

OpenPOWER Foundation
ANTITRUST COMPLIANCE GUIDELINES

The OpenPOWER Foundation (the “Corporation”) intends to conduct its affairs in compliance with the antitrust laws of the United States and, as applicable, the antitrust laws of the states within the United States and the antitrust/competition laws of other countries (collectively, the “Antitrust Laws”). The Antitrust Laws are intended to preserve and promote free, fair, and open competition. This competition benefits consumers and companies that are innovative and efficient. A violation of the Antitrust Laws can have serious consequences for the Corporation and for participating companies. Accordingly, the Corporation has adopted these Antitrust Guidelines (“Guidelines”) for itself, its members, directors, officers, employees, and agents, and for all attendees, licensees, customers, and other participants (collectively, “Participants”), as guidance in connection with participation in the Corporation’s activities.

At all meetings of the Board of Directors, or of any committee, subcommittee, or work group (each, a “Committee”) of the Board of Directors, a statement substantially similar to the following will be read or provided in writing to the meeting participants at the beginning of the meeting:

This is a reminder that all OpenPOWER Foundation activities are subject to strict compliance with the OpenPOWER Foundation's Antitrust Guidelines. Each individual participant and attendee at this meeting is responsible for knowing the contents of the Antitrust Guidelines, and for complying with the Antitrust Guidelines. Copies of the Antitrust Guidelines are available at: [insert link]

1. The Corporation and its Committees or activities shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors regarding their prices, terms or conditions of sale, distribution, volume of production, product development or introduction plans, territories, customers, credit terms, or other terms that might be competitively-sensitive.

2. In connection with participation in the Corporation, there shall be no discussion, communication, agreement, sharing of information or other disclosure among Participants that are actual or potential competitors, regarding their current or projected prices or any elements of prices, including price differentials, discounts, allowances, pricing methods, profits, profit margins, cost data, or terms or conditions of sale or licensing of products or services, production plans, capacities, market shares, sales territories, geographic or product markets, allocation of territories or customers, information on the timing, cost, or volume of research and development projects, production or sales, or information on bids, intentions to bid, procedures for responding to bid invitations, or specific contractual arrangements.

3. Each Participant is obligated and expected to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete.

4. The Corporation and the Participants, in connection with their participation in the Corporation, shall not enter into any agreement or understanding among themselves to refrain, or to encourage others to refrain, from purchasing any raw materials, product, equipment, services, or other supplies from any supplier or vendor, or from dealing with any supplier or vendor.

5. The Corporation and the Participants, in connection with their participation in the Corporation, shall not attempt to prevent any person from gaining access to any market or customer for goods and services, or attempt to prevent any person from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market; provided however, that this guideline shall not preclude the Corporation or any Participant from asserting its intellectual property rights.

6. The qualifications for participation in the Corporation are as established by the Certificate of Incorporation and Bylaws of the Corporation, and to the extent not inconsistent with the Certificate of Incorporation and Bylaws, by the Board of Directors. No Participant shall be excluded from a Committee for an anticompetitive reason.

7. To the extent that the Corporation develops, administers or approves guidelines, standards, specifications, test procedures, or certification programs, a Participant's decision to adhere to or participate therein shall be voluntary on the part of the Participant, and shall in no way be compelled or coerced by the Corporation; provided however that this guideline shall not prevent the Corporation from adopting testing and certification programs, as well as logo and trademark usage requirements tied to adherence with the Corporation's guidelines, standards, specifications, test procedures, or certifications programs.

8. Any guideline, specification, standard, test procedure, or certification program, which may be developed, administered, approved, or adopted by the Corporation, shall be based upon appropriate technical, business, and consumer considerations, including input from all effected parties who wish to provide input, and shall not be based upon any effort or purpose to unreasonably reduce or eliminate competition in the sale, supply, and furnishing of products and services.

9. The Corporation may condition use of its trademarks, logos, and other intellectual property, on compliance with terms and conditions developed to regulate the use of and to protect such intellectual property, and otherwise to maintain and enforce a compliance certification program in accordance with agreed terms and conditions and in conformity with the Antitrust Laws. Such terms and conditions may include a requirement of adherence with the Corporation's guidelines, standards, specifications, test procedures, or certifications programs. The Corporation also reserves the right to take appropriate action against any individual or entity which engages in false or misleading advertising regarding the use of or compliance with the Corporation's guidelines, standards, specifications, test procedures, or certification program.

10. In conducting any meeting of the Board of Directors or any Committee, the chairperson or secretary at the meeting shall prepare and follow a formal agenda, which shall be provided in advance of any meeting to all relevant Participants. Minutes of all such meetings shall be maintained, and shall accurately reflect the subjects discussed and any actions taken.

11. During the course of the activities of the Corporation, or at any event sponsored or co-sponsored by the Corporation, Participants should refrain from disclosing to any other Participant any information that is not reasonably related to the legitimate purposes of the Corporation.

12. The Corporation and each Participant, in connection with the activities of the Corporation, shall use their best efforts to comply with the Antitrust Laws.

13. The Corporation may appoint and maintain an Antitrust Counsel to provide legal advice to the Corporation, and to take reasonable steps to actively supervise the Corporation's compliance with the Antitrust Laws, including where appropriate attendance at meetings of the Board of Directors or of a Committee. The Antitrust Counsel shall be: (i) a lawyer who is admitted to practice law in the District of Columbia or in one or more States of the United States, and who is not employed by and does not represent any Participant in matters related to the Corporation; or (ii) a law firm that employs a lawyer who is admitted to practice law in the District of Columbia or in one or more States of the United States, and that does not represent any Participant in matters related to the Corporation.

14. The Antitrust Counsel may provide annual training to the Board of Directors and to any employees and agents of the Corporation concerning an overview of the Antitrust Laws as they apply to the Corporation's activities, behavior, and conduct.

15. The Antitrust Counsel may review and pre-approve: (i) the agenda of any meeting of the Board of Directors; (ii) the final version of any press release or other document that the Corporation intends to distribute to the public; and (iii) where appropriate, any agreement that will legally bind the Corporation.

16. Before any event sponsored or co-sponsored by the Corporation, the Antitrust Counsel may prepare a statement that provides context-appropriate guidance on compliance with the Antitrust Laws. At the event, the Corporation may make the statement in a manner pre-approved by the Antitrust Counsel.

17. Any Participant is encouraged to report to the Antitrust Counsel or to the Board of Directors any actual or potential violation of these Guidelines or the Antitrust Laws by any Participant, without fear of retaliation of any kind.

18. The Corporation reserves the right to take any and all reasonable and appropriate disciplinary actions against any Participant who fails to comply with these Guidelines or the Antitrust Laws in connection with their participation in the Corporation.

19. These Guidelines shall be promulgated to all Participants and all Participants shall abide by these Guidelines.

These Antitrust Compliance Guidelines were adopted by the Board of the Directors of OpenPOWER Foundation on _____, 2015.

_____, Secretary