. The Board may appoint and remove officers of the Council and may delegate to such officers such powers and authority otherwise vested in the Board, as the Board shall deem advisable; provided, however, that any such power or authority of the Board delegated to any officer of the Council shall remain concurrently vested in and exercisable by the Board also. The powers and authority delegated to each officer title shall be as set forth in Schedule 2. Officers shall include a Secretary and a Treasurer, but shall not include the Chair.

(b) Signatory Authority of Officers. Except when and to the extent the Board shall have provided otherwise in writing, the officers of the Council shall have the power and authority to execute and deliver instruments and other documents in the name and on behalf of the Council, and the execution and delivery in the name and on behalf of the Council of any instrument or other document by any two officers of the Council shall be necessary and sufficient to bind the Council with respect to such instrument or other document.

(c) Schedule of Officers. The officers of the Council appointed by the Board shall be listed on Schedule 2, with each person having the title set forth opposite his or her name.

**Section 7.3 Committees.** The Council shall establish committees (each, a “Committee”). The Council may create additional Committees with the approval of a majority of the Members. Each Committee shall be structured and governed as provided in a charter to be approved by a majority of the Members. Amendments to Committee charters must be approved by a majority of the Members. The Committees shall provide recommendations to the Council but shall have no authority to bind the Council or the Members other than as provided herein or in a Committee’s duly adopted charter.

## **Section 7.4 Actions by the Members.**

(a) Member Voting. Members shall vote on matters related to the Council on a per capita basis, with each Member having one (1) vote. Unless otherwise specified, the Council may act upon the approval of the majority of the Members.

(b) Quarterly Member Meetings. The Members shall meet at least quarterly, with meetings to be chaired by the Chair and attended by Council Representatives. The Members may

hold meetings within or outside the State of Delaware. The Chair or the Chair's designee shall give at least thirty (30) days' notice to each Member for quarterly Member meetings.

(c) Additional Member Meetings. Other than the regular quarterly meetings, the Chair, the Chair's designee, or a majority of the Members may also call additional meetings of the Members. If such an additional meeting is called by a majority of the Members, one of the Members calling such meeting shall inform the Chair or the Chair's designee, who shall provide at least ten (10) days' notice of the meeting to each of the Members.

(d) Notice for Member Meetings. Notices of meetings may be provided by overnight courier service, email or other electronic transmission, or personal delivery. Notices shall be deemed to have been given: if given by courier service, when deposited with a courier service for overnight delivery with charges therefor prepaid or duly provided for; if given email or other electronic transmission, at the time of sending; and if given by personal delivery, at the time of delivery. Notices given by personal delivery may be in writing or oral. Written notices shall be sent to a Member at the postal address, email address or address for other electronic transmission, designated by such Member for that purpose or, if none has been so designated, at such Member's last known residence or business address, email address or address for other electronic transmission. Except to the extent required by applicable law, no notice of any meeting of the Members need state the purposes of the meeting.

(e) Meeting Minutes. The Secretary of the Council (or the Secretary's designee) shall be responsible for the minutes of each meeting of the Members and such meeting minutes will be provided to the public no later than thirty (30) days after such meeting minutes are accepted by a majority of the Members.

(f) Waiver of Notice. No notice of a meeting of the Members need be given to any Member who signs a written waiver thereof (whether before, during or after the meeting) or who attends the meeting without protesting, prior to or at the commencement of the meeting, the lack of notice of the meeting to such Member.

(g) Quorum; Acts of the Members; Adjournments. At all meetings of the Members, the requisite number of Members that are required to pass any action contemplated at such meeting of the Members shall constitute quorum for the transaction of business. Notwithstanding the foregoing, the calculation of the required percentage to pass any action contemplated at a meeting shall be the percentage required to pass such action calculated on the basis of all Members and not the percentage required to pass such action calculated on the basis of Members then in attendance. By way of example, if the vote of twenty Members is required to pass an action and twenty Members are in attendance at a meeting, the vote of all twenty Members then present is required to pass such action. If a quorum shall not be present at any meeting of the Members, the Members present at the meeting, though less than a quorum, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

(h) Attendance by Telephone or Videoconference. Members may participate in meetings of the Council by means of conference telephone, videoconference, or similar communications equipment by which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(i) Action by Written Consent in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if notice with a written description of the proposed action is sent to all Members in accordance with Section 7.4(d) and, no sooner than seven (7) days after such notice is given, unless such notice period is waived by all Members in accordance with Section 7.4(f), written consents setting forth the action so taken are executed by the number of Members which would be required to pass such measure in the event that the Council held a meeting of the Members. Such written consents will be filed with the minutes of the proceedings of the Council.

(j) Council Change of Control. A Council Change of Control shall require the prior written consent of at least three-quarters of the current Members. Any liquidation in connection with such Council Change of Control shall be subject to Section 10.5.

### **Section 7.5 Indemnification and Liability of the Members.**

(a) The Council shall indemnify and hold harmless the Members, Council Representatives, Committee Delegates,<sup>1</sup> Board Members, the Chair, and all officers, employees and agents of the Council (each, an “**Indemnitee**”) to the full extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys’ fees and disbursements), judgments, fines, settlements and other amounts of any nature whatsoever, known or unknown, liquid or illiquid (collectively, “**Losses**”) arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative (collectively, “**Actions**”), in which the Indemnitee may be involved, or threatened to be involved as a party or otherwise, relating to the performance or nonperformance of any act concerning the activities of the Council, if (i) the Indemnitee acted in good faith, within the scope of such Indemnitee’s authority, and in a manner it believed to be in, or not contrary to, the best interests of the Council, and (ii) the Indemnitee’s conduct did not constitute Malfeasance. The termination of an action, suit or proceeding by judgment, order, settlement, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Indemnitee acted in a manner contrary to that specified in clauses (i) or (ii) above.

(b) Expenses incurred by an Indemnitee in defending any Action, subject to this Section 7.5 may, at the sole discretion of the Board, be advanced by the Council prior to the final disposition of such Action upon receipt by the Council of a written commitment by or on behalf of the Indemnitee to repay such amount if it shall be determined that such Indemnitee is not entitled to be indemnified as authorized in this Section 7.5.

(c) Any indemnification obligations of the Council arising under this Section 7.5 may, but shall not be required to, be satisfied first out of any Council assets. The Board shall give the Members timely written notice of any such Actions of which it becomes aware.

(d) The Board, on behalf of the Council, may, but shall not be required to, cause the Council to purchase and maintain insurance, at the expense of the Council and, to the extent available, for the protection of Indemnitees against any liability incurred by such Entity or person

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<sup>1</sup> Committee Delegates are defined in Exhibit C (“Hedera Committee Policy”) to this Agreement.

in any such capacity or arising out of such Indemnitee's status as such, whether or not the Council has the power to indemnify such Indemnitee against such liability.

(e) The provisions of this Section 7.5 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Entity or person.

(f) No Member, Council Representative, Committee Delegate, or Affiliates of any Member, nor the officers, members, directors, managers, shareholders, employees, partners or agents of any of the foregoing shall be liable to the Council or to any Member for any losses sustained or liabilities incurred as a result of any act or omission of such Member or such other Entity or person if (i) the act or failure to act of such Member or such other Entity or person was in good faith, within the scope of such Entity's or person's authority, and in a manner it believed to be in, or not contrary to, the best interests of the Council, and (ii) the conduct of such Member or such other Entity or person did not constitute Malfeasance.

(g) To the fullest extent permitted by law, regardless of the extent to which the Board, any other Member, any Council Representative, any Committee Delegate, any Affiliate of any Member, or any officer, member, director, manager, shareholder, employee, partner or agent of any of the foregoing (each, a "**Responsible Party**") would otherwise have duties (including fiduciary duties) at law or in equity (and liabilities relating thereto) to the Council, any Member or other Entity or person bound by the terms of this Agreement, any such duties of any such Responsible Parties shall be restricted to the compliance by such Responsible Parties with the implied contractual covenant of good faith and fair dealing, and such Responsible Parties acting in accordance therewith shall not be liable to the Council, any Member, or any such other Entity or person in respect thereof. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Responsible Party otherwise existing at law or in equity, are agreed by all parties hereto to modify to that extent such other duties and liabilities to the greatest extent permitted under Applicable Law.

(h) Notwithstanding any principles of law or equity, and notwithstanding any other provision of this Agreement, whenever in this Agreement the Board is permitted or required to make a decision (i) in their "sole discretion" or "discretion" or under a grant of similar authority or latitude, each Board Member shall be entitled to consider any such interests and factors as such Board Member desires and shall, to the fullest extent permitted by law, have no duty or obligation to give any consideration to any interest of or factors affecting the Council or any other Member, or (ii) in its "good faith" or under another express standard, such Board Member shall act under such express standard and shall not be subject to any other or different standard. To the maximum extent permitted by Applicable Law, any act or omission taken or suffered by the Board regarding any matter which this Agreement provides is in the Board's discretion or sole discretion shall be conclusively presumed for purposes of this Agreement not to constitute Malfeasance.

**Section 7.6 Records and Reports.** Upon the request by a Member, the Council shall deliver to each Member:

(a) as soon as practicable, but in any event within forty-five (45) days after the end of each fiscal quarter of the Council, an income statement for such fiscal quarter and a balance sheet of the Council as of the end of such quarter, and a statement of cash flows for such quarter, such

financial reports to be in reasonable detail, prepared in accordance with United States generally accepted accounting principles;

(b) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Council, an income statement for such fiscal year and a balance sheet of the Council as of the end of such year, and a statement of cash flows for such year, such financial reports to be in reasonable detail, prepared in accordance with United States generally accepted accounting principles. To the extent determined by the Board, such financial reports may be audited and certified by an independent public accounting firm of nationally recognized standing selected by the Council;

(c) as soon as practicable, but in any event thirty (30) days prior to the end of each fiscal year, a budget plan for the next fiscal year, prepared on a monthly basis and, as soon as prepared, any other budgets or revised budgets prepared by the Council; and

(d) such other information relating to the financial condition, business, prospects, or corporate affairs of the Council as any Member may from time to time reasonably request; provided, however, that the Council shall not be obligated under this Section 7.6 to provide information (i) that the Council reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Council); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Council and its counsel.

**Section 7.7 Inspection.** Upon the reasonable request of a Member with no fewer than fourteen (14) days' written notice, the Council shall permit such Member's designated Council Representatives, at such Member's expense, to visit and inspect the Council's properties and examine its books of account and records during normal business hours; provided, however, that the Council shall not be obligated pursuant to this Section 7.7 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Council) or the disclosure of which would adversely affect the attorney-client privilege between the Council and its counsel. A Member shall be entitled to no more than two such visits in any calendar year.

## **ARTICLE 8**

### **HEDERA NETWORK MATTERS**

**Section 8.1 Node Hosting.** Each Member will host at least one server running the Hedera hashgraph consensus algorithm (each such server, a "**Node**") in accordance with the terms specified in the current Hedera Node Policy, substantially in the form attached here as Exhibit B, as amended from time to time as set forth therein. Each Member will follow cybersecurity best practices in ensuring the security of each Node. The Council will provide each Member with the Node software, associated wallets, and standards for security. A Member may designate an Affiliate to host a Node on its behalf in satisfaction of this requirement; provided, however, that such Affiliate shall be responsible for complying with the Hedera Node Policy as if a party thereto; and, provided, further, that the Member will remain fully responsible for the acts and omissions of such Affiliate.

**Section 8.2 Network Pricing.** The Council’s Treasury Management & Coin Economics Committee (“CoinCom”), in accordance with CoinCom’s duly approved charter, shall be responsible for approving pricing plans for use of the Hedera Network.

**Section 8.3 Treasury Management.** Hbars, the cryptocurrency native to the Hedera Network (“Hbars”), may only be transferred out of a Hedera Treasury Account (as defined in the Hedera Node Policy) upon the approval of a majority of the Members. Such transfers shall be made in accordance with the procedures and protocols established by the Technical Steering & Product Committee (“TechCom”) in order to ensure decentralized control and the integrity of Hedera Treasury Accounts.

**Section 8.4 Network Management.** The Council is responsible for the maintenance of the Hedera Network, including the Hedera Network software. Any proposed modifications to the Hedera Network software require the approval by TechCom in accordance with TechCom’s duly approved charter and, if approved, shall be implemented by the Members in accordance with procedures and protocols established by TechCom in order to ensure decentralized control and the integrity of the Hedera Network. Notwithstanding the foregoing, the total supply of Hbars may not be increased above fifty billion (50,000,000,000) Hbars without the unanimous consent of the Members.

## **ARTICLE 9**

### **INTERESTS AND TRANSFERS OF INTERESTS**

**Section 9.1 Member Transfers and Encumbrances.** To the fullest extent permitted by law, and except as provided in Section 9.2, no Member may Transfer or create an Encumbrance with respect to all or any portion of its Interest (or beneficial interest therein). If a Member Transfers all or any portion of its Interest (or any beneficial interest therein) pursuant to this Article 9, the transferee of such permitted Transfer, shall receive the Transferred Interest (or beneficial interest therein) subject to all terms and conditions applicable to the Transferred Interest prior to such Transfer. To the fullest extent permitted by law, any purported Transfer or Encumbrance which is not in accordance with, or subsequently violates, this Agreement shall be null and void.

**Section 9.2 Permitted Transfers.** Each Member may, with the consent of the Council or the Board, Transfer its Interest to an Affiliate of such Member, provided that such transferee shall sign a Governing Member Joinder Agreement substantially in the form set forth as Exhibit A. In such event, the Affiliate receiving such Transfer shall become a full Governing Member hereunder and the transferring Governing Member shall fully Transfer its Interest and shall have no other rights under this Agreement.

**Section 9.3 Further Restrictions.** Notwithstanding any contrary provision in this Agreement and to the fullest extent permitted by law, any otherwise permitted Transfer or Encumbrance shall be null and void (unless this provision is waived in writing by the Board) if:

(a) such Transfer or Encumbrance may require the registration of the subject Interest pursuant to any applicable federal or state securities laws;

(b) such Transfer or Encumbrance may subject the Council to regulation under the Investment Council Act of 1940, the Investment Advisers Act of 1940 (the “**Advisers Act**”) or the Employee Retirement Income Security Act of 1974, each as amended;

(c) such Transfer or Encumbrance may result in a violation of Applicable Laws;

(d) if such Transfer or Encumbrance would affect the Company’s existence or qualification as a limited liability company under the Act;

(e) such Transfer or Encumbrance may be made to any Entity or person who may lack the legal right, power or capacity to own such Interest; or

(f) the Council does not receive written instruments (including, without limitation, copies of any instruments of Transfer or Encumbrance, the Governing Member Joinder Agreement, if applicable, and such transferee’s consent to be bound by this Agreement as a Member) that are in form and substance satisfactory to the Board.

## **ARTICLE 10**

### **DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COUNCIL**

**Section 10.1 Limitations.** The Council may be dissolved, liquidated, and terminated and have its affairs wound up only pursuant to the provisions of this Article 10, and, to the fullest extent permitted by law, the parties hereto do hereby irrevocably waive any and all other rights they may have to seek a court decree of dissolution or to seek the appointment by the Court of a liquidator for the Council.

**Section 10.2 Exclusive Causes of Dissolution.** Notwithstanding the Act, the following and only the following events shall cause the Council to be dissolved, liquidated, and terminated:

(a) The approval by at least three-quarters of the Members to dissolve the Council; or

(b) At any time there are no members of the Council, unless the business of the Council is continued in accordance with the Act.

(c) Any dissolution of the Council other than as provided in this Section 10.2 shall be a dissolution in contravention of this Agreement. In no event shall any proceeds of a dissolution, liquidation, or termination of the Council be paid to the Governing Members or the Original Member.

**Section 10.3 Effect of Dissolution.** The dissolution of the Council shall be effective on the day on which the event described in Section 10.2 (“*Exclusive Causes*”) occurs giving rise to the dissolution. Notwithstanding the foregoing, the Council shall not terminate until it has published all necessary procedures and effectuated all necessary changes in cryptographic controls required to enable the ongoing operation and evolution of the Hedera Network (which it shall do as timely as reasonably practicable), its affairs have been wound up and its assets have been distributed as provided in Section 10.5 (“*Liquidation*”) of this Agreement and its Certificate has been cancelled by the filing of a certificate of cancellation with the office of the Delaware Secretary

of State. Notwithstanding the dissolution of the Council, this Agreement shall continue to govern the business of the Council and the affairs of the Members prior to the termination of the Council.

**Section 10.4 No Recourse Upon Dissolution.** No Member shall have any recourse regarding its Capital Contribution (upon dissolution or otherwise) against any other Member.

**Section 10.5 Liquidation.** Upon dissolution of the Council, the Council shall not engage in any activity other than that which is necessary (1) to publish all necessary procedures and effectuate all necessary changes in cryptographic controls required to enable the ongoing operation and evolution of the Hedera Network and (2) to wind up the business in the following manner:

(a) Liquidator. The Board, or, if the Board is unable to do so, an Entity or person selected by a majority vote of the Members, shall act as the “**Liquidator**” of the Council. The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Council’s assets and to wind up and liquidate the affairs of the Council in an orderly manner.

(b) Distribution of Proceeds Upon Dissolution. The Liquidator shall liquidate the assets of the Council and shall apply and distribute the proceeds as follows:

(i) First, to the satisfaction (whether by the payment or the making of reasonable provision for payment thereof) of the Council’s debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Council);

(ii) Second, to the establishment of and additions to reserves that are determined by the Board in its sole discretion to be reasonably necessary for any contingent unforeseen liabilities or obligations of the Council; and

(iii) Thereafter, if approved by a majority of the Members, to an entity formed for charitable purposes and exempt from taxation under Section 501(c)(3) of the Code. In the absence of such approval, such proceeds shall be distributed as required by applicable law.

(c) Discretion of Liquidator. Notwithstanding Sections 10.5(a) and 10.5(b) of this Agreement, in the event that the Board determines that an immediate sale of all or any portion of the Council assets would cause undue loss, the Board, in order to avoid such loss to the extent not then prohibited by the Act, may either defer liquidation of and withhold from distribution for a reasonable time any Council assets necessary to satisfy the Council’s debts and obligations, or, subject to the priorities set forth in Sections 10.5(b) of this Agreement, distribute the Council assets in kind.

(d) Cancellation of Certificate. Upon completion of the Distribution of the assets of the Council as provided in Subsection (b) hereof, the Council shall be terminated and the Liquidator shall cause the cancellation of the Certificate in the State of Delaware and of all qualifications and registrations of the Council as a foreign limited liability company in jurisdictions other than the State of Delaware and shall take such other actions as may be necessary to terminate the Council.



(e) Survival of Rights, Duties and Obligations. Dissolution, liquidation, winding up or termination of the Council for any reason shall not release any party from any Losses which at the time of such dissolution, liquidation, winding up or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish or otherwise adversely affect any Member's right to indemnification pursuant to Section 7.5.

## **ARTICLE 11** **MISCELLANEOUS**

**Section 11.1 Counsel.** THE COUNCIL HAS SELECTED PAUL HASTINGS LLP (“COUNSEL”) AS LEGAL COUNSEL. EACH MEMBER ACKNOWLEDGES THAT THE COUNSEL DOES NOT REPRESENT ANY MEMBER IN ITS CAPACITY AS SUCH IN THE ABSENCE OF A CLEAR AND EXPLICIT WRITTEN AGREEMENT TO SUCH EFFECT BETWEEN SUCH MEMBER AND COUNSEL (AND THEN ONLY TO THE EXTENT SPECIALLY SET FORTH IN SUCH AGREEMENT), AND THAT ABSENT ANY SUCH AGREEMENT COUNSEL SHALL OWE NO DUTIES TO ANY MEMBER.

### **Section 11.2 Appointment of Attorney-in-Fact.**

(a) Each Member by its execution of this Agreement, irrevocably constitutes and appoints the person holding the position of Secretary of the Council, for so long as he or she holds such position, as its true and lawful attorney-in-fact (and each person who holds the position of Secretary of the Council thereafter, for so long as he or she holds such position, as its true and lawful successor attorney-in-fact) with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to:

(i) All certificates and other instruments (including counterparts of this Agreement), and all amendments thereto, which the Board deems appropriate to form, qualify, continue or otherwise operate the Council as a limited liability company (or other entity in which the Members will have limited liability comparable to that provided in the Act), in the jurisdictions in which the Council may conduct business or in which such formation, qualification or continuation is, in the opinion of the Board, necessary or desirable to protect the limited liability of the Members.

(ii) All amendments to this Agreement adopted in accordance with the terms hereof, and all instruments which the Board deems appropriate to reflect a change or modification of the Council in accordance with the terms of this Agreement.

(iii) All conveyances of Council assets, and other instruments which the Board reasonably deems necessary in order to complete a dissolution and termination of the Council pursuant to this Agreement.

In the event the position of Secretary is vacant, the Board is authorized to designate a successor attorney-in-fact until such time as a new Secretary has been appointed.

(b) The appointment by all Members of the Secretary as attorney-in-fact (and if applicable, each person who holds the position of Secretary of the Council thereafter as successor attorney-in-fact) shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Members under this Agreement will be relying upon the power of such person(s) or Entity to act as contemplated by this Agreement in any filing and other action by it on behalf of the Council, and shall survive the incapacity of any Entity or person hereby giving such power, and the Transfer or assignment of all or any portion of the Interest of such Entity in the Council, and shall not be affected by the subsequent incapacity of the principal.

**Section 11.3 Addition of Members.** Each additional Member shall become a signatory hereto by signing the Governing Member Joinder Agreement and such other instruments as the Board may determine. By so signing, each additional Member, as the case may be, shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

**Section 11.4 Amendments.** The Board may only make amendments to this Agreement specifically authorized herein. All other amendments to this Agreement shall require Member approval.

(a) Schedule of Members. The Chair or the Secretary may update the Schedule of Members set forth at Schedule 1 hereto in order to reflect changes in the name, email address or mailing address of a Member; the admission, departure or substitution of Members; or the change in the Term of a Member (in each case occurring pursuant to this Agreement) and such amendments shall not require the consent of or notice to any Member.

(b) Hedera Node Policy. The Hedera Node Policy set forth as Exhibit B may be amended as provided for therein. Any amendments to the Hedera Node Policy will take effect upon delivery of the amended Hedera Node Policy to the Members, subject to a reasonable period for Members to comply with any such modifications.

(c) Committees. The description of Committees set forth as Exhibit C may be amended as provided for therein.

(d) Distributions. Any amendment, modification or waiver to the distribution structure set forth in Article 6 (“Distributions”) or Section 10.5(b) (“Distribution of Proceeds Upon Dissolution”) shall require the unanimous consent of the Members.

(e) Member Terms and Renewals. Any amendment to Sections 4.3(b) (“*Member Terms*”) and Section 4.3(g) (“*Renewal Terms*”) shall require the unanimous consent of the Members.

(f) Network Pricing. Any amendment to the node payment and network pricing principles set forth in the last two sentences of Section 8.2 (“*Network Pricing*”) shall require the unanimous consent of the Members.

(g) Counsel. The Secretary, upon direction of the Board or the Council's General Counsel, may update the law firm identified in Section 11.1 as legal counsel to the Council and such amendments shall not require the consent of any Member.

(h) Registered Agent. The Secretary may update the name of the Council's registered agent and address of the Council's registered office set forth Section 1.6 and such amendments shall not require the consent of any Member.

(i) Other Amendments. Other than as specifically provided herein, any amendment to the terms of this Agreement shall require the approval of at least two-thirds of the Members. For the avoidance of doubt, amendments to Sections 11.4(d) through 11.4(f) and the last sentence of Section 8.4 ("*Network Management*") shall require the unanimous consent of the Members, and amendments to Sections 5.1 ("*Tax Treatment*"), 7.4(g) ("*Council Change of Control*") and 10.2 ("*Exclusive Causes of Dissolution*") shall require the approval of at least three-fourths of the Members.

(j) In making any amendments, there shall be prepared and filed by, or for, the Board such documents and certificates as may be required under the Act and under the laws of any other jurisdiction applicable to the Council. The Board or Secretary shall furnish copies of any amendments to this Agreement to all Members, other than changes in Schedule 1 as provided in Clause (a) above.

### **Section 11.5 Arbitration.**

(a) Any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement, including, without limitation, any action or claim based on tort, contract, or statute (including any claims of breach), or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement ("**Claim**"), shall be resolved by final and binding arbitration ("**Arbitration**") before a single arbitrator (the "**Arbitrator**") selected from and administered by JAMS Inc. (the "**Administrator**") in accordance with its then existing arbitration rules or procedures regarding commercial or business disputes. Each party shall select one arbitrator, and the two arbitrators so selected shall choose a third arbitrator to act as the Arbitrator. The Arbitration shall be held in New York, NY.

(b) Depositions may be taken and full discovery may be obtained in any Arbitration commenced under this provision.

(c) The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The Arbitrator shall be authorized to award compensatory damages, but shall not be authorized (i) to award non-economic damages, (ii) to award punitive damages, or (iii) to reform, modify or materially change this Agreement or any other agreements contemplated hereunder; provided, however, that the damage limitations described in parts (i) and (ii) of this sentence will not apply if such damages are statutorily imposed. The Arbitrator also shall be authorized to grant any temporary, preliminary or permanent equitable remedy or relief he or she deems just and

equitable and within the scope of this Agreement, including, without limitation, an injunction or order for specific performance.

(d) Each party shall bear its own attorney's fees, costs, and disbursements arising out of the Arbitration, and shall pay an equal share of the fees and costs of the Administrator and the Arbitrator; provided, however, the Arbitrator shall be authorized to determine whether a party is substantially the prevailing party, and if so, to award to that substantially prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the Administrator and the Arbitrator. Absent the filing of an application to correct or vacate the Arbitration award under Title 10 of the Delaware Code Sections 5713 through 5717, each party shall fully perform and satisfy the Arbitration award within fifteen (15) days of the service of the award.

(e) By agreeing to this binding Arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a Claim between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this Section 11.5, certain rights of appeal, and a right to invoke formal rules of procedure and evidence.

(f) EACH MEMBER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT AND ANY RELATED AGREEMENTS AND DOCUMENTS.

**Section 11.6 Accounting and Fiscal Year.** Subject to Code Section 448, the books of the Council shall be kept on such method of accounting for tax and financial reporting purposes as may be determined by the Board. The fiscal year of the Council shall end on December 31 of each year, or on such other date permitted under the Code as the Board shall determine.

**Section 11.7 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof.

**Section 11.8 Further Assurances.** Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

**Section 11.9 Notices.** Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (a) delivered personally to the person or Entity or to an officer of the person or Entity to whom the same is directed, or (b) sent by electronic mail or registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Council, to the Council at the address set forth in Section 1.3 hereof, or to such other address as the Council may from time to time specify by notice to the Members; if to a Member, to such Entity at the most recent address set

forth in the Council's books and records, or to such other address as such Entity may from time to time specify by notice to the Council. Any such notice shall be deemed to be delivered, given and received for all purposes as of: (i) the date so delivered, if delivered personally, (ii) upon receipt, if sent by electronic mail, or (iii) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed.

**Section 11.10 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among the residents of such state made and to be performed entirely within such state in accordance with the provisions of the Act.

**Section 11.11 Certain Rules of Construction.** To the fullest extent permitted by law, the parties hereto intend that any ambiguities shall be resolved without reference to which party may have drafted this Agreement. All Article or Section titles or other captions in this Agreement are for convenience only, and they shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Unless the context otherwise requires: (a) a term has the meaning assigned to it; (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with then-applicable generally accepted accounting principles; (c) "or" is not exclusive; (d) words in the singular include the plural, and words in the plural include the singular; (e) provisions apply to successive events and transactions; (f) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (g) all references to "clauses," "Sections" or "Articles" refer to clauses, Sections or Articles of this Agreement; and (h) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms.

**Section 11.12 Binding Effect.** Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the Members, their heirs, executors, administrators, successors and all other Entities or persons hereafter holding, having or receiving an interest in the Council.

**Section 11.13 Severability.** In the event that any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void, unenforceable or inoperative as a matter of law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of the Agreement as a whole, and this Agreement shall be construed and reformed in all respects as if any such invalid or unenforceable provision(s) were omitted in order to give effect to the intent and purposes of this Agreement.

**Section 11.14 Confidentiality.**

(a) **Definition.** "**Confidential Information**" shall mean with regard to Confidential Information of (i) the Council (ii) a Council Member, and (iii) a third party that has signed a non-disclosure agreement with the Council, information concerning the Council, the Hedera Network, or the status of matters under consideration by the Council that (x) if provided in tangible or electronic form, is marked as "Confidential," (y) if disclosed orally, is identified as "Confidential" at the time of disclosure, and (z) if made available in either tangible, electronic, or oral form, would be reasonably understood to be confidential or proprietary by its nature or context; and

(b) Maintenance of confidentiality. Each party hereto agrees that any Confidential Information received from (i) the Council, (ii) a Member, or (iii) a third party that has signed a Board-approved non-disclosure agreement with the Council shall be kept confidential and shall not be directly or indirectly disclosed or made accessible to any other person or Entity without the prior written consent of the disclosing party or as otherwise set forth below.

(c) Permitted use. The Council and each Member shall use Confidential Information solely for Council-related purposes. Each Member may disclose Confidential Information to its respective employees, officers, directors, managers, attorneys, accountants, consultants, Affiliates and other agents (collectively, “**Representatives**”) solely to the extent necessary for the administration of its Interest and performance as a Member hereunder, so long as such person or Entity has a legitimate business need to know such Confidential Information and such person or Entity is subject to obligations of confidentiality at least as stringent as those set forth in this Section 11.14. The Council may disclose Confidential Information to its Representatives and to the Members so long as such person or Entity has a legitimate Council-related business need to know such Confidential Information and such person or Entity is subject to obligations of confidentiality at least as stringent as those set forth in this Section 11.14. The Council and each Member shall promptly return or destroy all Confidential Information upon request of the disclosing party and in any event upon any termination of this Agreement and, with respect to a Member, upon such Member’s departure from the Council (and, in both cases, certify to such return or destruction). Notwithstanding the foregoing, the Council and each Member may retain copies of the Confidential Information in accordance with applicable law, regulation or its internal rules and practice.

(d) Highly sensitive information. Notwithstanding the foregoing, the Council and each Member may, in its sole discretion, identify certain of its Confidential Information as highly sensitive due to the business, legal, or other nature of such information. With regard to the Council’s Confidential Information, the Council may restrict access, in its sole discretion, to a limited number of specific Members and/or individual Representatives who may not disclose or otherwise share such information (including any summaries, analysis or notes based on or including any such information) with any individual not specified by the Council in writing to receive such information. With regard to a Member’s Confidential Information, such Member may restrict access, in its sole discretion, solely to the Council and its Representatives and/or to specific Members and/or individual Representatives who may not disclose or otherwise share such information (including any summaries, analysis or notes based on or including any such information) with any individual not specified by the disclosing Member in writing to receive such information.

(e) Degree of care. The Council and each Member shall, and shall cause its respective Representatives to, safeguard the Confidential Information from unauthorized use, access or disclosure and protect the confidentiality of the Confidential Information with the same degree of care that it exercises with respect to its own information of like importance, but in no event less than a reasonable degree of care. The Council and each Member shall be responsible for any breach of the terms of this Agreement by any of its Representatives. Each Member agrees to promptly provide written notice to the Council of any breach of this Agreement, including but not limited to, any misuse of Confidential Information by the Member or any of the Member’s Representatives. The Council agrees to promptly provide written notice to a Member of any breach

of this Agreement with respect to such Member's Confidential Information, including but not limited to, any misuse of such Member's Confidential Information by the Council or any of the Council's Representatives.

(f) Non-prohibited disclosures. Notwithstanding the foregoing, Confidential Information does not include any information the recipient can document (i) was publicly available, or that subsequently becomes publicly available, through no wrongful act of disclosure hereunder by the Council, a Member, or its respective Representatives; (ii) was in the Council's or a Member's possession prior to receipt of the same hereunder; (iii) was received from a person or Entity who was not under any obligation of confidentiality with respect to such information; (iv) that can be proven to have been independently developed by the Council or a Member without any use of or reference to the Council's or such Member's Confidential Information, as established by written documentation produced contemporaneously with the development of the information; or (v) with respect to the Council's Confidential Information, that is approved by the Council in writing for release or, with respect to a Member's Confidential Information, that is approved by such Member in writing for release; provided that, prior to disclosing such Confidential Information, a party shall promptly notify the Council and/or the applicable Member thereof, which notice shall include the basis upon which such party believes the information is required to be disclosed and such party shall reasonably cooperate with the Board to limit the extent of any disclosure. Further, notwithstanding Section 11.14(b), the Council or a Member may disclose Confidential Information to the extent required by Applicable Law. In no event shall the Council, a Member, or any of their respective Representatives oppose any action by the Council or a Member to obtain a protective order or other relief to prevent the disclosure of Confidential Information or to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information.

(g) No license; no reverse engineering. The Council and each Member retains its entire right, title and interest in and to all its respective Confidential Information, and nothing in this Agreement, including, without limitation, any disclosure of Confidential Information hereunder will be construed as granting a license, assignment or other transfer of any such right, title and interest to the Council or a Member or any other person, except the limited right to review such Confidential Information solely for the Council-related purposes, nor shall this Agreement or any disclosure of Confidential Information hereunder be construed as granting any rights under any patent, copyright, trademark, trade secret, or other intellectual property right of the Council or a Member. The Council and each Member shall not, and shall cause its Representatives to not, (a) alter, maintain, enhance or otherwise modify any software included within the Confidential Information; (b) disassemble, decompile or reverse-engineer any such software; nor (c) otherwise take action to discover the equivalent of any such software.

(h) No warranty. Unless otherwise agreed by the Parties in a subsequent written agreement, the Council provides its Confidential Information solely on an "AS IS" basis and without warranty and is not liable for any damages arising out of use of such Confidential Information.

(i) Export controls. Confidential Information disclosed under this Agreement may be subject to export controls under the laws of the United States. Each Member will comply, and will cause its Representatives to comply, with such laws and agrees, and will cause its Representatives

to agree, not to knowingly export, re-export or transfer any technical data acquired from the Council under this Agreement or any products or services utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

(j) Survival. The provisions of this Section 11.14 shall survive notwithstanding the forfeiture of an Interest from a Member in accordance with Section 4.3(h) (“*Expiration of Interests of Governing Members*”) or Section 4.3(i) (“*For-Cause Removal and Termination of Interests*”) or Section 4.3(j) (“*Removal of Member; Termination of Interests*”) and Section 4.3(k) (“*Withdrawal*”).

**Section 11.15 Consent to Use of Name.** Each Member hereby consents to the use and inclusion of its name and logo (i) on Schedule 1 hereto and any and all other notices or communications required or permitted to be given by the Council thereof and (ii) on the Council’s website and in the Council’s public announcements, press releases, and other marketing materials alongside the name and/or logos of the other Members for the sole purpose of identifying the Member as a Member of the Council and operators of identified Hedera Network nodes.

#### **Section 11.16 Copyright.**

(a) Definitions. The Council may, from time to time, produce documents or other works of authorship created in the course of or in connection with Council activities (including, without limitation, activities by Committees or other groups formed by the Council), excluding software (“**Documents**”). For the avoidance of doubt, source code, comments embedded within source code, and oral communications alone (including in any meetings, conference calls, or other live forums) are not “Documents.” Members may contribute materials to the Council for inclusion in a Document (each, a “**Contribution**”).

(b) Preexisting works. For any preexisting works in a Contribution, a Member grants to the Council a perpetual (for the duration of the applicable copyright), worldwide, non-exclusive, no-charge, royalty-free, copyright license, without any obligation for accounting to the Member, to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute copies of the preexisting works in the Contribution to the full extent of the Member’s copyright interest in the Member’s contribution to that Document.

(c) New works. For any new works in the Contribution, a Member assigns the new works in the Contribution to the Council and the Council grants the Member a perpetual (for the duration of the applicable copyright), worldwide, non-exclusive, no-charge, royalty-free, copyright license, without any obligation for accounting to the Council, to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute copies of the new works in the Contribution.

(d) Rights. To the fullest extent possible the Council shall own all copyright rights in all Documents.

**Section 11.17 Hedera Policies.** Hedera Policies, and any modifications thereto, will take effect upon delivery to the Members, subject to a reasonable period for Members to comply with the Hedera Policies or modifications thereto.



**Section 11.18 Counterparts.** This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 11.19 Securities Law Matters.**

(a) Each Member understands that in addition to the restrictions on Transfer contained in this Agreement, such Member must bear the economic risks of the acquisition of its Interest for an indefinite period because the Interests have not been registered under the Securities Act of 1933, as amended, or under any applicable securities laws of any state or other jurisdiction and, therefore, may not be sold or otherwise Transferred unless they are registered under the Securities Act and any such other applicable securities laws or an exemption from such registration is available. Each Member agrees with all other Members that such Member will not sell or otherwise Transfer such Member's Interest in the Council unless such Interest has been so registered or in the opinion of Counsel, or of other counsel reasonably satisfactory to the Council, such an exemption is available.

(b) Each Member hereby represents that: (i) it is acquiring its Interest for its own account, and not with a view to resell or distribute the same or any part thereof; and (ii) no other person or Entity has any interest in its Interest or in the rights of the Member under this Agreement other than a spouse having a community property or similar interest under Applicable Law. Each Member also represents that it has the business and financial knowledge and experience necessary to acquire its Interest on the terms contemplated herein without the need for the investor protections provided by the registration requirements of the Securities Act of 1933, as amended.

(c) Each Member hereby represents that such Member is not subject to any law, regulation, rule of a self-regulatory body, judicial order, contract or other binding arrangement that would: (i) be violated in consequence of entering into of this Agreement; or (ii) impose upon the Council any material burden, restriction or obligation solely in consequence of the status or position (disregarding for this purpose any burden or obligation that consists solely of compliance with applicable tax laws). Each Member shall immediately notify the Council in the event that any representation set forth in the preceding sentence ceases to be accurate.

**Section 11.20 Survival.** The provisions of Sections 4.4 ("*Liability of the Members*"), 7.5 ("*Indemnification and Liability of the Members*"), 11.1 ("*Counsel*"), 11.2 ("*Appointment of Attorney-in-Fact*"), 11.5 ("*Arbitration*"), 11.8 ("*Further Assurances*"), 11.14 ("*Confidentiality*") and 11.15 ("*Consent to Use of Name*") (and this Section 11.20) (and any other provisions herein necessary for the effectiveness of the foregoing sections) shall survive the termination of the Council and/or the termination of this Agreement.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned, as attorney-in-fact for each Member pursuant to 11.2(a)(ii) of this Agreement, has duly executed this Agreement as of the day and year first above written.

By: Tom Sylvester

Tom Sylvester

Secretary of Hedera Hashgraph, LLC

**SCHEDULE OF MEMBERS**

As of May 17, 2023

<u>Members</u>	<u>End of Term</u>
1. Swirls, Inc.	<i>(permanent member)</i>
2. Deutsche Telekom AG	Dec. 31, 2023*
3. DLA Piper Investments Limited	Dec. 31, 2023*
4. Magazine Luiza, S.A.	Dec. 31, 2023*
5. Tata Communications (America) Inc.	Dec. 31, 2023*
6. The Boeing Company	Dec. 31, 2023*
7. International Business Machines Corporation	Dec. 31, 2023*
8. Worldpay, LLC	Dec. 31, 2023*
9. Nomura Holdings, Inc.	Dec. 31, 2023*
10. Google, LLC	Dec. 31, 2023*
11. Wipro Limited	Dec. 31, 2023*
12. University College London	Dec. 31, 2023*
13. Mobile Telecommunications Company K.S.C.P. (d/b/a Zain Group)	Dec. 31, 2023*
14. LG Electronics, Inc.	Dec. 31, 2023*
15. Avery Dennison Atma GmbH	Dec. 31, 2024*
16. Dentons Rodyk & Davidson LLP	Dec. 31, 2024*
17. EFTPOS Payments Australia Limited	Dec. 31, 2024*
18. Standard Bank Group Limited	Dec. 31, 2024*
19. Électricité de France S.A. (EDF)	Dec. 31, 2024*
20. Shinhan Bank	Dec. 31, 2024*
21. Chainlink Labs, Inc.	Dec. 31, 2024*
22. LSE Enterprise Ltd.	Dec. 31, 2024*
23. Indian Institute of Technology Madras	Dec. 31, 2024*
24. DBS Bank, Ltd.	Dec. 31, 2024*
25. ServiceNow, Inc.	Dec. 31, 2024*
26. Ubisoft Inc.	Dec 31, 2025*
27. Aberdeen Asset Management plc	Dec. 31, 2025*
28. Dell Marketing LP	Dec. 31, 2026*
29. COFRA Digital Services AG	Dec. 31, 2026*

(\* = Member is eligible for a Renewal Term)

Note: Each Governing Member is eligible to serve an additional three-year Renewal Term on the Council if the Member is elected to a Renewal Term in accordance with Section 4.3(g).

**HEDERA OFFICERS**

As of April 18, 2023

**President - Brett McDowell**

Responsibilities: Lead Hedera staff in support of the Hedera Council's governance of the Hedera network; implement Council-, Committee-, and Board-approved actions and policies relating to governance, risk, compliance, and treasury management; perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him from time to time by the Board.

**Chief Financial Officer & Treasurer – Betstabe Botaitis**

Responsibilities: Work with the Board and Hedera management to provide oversight of Hedera's financial transactions and financial matters; shall exercise oversight of any financial services contractor; shall prepare and present to the Board (at a minimum) quarterly financial reports on all Hedera finances; in general, shall perform all duties customarily incident to the office of Treasurer and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**Chief Information Officer – Alex Popowycz**

Responsibilities: Coordinate with Council Members to ensure the availability of the Hedera network and its services in accordance with agreed-upon service levels, provide reporting to the Hedera Council on Hedera network availability and performance. Propose and implement approved policies for network operations. Manage the Hedera technical strategy as determined by TechCom. In general, shall perform all duties customarily incident to the office of Chief Information Officer and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**Chief Regulatory Counsel & Compliance Officer – Sam Brylski**

Responsibilities: Provide regulatory legal advice to the Hedera to inform risk management and strategic planning; implement regulatory compliance programs to ensure company compliance with applicable regulations; facilitate network participants' compliance with global regulatory requirements to enable compliant development on the Hedera network; implement internal controls consistent with industry best practices and Hedera values to ensure ethical company conduct; promote industry best practices and Hedera values to network participants to foster a safe and productive ecosystem; engage with regulators and industry groups to generate intelligence, influence public policy and industry practices, and maintain productive relationships with policymakers. In general, shall perform all duties customarily incident to the office of Chief Compliance Officer and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**General Counsel – Tom Sylvester**

Responsibilities: Management and oversight of all legal matters relating to Hedera; shall exercise oversight of any external legal counsel; shall perform all duties customarily incident to the office of General Counsel and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**Secretary – Tom Sylvester**

Responsibilities: Recording and distributing minutes of meetings of the Board and Council Members, which shall include results of votes and other actions taken; in general, the Secretary shall perform all duties customarily incident to the office of Secretary and such other duties as may be required by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**HEDERA HASHGRAPH, LLC**

**GOVERNING MEMBER JOINDER AGREEMENT**

Pursuant to that certain Fourth Amended and Restated Limited Liability Company Agreement of Hedera Hashgraph, LLC attached as Appendix A hereto dated as April 6, 2022 (as may be amended from time to time, the “**Hedera LLC Agreement**”), the undersigned (the “**Member**”) hereby agrees to be bound by and to observe all of the terms and conditions of the Hedera LLC Agreement, including the Exhibits attached thereto. In addition, Member acknowledges receipt of a copy of the Hedera LLC Agreement and represents that Member has read such Hedera LLC Agreement and had the opportunity to consult with counsel in connection therewith. All terms not defined herein shall have the meanings set forth in the Hedera LLC Agreement.

Member hereby (a) authorizes Hedera Hashgraph, LLC (the “**Council**”) to attach this counterpart signature page to the Hedera LLC Agreement, (b) agrees to purchase an Interest for the Initial Capital Contribution as set forth in Section 3.2 of the Hedera LLC Agreement, and (c) agrees that any notice required or permitted by the Hedera LLC Agreement shall be given to Member at the address or e-mail listed below.

Member hereby agrees, effective as of the date Member is listed as a Governing Member on the Council’s website (with such date to be jointly agreed by the Council and the Member), to become a party to the Hedera LLC Agreement as a Governing Member, and for all purposes of the Hedera LLC Agreement, the Member shall be included within the term “Governing Member” thereunder.

This Joinder Agreement may be executed and delivered by facsimile or electronic signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Hedera LLC Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Joinder Agreement as of the date first agreed and accepted by the Council as written below.

<b>COUNCIL:</b>	<b>MEMBER:</b>
<b>Hedera Hashgraph, LLC</b>	<b>[Member Name]</b>
By: _____	By: <i>[NOTE: DO NOT SIGN THIS EXHIBIT]</i>
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Address: _____
	_____
	_____
	Email: _____
	Date: _____

**FOURTH AMENDED & RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HEDERA HASHGRAPH, LLC  
[Attached]**

Exhibit A

**HEDERA NODE POLICY: HOSTING TERMS & DEPLOYMENT  
GUIDE**

*Dated 06 October 2022*

**A. Overview**

1. **General.** Pursuant to Section 8.1 of the Limited Liability Company Agreement of Hedera Hashgraph, LLC (the “**Hedera LLC Agreement**”), each Member will host a Node and associated supporting system(s) on the Hedera Network in accordance with these Member Node Hosting Terms & Deployment Guide, as amended from time to time (“**Hedera Node Policy**”). The Hedera Node Policy may be amended by the Technical Steering & Product Committee in accordance with its charter. Hedera shall promptly notify the Members in writing upon any amendment of the Hedera Node Policy and the Members will have a reasonable grace period to comply with any such modifications.
2. **Definitions.** Capitalized terms not defined herein shall have the meanings ascribed to them in the Hedera LLC Agreement.
  - a. “**Coins**” or “**hbars**” means the cryptocurrency native to the Hedera Network for the purpose of weighting votes on consensus, securing the network and paying network usage fees.
  - b. “**Council**” or “**Hedera**” means Hedera Hashgraph, LLC, a Delaware limited liability company.
  - c. “**Hedera Network**” means the public, peer-to-peer, distributed ledger technology-based platform that utilizes the hashgraph consensus algorithm and is governed by the Hedera Council.
  - d. “**Network Account**” or “**Account**” means a digital account on the Hedera Network that holds Coins.
  - e. “**Node**” means a dedicated server that runs the Node Software on the Hedera Network in accordance with the specifications herein
  - f. “**Node Software**” means the software provided by Hedera for the purpose of creating and operating a Node that creates, sends, receives, and/or transmits information to the Hedera Network, runs the hashgraph algorithm to assign transactions a consensus timestamp and order, and offers one or more services supported by the Hedera Network. For the avoidance of doubt, “Node Software” does not mean software to run a “mirror node” on the Hedera mirror node network, a parallel network dedicated to propagating the state and transaction history of the main Hedera Network.
  - g. “**Node Stake**” means the total amount of Coins staked to a particular node.
  - h. “**Member**” means the legal entity that is the signatory to the Hedera LLC Agreement
  - i. “**Proxy**” means a network element that mediates electronic communications between a specific node and clients.



- j. **“Node Subsidy”** means a payment made in fiat currency (US Dollars) or HBAR, used to remunerate Members the costs of operating a Node when Node Rewards and Node Fees are insufficient to offset those costs.
  - k. **“Node Fees”** means a fee paid by a client directly to a Node Account.
  - l. **“Staking Rewards”** means the sum of Node Staking Rewards and User Staking Rewards
  - m. **“Node Rewards”** means the amount paid in HBAR to a Node Account for being active, distributed out of account 0.0.801.
  - n. **“User Staking Rewards”** means the amount paid in HBAR to a user’s Network Account proportional to the amount staked to a Node distributed out of account 0.0.800.
  - o. **“Hedera Treasury Accounts”** means those Network Accounts controlled by Council Members collectively.
  - p. **“Hedera Administrative Accounts”** means those Network Accounts controlled by Hedera Staff collectively.
  - q. **“Node Account”** means the Network Account associated with a node which receives Node/Staking Rewards from Hedera and Node Fees from Clients. Node Accounts can be either Member- Controlled or Hedera-Controlled.
3. **Phased Growth.** In order to ensure the integrity, stability, and security of the Hedera Network, Nodes are expected to be implemented in phases, and the phases may overlap with each other.
- a. **Phase 1.** Phase 1 will consist of Nodes operated by Members and, during a transition period, by Hedera as described in paragraph B.1.
  - b. **Phase 2.** Phase 2 is expected to consist of Member Nodes and a select number of Nodes operated by non-Members. The non-Member Nodes will be required to comply with Node hosting terms as set forth by the Council, which may be amended from time to time (the **“General Node Terms”**).
  - c. **Phase 3.** Phase 3 is expected to widely permit non-Member Nodes, provided such Nodes comply with the General Node Terms.

## **B. Member Node Hosting Requirements**

1. **Node Set-up.** Upon joining the Council, a Member will work with Hedera’s DevOps team to finalize a plan for operating its Node. A Member will be required to manage its Node independently within 90 days of joining the Council<sup>1</sup>. Prior to the member independently operating a node, Hedera may set up a Node on behalf of such Member and such Member will accept shared control with Hedera of such Node (a Node under such shared control, a “**Transitional Node.**”) Hedera, and not the Member, will be responsible for the costs or IT support relating to the management of a Transitional Node. During any period in which a Member has a Transitional Node, the Member will not be eligible to receive any of the fees and/or rewards described in paragraph B.5 below.

Members shall provide Hedera with the current location (minimally region and country) where their node is operating. Members shall provide updates to Hedera within 90 days of a change in hosting location. Hedera may publish the location of Hedera nodes operating on Mainnet along with the attribution of members to their specific node.

2. **Node Software and Operating Guide.** Nodes must download and run the Node Software. Each Member will operate its Node in accordance with the Hedera Node Deployment Guide, attached as Schedule 1 to the Member Node Terms, as may be amended from time to time by the Technical & Product Steering Committee of the Council.
3. **Node Activities.** Hedera Network end users and developer applications running on the Hedera Network (“**Clients**”) will use Nodes to submit transactions to the Hedera Network and will pay for such transactions with Coins. Nodes will receive and process transactions from Clients for recording on the Hedera Network public ledger (“**Node Activities**”).
4. **Node Accounts.** Each Node will be associated with a Network Account (each a “**Node Account**”) that may pay fees or receive payments associated with the Node’s Activities. Each Member must decide whether (a) the Member (or one of its Affiliates) will own and control its Node Account, including any Coins within (a “**Member-Controlled Node Account**”), or (b) Hedera will own and control such Node’s Node Account, including any Coins within (a “**Hedera-Controlled Node Account**”). For a Hedera-Controlled Node Account, (i) Hedera will not disclose the private keys of such account to the Member at any time, (ii) such Member will have no ability to control, access, or otherwise transact with the Coins in the Hedera-Controlled Node Account, and (iii) such Member will forfeit all current and future ownership rights to the Coins in the Hedera-Controlled Node Account. A Member may, upon written notice to Hedera, switch from a Member-Controlled Node Account to a Hedera-Controlled Node Account, or vice-versa.
5. **Transaction Fees and Rewards.** The Hedera Network operates through fees and rewards, which are denominated and paid in Coins, as described below.

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<sup>1</sup> Members who join prior to 01 May 2022 are provided 12 months to set up a permanent, independently operated node.

- a. Transaction Fees. For each transaction it submits to the Hedera Network, a Client pays a transaction fee (a “**Transaction Fee**”) that contains the three separate fees described below.
  - i. Node Fees. Node fees are paid by a Client in exchange for a Node submitting the Client’s transactions to the Hedera Network (“**Node Fees**”). Node Fees are paid by a Client directly from the Client’s Account to the designated Node Account of the Node that submits the Client’s transaction to the Network.
  - ii. Network Fees. Network fees are paid by a Client in exchange for the Hedera Network processing the Client’s transactions into consensus (i.e., placing each transaction in the correct place with respect to the chronological order of all transactions on the Hedera Network) (“**Network Fees**”). Network Fees are calculated largely based on a transaction’s size, with such amount set by the Council. Fees may be divided among a Hedera Treasury Account (0.0.98), the User Staking Rewards Account (0.0.800) and the Node Rewards Account (0.0.801) in a manner prescribed by the Hedera Council.
  - iii. Service Fees. Service fees are paid by a Client in respect of a transaction in exchange for the Hedera Network providing the service associated with that transaction (e.g., a cryptocurrency transfer, smart contract processing, file storage, or message ordering) and are calculated based on a transaction’s size, processing requirements, and service duration (“**Service Fees**”). The Service Fees for various Hedera Network services will be set by the Council. Fees may be divided among a Hedera Treasury Account (0.0.98), the User Staking Rewards Account (0.0.800) and the Node Rewards Account (0.0.801) in a manner prescribed by the Hedera Council.
- b. Rewards and Subsidy
  - i. Details of subsidies or incentives related to Members’ operation of nodes on Hedera Mainnet are described in Hedera's Treasury Management Policy, which may change from time to time.
  - ii. Staking to Member Nodes. Hedera shall periodically adjust the staking of Coins in its Treasury in such a manner to equalize the consensus weight of Member Nodes. Such staked Coins will not be owned by the Members and will be allocated for the sole purpose of ensuring the security, stability, availability, and functionality of the Hedera Network.
6. Security Requirements. Each Member shall operate its Node in accordance with cybersecurity best practices and other requirements as determined by Hedera and communicated to the Members, which are expected to include, among other things, periodic obligations to submit security assessments. Each Member shall promptly notify Hedera of any suspected or actual security breaches with respect to its Node. Each Member shall maintain standard physical access controls to its Node, as Nodes contain private keys for communications and fee retrieval, which are valuable from a security and economic perspective.

7. Service Level Agreements (SLAs).

- a. Service Levels. Each Member will operate its Node in accordance with the “Service Levels” set forth below. If a Member’s Node fails to meet a Service Level, the Member will: (a) investigate, assemble and preserve pertinent information with respect to such failure, and report to Hedera DevOps on the causes of such failure, including performing a root cause analysis of such failure; (b) advise Hedera DevOps, as and to the extent reasonably requested by Hedera of the status of remedial efforts being undertaken with respect to such failure; and (c) minimize the impact of such failure by initiating remediation of such failure and provide to Hedera DevOps, as reasonably requested by Hedera DevOps, status reports of the remedial efforts being undertaken with respect to such failure. The Member will correct such Service Level failure and take appropriate preventive measures which have the aim that such failure does not recur. The correction of any such failures will be performed as soon as practicable and at the Member’s sole expense (except for direct costs incurred by the Member where the Node Software or other technology or systems provided by Hedera DevOps are the root cause of such failures, as such costs shall be reimbursed by Hedera up to an amount to be determined by a committee of the Council). Notwithstanding the foregoing regarding Member’s obligations to correct failures, each Member will use reasonable endeavors to correct a failure to meet Service Levels to the extent such failure is due to other Members, a Client, end-users, Hedera and/or parts of the Hedera Network not under the control of the Member.
- b. Measurement and Reporting. Each Member shall monitor its actual performance of its Node against each Service Level and shall use automated monitoring tools to monitor and log the general availability and proper functioning of the Node, collect and provide to Hedera the data made available to it by such tools, and be responsible for measuring its performance as against such Service Levels. A Member’s monitoring practices will be based on best practices and provided by Hedera.
- c. The Service Levels will be as follows:
  - i. Uptime Requirements. Uptime requirements for Nodes shall be in accordance with industry best practices as determined by Hedera. Hosting facilities used must provide no less than 90% uptime service level. Member shall take appropriate preventative measures and address active issues with their Nodes consistent with section B(7)c(vi) Resolution: Response Time to ensure 90% availability of consensus operations in a calendar month.
  - ii. Availability. Members will provide Hedera with a dedicated resource with respect to its Node and a support email to receive expedited assistance.
  - iii. Member Planned Outages. *Hedera must approve all planned scheduled maintenance.* At least 15 calendar days in advance, a Member shall notify Hedera’s DevOps team of scheduled downtime for maintenance or upgrades during which time the Node will not be available to process transactions on the Hedera Network (“**Scheduled Maintenance**”). Scheduled

- Maintenance will not exceed more than three and 1/2 (3.5) hours per month (99.5% scheduled availability).
- iv. Investigation and Correction. A Member will promptly investigate and correct each failure to meet the Service Levels by: (a) promptly initiating problem investigations; (b) promptly reporting problems and findings to Hedera DevOps; (c) correcting problems and meeting or restoring Service Levels as soon as practicable; (d) advising Hedera of the root cause of problems and the status of remedial efforts being undertaken with respect to such problems; (e) providing evidence to Hedera that the causes of such problems have been or will be corrected; and (f) making written recommendations to Hedera for improvements.
- v. Severity Level Descriptions.
- Severity Level 0 – Complete Hedera Network Outage: Mainnet has stopped accepting new transactions and is unable to reach consensus.
  - Severity Level 1 – Hedera Network Degradation (Defined under these conditions)
    - Less than 85% of total nodes are operational
    - Consensus time (C2C) is 50% longer duration for the preceding 60 minutes compared to the average for the prior 24 hours
    - Less than 50% of total nodes are accepting transactions from clients (public)
  - Severity Level 2 – Degraded Performance – Individual node has problems but more than 85% of active nodes on Mainnet are fully operational
    - An individual node is unable to receive or process transaction requests, or
    - A node is completely unavailable to participate towards consensus
  - Severity Level 3 – Cosmetic Problems: Minor flaws that do not affect the Hedera Network's normal operations.
- vi. Resolution: Response Time. Technical support issues meeting the severity level descriptions set forth above will be addressed as follows:
- Severity Level 0 – Members with nodes contributing to outage will work 24 hours per day, 7 days per week, until the issue has a temporary repair/workaround in place. A permanent repair will be performed during working hours. Upon request by Member, Hedera will use reasonable efforts to make a designated contact available 24 hours per day, 7 days per week to assist Member resources in the investigation of the issue. In addition, Hedera will use reasonable efforts to make a designated contact available to assist Member resources in the investigation of other Severity Level responses during the times as reasonably requested by Member.
  - Severity Level 1 – Members with nodes contributing to degradation will work 16 hours

per day, 7 days per week to resolve all Severity Level 1 incidents until the issue has a temporary repair/workaround in place. A permanent repair will be performed during working hours.

- Severity Level 2 – Member with affected node will work during working hours until a temporary repair is in place and then work to provide a permanent repair.
- Severity Level 3 – Member resources will work during working hours to resolve Severity Level 3 incidents in order of their priority.

8. Prohibited Activities; Rules of Conduct. As a condition of hosting a Node, Members will not operate a Node for any purpose that is prohibited by the Member Node Terms. Each Member is responsible for all its activity with regard to the acts and omissions of its Nodes. Each Member hosting a Node shall not (directly or indirectly):

- host a Node in any jurisdiction, or in association with any persons or entities, in violation of regulations promulgated by the United States Treasury Department’s Office of Foreign Assets Control (“OFAC”) and available on the OFAC website at <http://www.treas.gov/offices/enforcement/ofac/>;
- accept internet traffic to a Node from any jurisdiction subject to a comprehensive embargo under regulations as documented in the [Hedera Economic Sanctions and Financial Crimes Policy](#).
- take any action that imposes or may impose (as determined by Hedera in its sole discretion) an unreasonable or disproportionately large load on Hedera’s (or its third-party providers’) infrastructure;
- interfere or attempt to interfere with the proper working of the Hedera Network or any activities conducted on the Hedera Network;
- bypass any measures Hedera may use to prevent or restrict access to the Hedera Network (or other accounts, computer systems or networks connected to the Hedera Network);
- decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Hedera Network (including without limitation any application or widget), except to the limited extent applicable laws specifically prohibit such restriction;
- use the Node for any purpose other than performing Node Activities on the Hedera Network;
- run any software on the Node that is not approved by Hedera;
- use the Hedera Network in a manner that is knowingly unlawful or fraudulent; or
- otherwise take any action in violation of Hedera’s guidelines and policies.

9. Member Affiliates. If a Member’s Node is hosted by such Member’s Affiliate, such Affiliate shall be

responsible for complying with the Member Node Terms as if a party thereto. Each Member is fully responsible for the acts and omissions of its Affiliates.

10. License Grant. Use of the Node Software is subject to the following license terms; however, Members acknowledge and agree that such license terms may be amended by the Council to account for open-review, un-permissioned use, or other terms consistent with the goals of Council policy and platform development.
  - a. *Grant*. Subject to all of the terms and conditions of these Member Node Terms, Hedera grants to each Member a limited, non-exclusive, non-sublicensable and non-transferrable license to (i) install, run and use the Node Software for the Member's operation of a Node on the Hedera Network, and (ii) use any documentation provided by Hedera in connection with the licensed use of the Node Software.
  - b. *Restrictions*. The Node Software and related documentation may be protected by United States and international copyright, patent, and trademark laws, international treaties, and other applicable laws. Members must not alter or remove any proprietary markings on the Node Software or related documentation, including copyright, patent, trademark, service mark, trade secret, confidentiality or other proprietary notices. In addition, Member must not, or permit any third party to, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to determine the internal manner of functioning of the Node Software; (ii) copy, modify or create derivative works from the Node Software or related documentation (code written to published APIs (application programming interfaces) for the Node Software will not be deemed derivative works); (iii) sublicense, rent, lease or otherwise distribute or transfer the Node Software or related documentation; (iv) use the Node Software or related documentation for any third-party use; or (v) take any actions to create any claim, encumbrance or lien with respect to the Node Software.
  - c. *Reservation of Rights*. The Node Software and related documentation are licensed and not sold, and all rights not expressly granted to each Member are reserved, including any and all worldwide rights in or to all Intellectual Property Rights in and to the Node Software and related documentation. Each Member acknowledges that it obtains no ownership rights in the Node Software or the related documentation under these Member Node Terms. "Intellectual Property Rights" means patents, inventions, improvements, rights associated with works of authorship, including copyrights, trademarks, service marks and similar; and other proprietary rights arising under statutory or common law, contract, or otherwise.
  - d. *Export Control Laws*. Each Member acknowledges that the Node Software is of U.S. origin and that the Node Software and all related technical information, documents, and materials are subject to U.S. and international import and export regulations, including export controls under the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments. Each Member must comply strictly with all United States and international export controls and shall not export, re-export, transfer or divert any of the Node Software or any direct product thereof, to any destination, end-use, or end user

that is prohibited or restricted under any United States or international export control laws and regulations. Each Member must indemnify and hold Hedera and its contractors harmless from and against any claim, loss, liability or damage suffered or incurred by Hedera and its contractors resulting from or related to a such Member's violation or breach of this paragraph.

11. Node Removal. In the event that any Member's Node fails to comply with the Member Node Terms, whether due to multiple failures, the severity of any one or multiple failures, or the duration of any such failure(s) (each, a "**Node Failure**") and Hedera believes in its reasonable sole discretion, that such failure(s) may cause a negative effect on the Hedera Network or may subject Hedera, any Member(s), application developers or end users to any legal, compliance or business risks, Hedera may remove or require the removal of the Node from the Hedera Network.

12. Limitations on Liability; Indemnification.

- a. *Limitations on Liability*. NEITHER HEDERA NOR ANY MEMBER SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOST DATA, SOFTWARE, FIRMWARE, LOST PROFITS OR REVENUES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, HEDERA AND EACH MEMBER DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, SATISFACTORY QUALITY, AND QUIET ENJOYMENT.
- b. *Indemnification by Hedera*. Each Member shall be indemnified and held harmless for owning and operating a Node pursuant to Section 7.5 of the Hedera LLC Agreement (the "**Hedera Indemnity**"), in that the Hedera Indemnity will apply to the Member Node Terms, except for claims arising out of (i) any claim between a Member and Hedera; (ii) a Member's breach of any material term of the Member Node Terms; (ii) injuries to persons (including death) or loss, theft or damage to real or tangible personal property arising from the negligence, dishonest or willful acts, or omissions of the Member; (iii) any actual infringement, misappropriation or other violation of any Intellectual Property Rights (defined below) by the Member, other than claims arising solely from Member's use of the Node in compliance with the Member Node Terms; and (iv) the Member's acts or omissions constituting bad faith, willful misconduct or gross negligence.
- c. *End Users*. End users accessing or otherwise using Client applications on the Hedera Network are, and will remain, subject to terms and conditions between such end users and Hedera that shall include provisions typically used in those kinds of agreements limiting the liability of Members, including provisions requiring the end users to indemnify and hold harmless Members against Losses arising from owning and operating a Node.<sup>2</sup>

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<sup>2</sup> See Hedera Hashgraph Terms of Use, last modified November 13, 2019, at <https://www.hedera.com/terms>.



**C. Hedera Node Deployment Guide**

The technical specifications and minimum Node requirements for Council Member Nodes are provided in the Hedera Node Deployment Guide, attached as Appendix 1 to this Exhibit B.

# Hedera Node Specifications & Deployment Guide

## Overview

The following guide is provided to help you successfully procure and provision the necessary equipment and services to successfully set up a Hedera Hashgraph Mainnet node.

The use of virtual/public cloud instances can be considered in lieu of physical (bare metal) node deployment but is subject to approval to ensure meeting environment diversity requirements.

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#### Overview

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##### Appendix E: Notional Network Topology

##### Appendix F: Network Rules

###### HTTPS Outbound

###### SSH Inbound

###### Gossip IPs port 50111

###### gRPC Proxy IPs port 50211

##### Appendix G: Developer Links

##### Appendix H: Hosting/Cloud Providers In Use

##### Appendix I: Node Deployment Sequence

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## Minimum Node Requirements

The Mainnet will consist of Hedera nodes deployed by Governing Council members. The Hedera Network will generally perform at a rate determined by the lowest performing node. To ensure a common level of performance minimum hardware, connectivity and hosting requirements have been defined for Governing Council Hedera nodes.

Members each shall operate a single node and up to three (3) proxies conformant to the specifications below.

*To ensure accurate conformity with the minimum requirements, prior to purchasing any node or proxy hardware or virtualized infrastructure services, please provide the details of planned infrastructure, connectivity, hosting location and any third party involved in node operations to Hedera's technical contacts listed herein prior to purchase.*

## Node Infrastructure

Each Member's Node must be:

- (a) a physical server located on the Member's premises or co-located at such premises as approved by the Technical Steering & Product Committee to ensure appropriate geographic and network distribution; or
- (b) a virtual/public cloud instance approved by the Technical Steering & Product Committee to ensure appropriate geographic and network distribution.
- (c) limited in deployment such that any given hosting provider services only a single node.
- (d) Operated by a single entity – no organization, including third party service provider, may operate more than a single node

## Node Set-Up Assistance

Hedera will offer Members assistance with setting up both physical and virtual/public cloud Nodes, as follows:

- (a) For physical hardware instances, upon a Member's request and consent to the related costs, Hedera will purchase, configure, set-up, test, and deliver the physical Node to the Member to the premises where the Node will be located. Members will reimburse Hedera for the costs of the hardware purchase and delivery. After delivery, the Member will be responsible installing and maintaining the Node.
- (b) For virtual/public cloud instances approved by the Technical Steering & Product Committee, upon a Member's request and consent to the related costs, Hedera will configure, set-up, and test the Member's cloud-based Node. Upon a Member's request, Hedera will also on-board a service provider to manage the cloud-based Node on behalf of the Member. The Member will reimburse Hedera for the costs of the cloud-based Node and any service provider, starting

from the date Hedera notifies the Member that the Member is now responsible for maintaining the Node.

### Minimum Hardware Requirements

- Chassis
  - Dual Power - 1600W minimum, 2000W recommended
- Network Connectivity: Single 1-Gigabit / 10-Gigabit Ethernet (physical connectivity subject to network infrastructure)
- 2 x Intel® Xeon® Silver 4116 Processor 12-core 2.10GHz 16.50MB Cache (85W) or similar (may exceed but not fall below individual core performance).
- 256 GB PC4-21300 2666MHz DDR4 ECC Registered DIMM
- 2 x 240GB SSD with RAID 1 for OS Storage
- 5TB or greater SSD NVMe usable storage
  - Single Drive recommended
  - Endurance / Mixed Use (Not Read Intensive)
- Considerations for future expansion (hardware based deployments):
  - Chassis must be Nvidia Tesla V100 PCIe certified (<https://www.nvidia.com/en-us/data-center/tesla/tesla-qualified-servers-catalog/>)
  - 1x Nvidia Tesla V100 **PCIe** 16GB GPU



Reference Configurations available in Appendices B, C, D

### Minimum Cloud Requirements

- Network Connectivity: Single 1-Gigabit / 10-Gigabit Ethernet (physical connectivity subject to network infrastructure)
- Equivalent to 24 cores of physical hardware (minimum 2 threads per core)
  - 48vCPU if single thread
  - 24vCPU if mapped to physical multi-threaded cores
- 256 GB RAM
- Storage must be solid state:
  - 240GB SSD for OS Storage
  - 5TB or greater direct attached storage / SSD NVMe or equivalent



Reference Configurations available in Appendices B, C, D

## Proxy Requirements

Access to the node via the public APIs must be mediated by an in-line proxy. Hedera shall maintain no less than 39 proxies, equally distributed among nodes on Mainnet. The number of proxies required per node will depend on the number of active nodes on Hedera’s Mainnet as shown in the table below.

Number of Nodes on Mainnet	Number of Required Proxies per Node
Fewer than 20 (<20)	3
20-38	2 (1 Hedera, 1 Member or 2 Member)
More than 38 (>38)	1

Below are the specifications for establishing a proxy.

- 2-CPU
- 2GB RAM
- 100GB storage
- 200Mb/s internet network connectivity with public static IP address
- Docker 18 or higher (Hedera to provide Docker image with HAProxy)

## Network Connectivity Requirements

- Node Connectivity
  - 1Gbps internet connectivity – sustained/unmetered
  - Node deployed in dedicated (isolated) DMZ network
  - Static IP (FQDN is not supported)
  - TCP Port 50111 open inbound and outbound from 0.0.0.0/0
  - TCP Ports 50211 and 50212 open inbound from 0.0.0.0/0
  - TCP Port 443 open outbound to 0.0.0.0/0
  - TCP Port 80 open outbound to 0.0.0.0/0
  - TCP Port 22 (SSH) open to Hedera provided SSH host addresses
- Proxy Connectivity
  - Static IP address (FQDN not supported)
  - 200Mb/s internet connectivity
  - TCP Ports 50211 and 50212 open inbound from 0.0.0.0/0
  - TCP Port 443 open inbound and outbound to 0.0.0.0/0
  - TCP Port 80 open outbound to 0.0.0.0/0
  - TCP Port 22 (SSH) open to Hedera provided SSH host addresses

## Hosting Requirements

- Industry standard hosting requirements for security and availability
  - Tier 1 Data Center Hosting facility
  - SSAE 16 /18, SOC 2 Type 2 compliant or equivalent
- Avoid duplicating of hosting and connectivity providers across Council members

## Firewall Requirements

- Software firewall on the node will do IP whitelist filtering, limiting incoming connections to connections from that node's proxies and the other mainnet nodes
- Optionally, other firewalls can be used, including software or hardware firewalls in the data center
- Port filtering will happen in the software firewall, and optionally in external firewalls.
- IP address denylisting can happen optionally in external firewalls
- IP address allowlisting of port 50111 should only be in the software firewall on the node, not other firewalls
- Proxies should block connections from prohibited countries (IP range denylist)

## Software Requirements/Installation

- An approved and currently supported 64 bit Long Term Support (LTS) Linux distribution
  - Approved distributions:
    - Ubuntu
    - Red Hat Enterprise
    - CentOS (only through 2021)
- Any Linux distribution not listed must be approved by Hedera prior to use
- Linux user, named: hgadmin (with sudo privileges)
- Hedera provided public key added to SSH authorized\_keys for user hgadmin for both node host and proxies

Note: External access from hgadmin **will not** be required for ongoing production (mainnet). This is temporary to be able to update the configuration of the nodes to support new members and features during the testing and initial production deployment phase.

Once the hardware with base O/S is deployed, please email us the following

- Static IPs of the node interface(s)
- **hgadmin** user password

Once received we can test permissions and setup the node accordingly.

## Appendix A: FAQ

### **What Security Protocols and Key Sizes are used by Hashgraph?**

The nodes use TLS 1.2 DH RSA 3k keys and SHA 384 to secure communications amongst nodes. Our goal is to satisfy CNSA suite<sup>3</sup> as specified by the US government. TLS 1.2 uses ephemeral AES 256 for perfect forward secrecy. Different keys are used for the TLS key exchange and a different one for signatures. Clients use ED25519 to sign transactions.

### **Does a Hashgraph Node support bonding or splitting ingress and egress traffic?**

Hashgraph does not support bonding. Hashgraph does not splitting of ingress and egress traffic.

### **Does the Hashgraph Node need access to our internal network?**

The Hashgraph node does not need access to any internal resources and must be separated from the rest of the corporate network. Preferably in its own DMZ.

### **Does the Hedera Hashgraph Node need to be backed up?**

Since the network of Hedera Distributed Ledger Nodes continue to process transactions while the failed Node is down, restored backups will be out of date by the time they are recovered. Redundancy comes from the other nodes and the recovered node will be resynchronized by the hashgraph software from the network. Therefore, application specific backups are not required.

It is expected that normal backup procedures are in place for the operating system level to allow for rapid and consistent recovery for disaster situations included hardware failures and similar situations.

### **What is the Swirlds & Hedera Hashgraph API? What Services does Hedera Hashgraph provide?**

Please refer to SDK for Swirlds API documentation.

Please refer to Hedera Hashgraph API documentation (to be released soon).

### **What are the Hedera Hashgraph Node SLA and Operational Requirements?**

The LLC agreement specifies that:

Uptime requirements for Member Nodes shall be in accordance with industry best practices as determined by the Council.

...while a desired initial target should be at least 99.5% scheduled availability (member controlled technical/operational maintenance windows).

External monitoring will be available from Hedera for notification of failure.

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<sup>3</sup> The Commercial National Security Algorithm (CNSA) Suite is the cryptographic algorithm policy for United States national security applications

**Appendix B: Reference Configuration – Hewlett Packard Enterprise**

- 1 each: HPE ProLiant DL380 Gen10 - rack-mountable chassis
- 2 each: Intel Xeon Silver 4116 / 2.1 GHz processor
- 16 each: HPE SmartMemory - DDR4 - 16 GB - DIMM 288-pin
- 1 each: HPE NVMe 8 Solid State Drive Express Bay enablement kit
- 1 each: HPE x16/x16 GPU Riser Kit - riser card
- 1 each: HPE 562SFP+ - network adapter
- 1 each: Q2N68A NVIDIA Tesla V100 16GB GPU computing processor (optional)
- 1 each: HPE 4-port 8 NVMe Slimline Riser Kit - riser card
- 1 each: HPE 562FLR-SFP+ - network adapter
- 1 each: HPE High Performance Fan Kit - system fan kit
- 2 each: HPE 1600 - Watt power - 1736 supply VA - hot-plug / redundant
- 1 each: HPE Integrated Lights-Out Advanced - License + 3 Years 24x7 Support -  
1 server - for ProLiant DL20 Gen9, DL325 Gen10, DL380 Gen10, DL385 Gen10,  
DL388 Gen10, MicroServer Gen10
- 1 each: HPE 8-pin Keyed - power cable kit
- 1 each: HPE Small Form Factor Easy Install Rail Kit - 2U
- 1 each: HPE High Performance Heatsink Kit
- 1 each: HPE 3YR Foundation Care NBD Service - extender service agreement - 3 yrs on-site
- 1 each: Intel Solid-State Drive DC P4608 Series - solid state drive - 6.4TB - PCI Express 3.1x8  
(NVME)



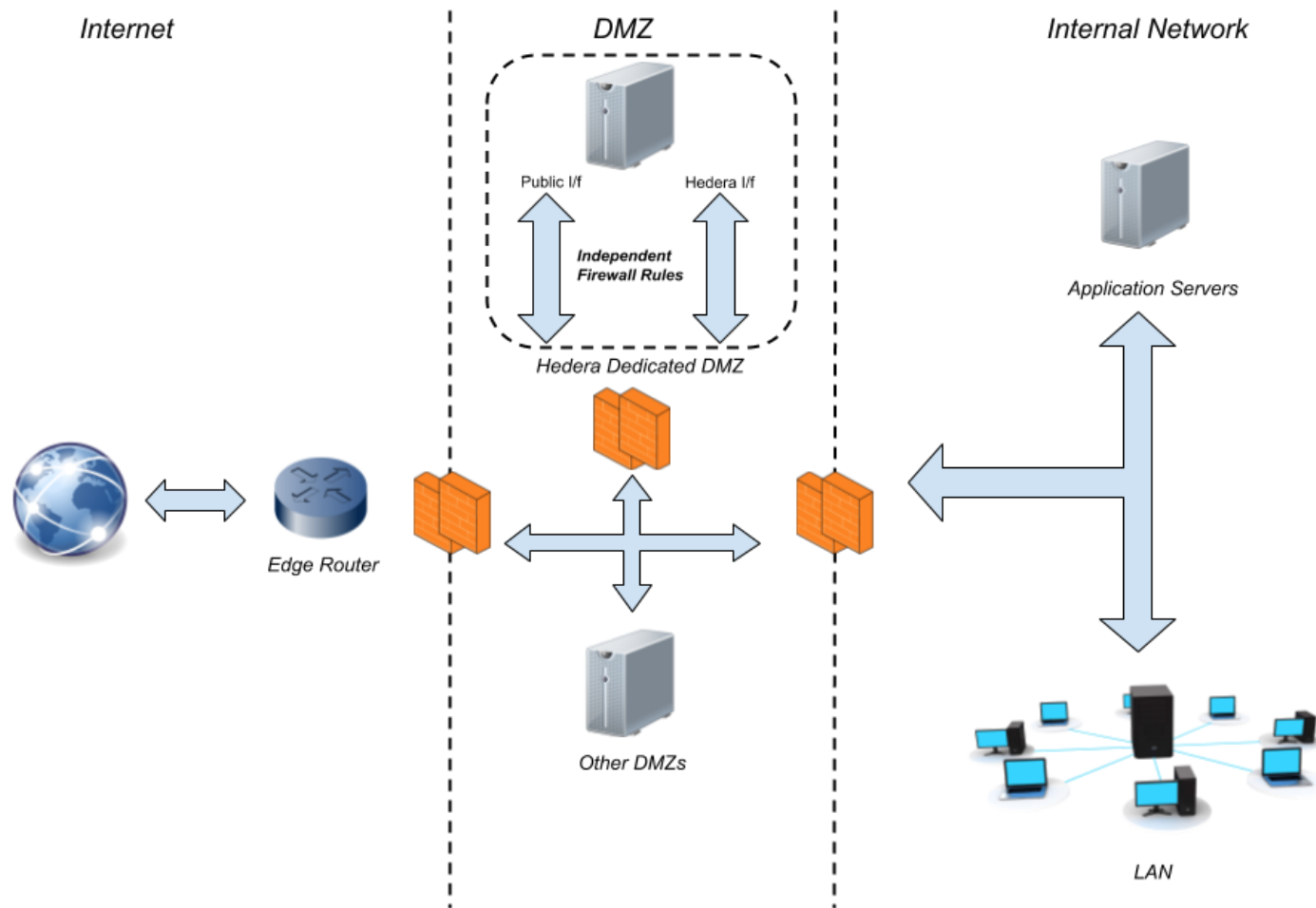
**Appendix C: Reference Configuration – Dell**

- 1 each: PowerEdge R740XD Server - rack-mountable chassis - up to 24 x 2.5 HardDrives including 24 NVME Drives, 2CPU Configuration
- 1 each: PowerEdge R740/R740XD Motherboard
- 2 each: Intel Xeon Silver 4116 2.1G, 12C/24T, 9.6GT/s , 16.5M Cache, Turbo, HT (85W) DDR4-2400 processor
- 1 each: HS Install Kit,GPU Config, EPS12V Cable
- 8 each: 32GB RDIMM 2666MT/s Dual Rank
- 1 each: HBA330 Controller Adapter, Low Profile
- 1 each: Riser Config 9, 3 x8 slots, 4 x16 slots
- 1 each: Broadcom 57416 2 Port 10Gb Base-T + 5720 2 Port 1Gb Base-T, rNDC
- 1 each: Q2N68A NVIDIA Tesla V100 16GB GPU computing processor
- 1 each: Power Saving Dell Active Power Controller
- 1 each: HPE 562FLR-SFP+ - network adapter
- 1 each: 6 Performance Fans for R740/740XD
- 1 each: Dual, Hot-plug, Redundant Power Supply (1+1), 1600W 1
- each: ReadyRails Sliding Rails With Cable Management Arm 1
- each: Basic Deployment Dell Server R Series 1U/2U
- 1 each: Power Cord
- 1 each: ProSupport Mission Critical: 4-Hour 7x24 On-Site Service with Emergency Dispatch, 3 Year
- 1 each: ProSupport Mission Critical: 7x24 HW / SW Technical Support and Assistance, 3 Years 1
- each: Dell 6.4TB, NVMe, Mixed Use Express Flash, 2.5 SFF Drive, U.2, PM1725a with Carrier
- 1 each: NVIDIA Tesla V100 16G Passive GPU (optional)

**Appendix D: Reference Configuration – Thinkmate**

- 1 each: GPX XT4-21S1-4GPU  
Intel C621 Chipset - 1U GPU Server - 2x SATA - LGA3647 Socket
- 2 each: Intel Xeon Silver 4116 Processor 12-core 2.10GHz 16.50MB Cache (85W)
- 12 each: 32GB PC4-21300 2666MHz DDR4 ECC Registered DIMM
- 1 each: NVIDIA Tesla V100 GPU Computing Accelerator - 16GB HBM2 - PCIe 3.0 x16 -  
Passive Cooling (optional)
- 1 each: Intel SSD DC P4500 Series 8.0TB PCIe 3.1 x4 NVMe Solid State add-on card
- 1 each: Supermicro Update Manager
- 2 each: 240GB Intel SSD D3-S4510 Series 2.5" SATA 6.0Gb/s Solid State Drive
- 1 each: Dual 10-Gigabit Ethernet
- 1 each: 2000W Redundant Power Supply
- 1 each: 3 Year Advanced Parts Replacement Warranty

Appendix E: Notional Network Topology



## Appendix F: Hosting/Cloud Providers In Use

The public hosting providers listed below are currently in use or in the process of being deployed to Hedera's Mainnet. Those in bold are permanent nodes and are unavailable for additional deployments by other council members. Providers in italics are backup or transitional nodes on Mainnet and may be converted to permanent nodes by Council Members. Please contact Hedera for additional details regarding hosting providers listed below.

### **Amazon Web Services (AWS)**

*Atlantic.net*

Centrilogic

Cogent

Equinix

eukHost

FDC Servers

Google Cloud (GCP)

HiVelocity

IBM Cloud

*INAP*

*InMotion*

*Linode*

*Massive Grid*

### **Microsoft Azure**

OVH

*Oracle*

*Quadranet*

Sungard

*TerraSwitch*

*WebNX*

## Appendix I: Node Deployment Sequence

The following are general steps to stand up a Hedera Mainnet node

- Initial contact with Council Member/Node Hosting entity
  - Identification of key individuals/project managers
  - Establishment of regular deployment team meeting cadence
- Conveyance of technical requirements (this document) and discussion of deployment options
- Node platform acquisition
  - Hardware or virtual instance
  - Network connectivity
  - Hosting facility
- Configuration of operating system on platform
  - Provisioning of accounts as specified
  - Provisioning of network access (firewall rules/access control lists)
- Conveyance of credentials to Hedera
  - Includes any special instructions for permissioned access such as VPNs
  - Discussion of support and escalation paths between organizations
- Hedera undertakes configuration review
  - Platform
  - Connectivity
- Deployment of Hedera Node software and required support libraries
- Add connection configuration for a Hedera Performance Testnet
  - Hedera will execute functional, stability and performance tests for all services (crypto, smart contract, filesystem).
- Review of test results and determination of preparedness for Mainnet connectivity
  - Review documentation for key management as it relates to council member accounts including fee account, proxy staking account, etc.
  - Update private keys using provided tools
- Scheduling for Mainnet connection
- Mainnet live

## HEDERA COMMITTEE POLICY

Approved July 21, 2023

*Note: Capitalized terms not defined herein shall have the meanings given to them in the Limited Liability Company Agreement of Hedera Hashgraph, LLC (the "Hedera LLC Agreement"), as may be amended from time to time.*

### Governing Documents

- Any inconsistency or conflict in the documents that govern Committees shall be resolved by giving precedence in the following order:
  1. Hedera LLC Agreement
  2. Committee Charter
  3. Hedera Committee Policy (the "Policy")
  4. Robert's Rules of Order Newly Revised (RONR)

### Maintenance of the Policy

- The Policy will be maintained by the Council's Secretary.
- The Secretary has the authority, in his/her reasonable discretion, to make procedural and administrative changes to this Policy.
- Any and all substantive changes that may affect the rights of the Members or the purpose, duties, or organization of any Committee must be approved by the majority of the Council Members.

### Purpose of Committees

- Committees advise the Council; they do not have the authority to act on behalf of the Council, unless a majority of the Council Members explicitly grant them such authority in the Committee's charter or otherwise.
- Committees are a means for Council Members to contribute their expertise and make recommendations to the Council on decisions relating to the Hedera Network.

### Committee Creation

- As of the date of this Policy, the Council has 6 active Committees:
  - Treasury Management & Coin Economics Committee (CoinCom)
  - Corporate Utilization Committee (CorpCom)
  - Marketing Committee (MarCom)
  - Membership Committee (MemCom)
  - Regulatory & Policy Committee (RegCom)
  - Technology Steering & Product Committee (TechCom)
- Additional Committees can be created by a majority of the Council Members by approving a Committee charter and electing one or more Committee chair(s).
- Committee charters must be approved by a majority of the Council Members and shall include, but not be limited to, the following information:
  - Purpose statement

- o Description of Committee composition
- o Description of operating procedures
- o A list of responsibilities, and if applicable, delegated authority
- o A roster of active and inactive Members, maintained by the Secretary
- Committee charters may be amended by a majority of Council Members; provided, that, at the direction of a Committee's chair(s), the Secretary may make editorial or administrative amendments to a charter. For the avoidance of doubt, any and all substantive changes that may affect the rights of the Members or the purpose, composition, responsibilities, or delegated authority of any Committee must be approved by the majority of the Council Members. The Secretary may also update Committee charters from time to time to incorporate any responsibilities or authority that had been explicitly delegated to such Committee by the Council or Board, or to maintain the Committee charters consistently with any revisions to the Committee Policy.

### Committee Composition

The following participation rules shall be in effect for all Committees unless further limited by a specific Committee charter. For the avoidance of doubt, no Committee charter may expand the participation rules beyond the following.

- Committee members will be entities, not individual persons.
- Each Council Member that joins a Committee will designate one (1) natural person who is an employee, officer, contractor or director of such Member to be the Member's designated representative to the Committee (a "Delegate").
- Each Council Member that joins a Committee may designate any other one (1) natural person who is an employee, officer, contractor or director of such Member to be the Member's alternate designated representative to the Committee (an "Alternate Delegate" or "Alternate"), who may vote on behalf of the Member and exercise the same rights and duties as the Delegate in the absences of the Delegate. For the avoidance of doubt, Alternates are welcome to attend and participate in all Committee meetings alongside their Delegate.
- Any natural person who is unaffiliated with a Council Member may be invited to join any Committee as a non-voting participant ("Invited Expert") at any time by the Committee chair(s). Invited Experts shall not be admitted access to any activity of a Committee until they have a fully executed legal agreement ("Participation Agreement") that binds them, and/or their employer as may be required by the Secretary, to the same set of relevant obligations the Members are bound to. For the avoidance of doubt, these obligations shall include, but not necessarily limited to compliance to the same confidential information policy, anti-trust policy, and market integrity policy that govern the conduct of the Members.

### Committee Leadership

- Each Committee must have one but may have up to two Chairs who will be Delegate(s) elected by the Council Members. If a Committee has only one Chair then that Chair is required to appoint a Vice Chair from that Committee's Delegates to fulfill the duties of the Chair in the absence of the Chair.
- Any Delegate who has maintained active status in a pre-existing Committee for a minimum of 90 days, may seek to become a Chair. Any Delegate may seek to become a Chair of a new, or newly re-chartered Committee. For each Chair vacancy, the Delegate(s) receiving the most votes

from the Council Members shall become the Chair; provided, however, that to be elected as a Chair, a Delegate must receive the votes of at least one-third of the Council Members.

- If no nominated Delegate receives the votes of at least one-third of the Council Members, the Council Chair shall eliminate the nominee who received the lowest number of votes, and the Council Members shall vote again. This process may repeat as many times as necessary until one or both Chair vacancies are filled by nominees who receive at least one-third of the Council Member votes. If no nominee receives at least one-third of Council Member votes, the position shall remain vacant and the Council Chair shall fulfill the duties of the Committee Chair until a Delegate receives the votes of at least one-third of the Council Members. For the avoidance of doubt, a Committee may operate with one Chair in the case that no additional delegates are nominated or receive one third of Council Member votes.
- Each Chair will be elected to serve a term of no longer than two (2) years, to be specified by the Council Chair at the time of the election. Chairs may be re-elected to serve multiple terms. For the avoidance of doubt, Chairs may resign at any time by providing the Council Chair with written notice.
- Should a Chair seat be vacated before the end of the term, the Council may, at their discretion, choose to elect a new Delegate to complete the term. If a vacancy results in a Committee having no active Chair, the Council Chair shall fulfill the duties of the Committee Chair until the Council elects a new Delegate as Chair.
- The Committee Chair(s) shall be responsible for setting the agenda for, and presiding over the deliberations of, their Committee meetings.
- Chairs shall have the responsibility and authority normally associated with the role of chair of a deliberative body. For the avoidance of doubt, see Robert's Rules of Order Newly Revised (RONR) for details.

#### Committee Operations

- *Active Committee:* Only Active Committees may convene meetings or make decisions via electronic ballot. Committees will be considered Active if (1) there are at least three Council members with active status on the Committee, (2) the Committee has a Council-approved Committee Charter in effect, and (3) the Committee has a Chair present to preside over its activities.
- *Committee Meetings.* Committees are expected to meet at least once between Council meetings ("Committee Meetings"). The Chair(s) shall provide at least thirty (30) days' notice to each Delegate for Committee Meetings conducted in person, or at least seven (7) days' notice for Committee Meetings conducted telephonically. For the avoidance of doubt, any notice of a recurring meeting schedule shall suffice as notice for all meetings in that recurring schedule.
- *Meeting agendas.* Chairs, regardless of how they provided the original notice of the Committee Meeting, must distribute an agenda to all Committee Delegates describing the business to be transacted at the meeting no later than 48 hours before the meeting.
- *Teleconference/videoconference.* Committees can meet telephonically by means of conference telephone or videoconference.
- *Email notice.* Notice of Committee Meetings and /or Committee Meeting Agendas is to be given by email and sent to the email addresses of Delegates provided in the Committee rosters. Notice will be deemed to have been given at the time of the sending of the email.



- *Waiver of notice.* No notice of a Committee meeting, or agenda for such meeting, need be given to any Delegate who sends a written waiver thereof (whether before, during, or after the meeting) or who attends the meeting without protesting his or her lack of notice prior to or at the commencement of the meeting. For the avoidance of doubt, if a quorum of Delegates attends a meeting and waives notice requirements for that meeting, then that meeting will be eligible to conduct business even if a minority of Delegates do not waive the notice requirements.
- *Administrator.* The Council Secretary shall appoint an administrator for each Committee. The Committee administrator is responsible for taking and distributing Committee meeting notes (including tracking committee decisions and action items), maintaining the Committee rosters, and other Committee administrative matters.
- *Committee reports.* Committee chairs will provide a report, in relation to the affairs of their Committee, including any significant actions, determinations, and recommendations made by the Committee, at each Council meeting or as otherwise requested by the Council Chair.
- *Third-party firms.* Subject to Board approval, Committees may engage independent firms and other experts or consultants as the Committee determines advisable or necessary to carry out its responsibilities.
- *Conflict escalation.* If there is a conflict between a Committee's Elected Co-Chairs, such matter will be escalated to the Chair of the Council.

Acts by a Committee

- Elected Chairs shall strive to ensure all Committee decisions are made by consensus, only calling a vote to resolve a sustained objection after reasonable efforts are made to find a consensus.
- For any vote by a Committee, each Committee member will have one vote, exercised by its respective Delegate (or Alternate Delegate).
- At all meetings of a Committee, the number of Delegates or Alternate Delegates representing a majority of the Committee members (excluding any Committee members who have Inactive Status) shall constitute a quorum for the transaction of business.
- Except as otherwise specifically provided in a Committee charter, the act of a majority of the Delegates (or Alternate Delegates) present at any Committee meeting, in which a quorum is present, shall constitute the act of the Committee.
- A Committee member will be deemed to have an "Inactive Status" if such Committee member has not had a Delegate or Alternate Delegate attend the Committee's two most recent Committee Meetings.
- Any Committee member who has an Inactive Status will retain its active status upon its Delegate's (or Alternate Delegate's) attendance at a Committee Meeting.
- A Committee may also act by a majority approval of an electronic ballot sent to all Committee members, excluding any Committee members who have Inactive Status.

**INDEX OF HEDERA POLICIES**

1.	Anti-Corruption Policy
2.	Antitrust Policy
3.	Conflict of Interest Policy for Professional Service Firms
4.	Committee Policy
5.	Economic Sanctions & Financial Crimes Policy
6.	Hedera Council Transaction Signature Policy
7.	Market Integrity Policy
8.	Node Policy
9.	Related Party Transaction Policy