

BYLAWS OF  
**OPENPOWER FOUNDATION**

ARTICLE I

NAME, PURPOSE AND OFFICES

Section 1.1     Name

The name of the corporation is the “OpenPOWER Foundation” and the corporation is referred to in these Bylaws as “OpenPOWER.”

Section 1.2     Principal Office

The principal office of OpenPOWER will be located at 445 Hoes Lane, Piscataway, NJ 08854.

Section 1.3     Change of Address

The location of OpenPOWER’s principal office may be changed from time to time by the Board of Directors for OpenPOWER (the “Board”), which change of address shall be effective upon written notice to all Members. The Board of Directors of OpenPOWER (the “Board”) is hereby granted full power and authority to change its principal office from one location to another.

Section 1.4     Other Offices

OpenPOWER may also have offices at such other places as its business and activities may require, and as the Board may, from time to time, designate.

Section 1.5     Purpose

The primary purpose of OpenPOWER is to create an open “system on a chip” ecosystem, using the Power Architecture to share expertise, investment, and validated and compliant server-class intellectual property to serve the new consumption needs of customers that require scale-out capabilities.

Members are expected to advance and contribute to the adoption of a competitive, architecturally compliant and open Power-based ecosystem. In furtherance of these efforts, OpenPOWER shall seek to solicit the participation of all interested parties on a fair, equitable and open basis.

In support of such purpose, OpenPOWER may engage in some or all of the following activities: (a) create an ecosystem for creation of an OpenPOWER Platform, and maintain architectural control of the OpenPOWER Platform to ensure software compatibility drive the development of, disseminate, support

and maintain the Platform, (b) host collaborative platform development work groups, and offer open hardware reference designs and specifications, open source software for system design, and a stable architecture for software and hardware development; (c) establish a new open source community and work with existing open source communities, using OSI-approved licenses and standard open source development methodology, to get support for OpenPOWER in those communities; (d) support a fee-based model for custom chip, software and system design validated to be consistent with the OpenPOWER Architecture and interface specifications; (e) create and own distinctive trademarks, service marks and/or certification marks, (f) administer or subcontract a branding program, (g) create various printed and/or electronic materials for distribution to members and non-members, (h) maintain its own website, (i) coordinate the promotion of the OpenPOWER ecosystem among members and non-members, as well as create basic marketing promotional collateral (e.g., both web pages as well as tangible materials), and (j) undertake those other activities as the Board may from time to time approve consistent with and in furtherance of the Purpose.

Section 1.6      Intellectual Property Rights Policy

The Intellectual Property Rights Policy of OpenPOWER is adopted and is attached hereto as Exhibit 1. The Intellectual Property rights policy may be amended in accordance with the terms of these Bylaws.

Section 1.7      Duration

The duration of OpenPOWER shall be perpetual, but may be dissolved at any time upon a unanimous vote of the Board.

Section 1.8      Nonprofit Status

(a) OpenPOWER is organized and shall be operated as a non-stock, not for profit membership corporation organized under the General Corporation Law of the State of Delaware.

(b) The Board may, in its sole discretion, elect to seek exemption from Federal taxation for OpenPOWER pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Code"). In the event that such exemption is sought and until such time, if ever, as such exemption is denied or lost, OpenPOWER shall not knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

ARTICLE II

## MEMBERS

### Section 2.1     Classes of Membership

OpenPOWER shall initially have four classes of membership: Platinum Members, Gold Members, Silver Members, and Associate and Academic Members. Additional classes of voting and non-voting members may be created in the future, and the rights of existing classes of members may be amended, in each case pursuant to Section 2.9 of these Bylaws. Platinum Members, Gold Members and any future classes of members that are entitled to voting rights shall be collectively referred to as "Voting Members." All Voting and non-voting memberships in OpenPOWER are collectively referred to in these Bylaws as "Memberships", and a person or entity holding Membership is referred to in these Bylaws as a "Member".

### Section 2.2     Conditions of Membership

Any association, partnership, organization, governmental agency, company, corporation, academic entity, or non-profit entity (with exception of Associate and Academic Members which shall exclude for-profit corporations and which shall include individuals) shall be admitted to Membership upon: (a) acceptance of its written application on such form as may be from time to time required by OpenPOWER (which acceptance shall be administered in a non-discriminatory fashion), (b) satisfaction of such other conditions, including without limitation requirements for in-kind contributions (e.g. assignment of dedicated developers and maintainers to projects), as may from time to time be established by the Board for such class of Membership, if any, and (c) unless otherwise provided by the Board, payment of such application fees, assessments, initiation fees, annual dues or other fees for such class of Membership as may from time to time be established by the Board, if any (collectively, "Fees"). A Member shall remain in good standing as a Member provided such Member is in compliance with the terms and conditions of OpenPOWER's Bylaws, Membership Application, Intellectual Rights Policy and such rules and policies (and the terms of any agreements required thereby) as the Board and/or any committees thereof (each a "Board Committee") may from time to time adopt, and is current in its fulfillment of all in-kind commitments and payment of all Fees and penalties for late payment as may be required or determined by the Board (such Fees and penalties are collectively referred to in the Bylaws as "Financial Obligations", and all of the foregoing good standing requirements are collectively referred to in these Bylaws as "Membership Obligations").

At any time, any Member or Membership applicant may nominate itself to be a Platinum Member, pursuant to a process to be established by the Board and/or Board Committee. The nominee must execute the Member Agreement and submit it to the Secretary. The Board of Directors shall consider the application of the Platinum nominee at its next meeting. If the Board of Directors approves the admission with a simple majority vote, the entity shall become a Platinum Member as provided in Section 2.3. Approval of Platinum memberships will not be unreasonably withheld.

### Section 2.3     Privileges of Platinum Membership

The term of Platinum membership will be two years. The maximum number of Platinum memberships shall be twelve (12). Once the maximum number of Platinum memberships has been reached, the Platinum class of membership will no longer accept new applicants. As openings become available,

public notice shall be given and Platinum applications will be accepted for sixty (60) days; this period may be extended, if required. Each Platinum Member, while in good standing, shall be entitled to:

- (a) subject to the limitations of Section 4.3(a) of these Bylaws, appoint one representative to serve as a member of the Board (a “Director”), in accordance with such Section;
- (b) if such Platinum Member has a Director representative, nominate such Director to run for election as an officer of OpenPOWER (each an “Officer”);
- (c) highest priority access to any technical assistance and/or certification services that may from time to time be offered by OpenPOWER;
- (d) prominent listing in all appropriate OpenPOWER marketing materials;
- (e) appoint one representative on the Technical Steering Committee if and only if such Platinum Member is otherwise un-represented on the Technical Steering Committee. This right may be eliminated by Super Majority Vote of the Board when the Board believes it is no longer necessary; and
- (f) in addition to the rights enumerated in this Section 2.3, to all other rights enumerated or referred to in Section 2.4(b) – (c) and 2.5(b) – (d) below, and such other rights as may be amended or created by the Board pursuant to its authority under Section 2.9 and Article XIV below or under the General Corporation Law of Delaware.

#### Section 2.4 Privileges of Gold Membership

Each Gold Member, while in good standing, shall be entitled to:

- (a) nominate a representative to run for election as a Director and participate in the election of Directors in accordance with Section 4.3(b) of these Bylaws;
- (b) vote on each matter submitted to a vote of the Voting Members;
- (c) appoint one voting representative, on a one vote per Member basis, to each Member Committee thereof that OpenPOWER may establish; and
- (d) in addition to the rights enumerated in this Section 2.4, to all other rights enumerated or referred to in Section 2.5(b) – (d) below, and such other rights as may be amended or created by the Board pursuant to its authority under Section 2.9 and Article XIV below or under the General Corporation Law of Delaware.

#### Section 2.5 Privileges of Silver Membership

Each Silver Member, while in good standing, shall be entitled to:

- (a) nominate a representative to run for election as a Director and participate in the election of Directors in accordance with Section 4.3(c) of these Bylaws;

- (b) listing as a Member at OpenPOWER's Web site and in other appropriate promotional materials;
- (c) display OpenPOWER logo on such Member's Web site and in other appropriate materials to indicate membership in OpenPOWER, subject to such guidelines relating to OpenPOWER's trademarks as may from time to time be in force; and
- (d) such other benefits, rights and privileges applicable to such Member's Membership class as the Board may designate from time to time by vote pursuant to Section 2.9 and Article XIV below or under the General Corporation Law of Delaware.

Section 2.6      Privileges of Associate and Academic Membership

Each Associate and Academic Member, while in good standing, shall be entitled to:

- (a) run for election as a Director and participate in the election of Directors in accordance with Section 4.3(d) of these Bylaws;
- (b) participate in development activities of OpenPOWER as determined by the Technical Steering Committee; and
- (c) such other benefits, rights, and privileges as the Board may designate or the Voting Members may from time to time institute by vote pursuant to Section 2.9 and Article XIV below or under the General Corporation Law of Delaware.

Section 2.7      Participation

Participation by Members or non-Members in development projects, Work Groups (as defined in the Intellectual Property Rights Policy), and Member Groups (as defined in Section 5.5(a) below) sponsored by OpenPOWER will be subject to the Intellectual Property Rights Policy, such operating procedures and terms of participation, and other rules as may from time to time be approved by the Board. No Member will be obligated to contribute its intellectual property as a condition of joining OpenPOWER. No Member will be obligated to participate in an OpenPOWER Work Group or to provide feedback to an OpenPOWER Work Group.

Section 2.8      Subsidiaries, Etc.

- (a) Only the legal entity that has been accepted as a Member of OpenPOWER and its Affiliates (as defined below) shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member and its Affiliates shall be treated together as a single Member. For purposes of this Section, the term "Affiliate" shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

(b) A Member and its Affiliates shall be entitled to have only one representative on the Board at one time.

(c) No Affiliate of a Platinum, Gold or Silver Member may apply for Membership as a Platinum, Gold or Silver Member for so long as the existing Platinum, Gold or Silver Member retains its Membership.

(d) If a Member is itself a foundation, consortium, membership organization, user group or other entity that has members or sponsors, then the rights and privileges granted to such Member shall extend only to the employee-representatives of such Member, and not to its members or sponsors, unless otherwise approved by the Board in a specific case from time to time.

(e) Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its Membership for the then current year to a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that the transferee agrees to be bound by these Bylaws, the Certificate of Incorporation and such policies and procedures as the Board may from time to time adopt, including, but not limited to the Intellectual Property Rights Policy.

#### Section 2.9 Additional Classes of Members

The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one or more additional classes of Membership may be created, and the conditions, voting rights (if any), powers and privileges of each such class may be prescribed, by amendment to these Bylaws in accordance with Article XIV.

#### Section 2.10 Termination or Suspension of Membership

Any Member may be suspended from Membership or have its Membership terminated by the Board for failure to satisfy its Membership Obligations or for engaging in any conduct, either within or without OpenPOWER, that is contrary to the Purposes of OpenPOWER. Financial Obligations already paid shall not be refundable upon any such termination or suspension, and all Financial Obligations of such Member which may be accrued and unpaid as of the date of such termination shall remain due and payable. Terminations or suspensions of Membership for failure to satisfy Financial Obligations within 60 days of invoice may be imposed with notice and without right of formal appeal under such procedures as the Board may from time to time approve. Except as provided in the last paragraph of this Section 2.10, no termination or suspension of Membership for any other purpose shall be effective unless:

(a) The Member is given notice of the proposed termination or suspension of Membership and of the reasons therefor;

(b) Such notice is delivered personally or by certified mail, return receipt requested, or by a national or international overnight courier service, sent to the last address of the Member shown on OpenPOWER's records;

(c) Such notice is given at least thirty days prior to the effective date of the proposed termination or suspension of Membership; and

(d) Such notice sets forth a procedure determined by the Board (or other body authorized by the Board) to decide whether or not the proposed termination or suspension shall take place, whereby the Member is given the opportunity to be heard by such body, either orally (and represented by counsel if the Member so desires, at its sole cost and expense) or in writing, not less than five days before the effective date of the proposed termination or suspension.

Notwithstanding the foregoing, in the event that the Board believes in good faith that a Member is engaging in willful misconduct or otherwise acting to the material detriment of the best interests of OpenPOWER and its Members, the Board, acting by Super Majority Vote, may suspend such Member's Membership immediately, provided that such Member is otherwise afforded the protections provided for in subsections (a), (b) and (d) of this Section 2.10.

#### Section 2.11 Resignation by Member

A Member may resign as a Member at any time by providing 30 days' prior written notice to the Board. Any Financial Obligations already paid by such Member shall not be refundable in such event, and all such Financial Obligations of such Member which may be accrued and unpaid as of such date shall remain due and payable. If a Platinum Member does not give written notice of renewal or resigns as a Member, or is terminated, OpenPOWER shall promptly give notice of such event to all Members.

#### Section 2.12 Intellectual Property Obligations Upon Member Termination, Suspension, or Resignation

The Intellectual Property Rights Policy will set forth a Member's obligations upon termination, suspension or resignation from OpenPOWER.

#### Section 2.13 Levy of Dues, Assessments or Fees

OpenPOWER may levy dues, assessments or fees upon its Members in such amounts as may be approved from time to time by the Board, but a Member upon learning of any increase in dues, or of any levy of any assessments or fees, may avoid liability therefor by resigning from Membership prior to the date such dues, assessments or fees are due and payable, except where the Member is, by contract with OpenPOWER or otherwise, independently and explicitly liable for such dues, assessments or fees. No provision of the Bylaws of OpenPOWER authorizing such dues, assessments or fees shall, of itself, create such liability. In no event shall the failure of a Member to pay any dues or assessments give rise to any claim in favor of OpenPOWER for indirect or consequential damages.

#### Section 2.14 Use of Names

Unless otherwise provided herein, neither OpenPOWER nor any Member shall use the name, logo, trademark, service mark or other distinctive mark of the another Member in any form of publicity without the written permission of the other member, provided that OpenPOWER and any Member may each disclose and publicize such Member's Membership in OpenPOWER.

## ARTICLE III

### ACTIONS OF MEMBERS

#### Section 3.1      Action Without Meeting

Any action required or permitted to be taken by the Members, or any class of Members under the General Corporation Law of Delaware, or at any meeting of a Member Committee, Working Group thereof or other group of Members or subset of Members, may be taken without prior notice and without an in-person vote, if a consent in writing, setting forth the action to be taken, shall be signed by Members (or all members of a class of Members, as the case may be), making up not less than that percentage of all Members as would be necessary to authorize or take such action at a meeting at which all Members (or class of Members, as the case may be) entitled to vote thereon were present and voted, in accordance with Section 2.15(c) of the General Corporation Law of Delaware. Pursuant to such written consent, the Voting Members shall elect a Board in accordance with Section 4.3 on an annual basis. Prompt notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those otherwise entitled to vote thereon who have not consented in writing. An electronic transmission consenting to an action to be taken and transmitted by a Member or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section, provided that any such electronic transmission sets forth or is delivered with information from which OpenPOWER can determine (a) that the electronic transmission was transmitted by the Member or by a person or persons authorized to act for the Member and (b) the date on which such Member or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Consents given by electronic transmission (i) may be delivered by electronic transmission to the principal place of business of OpenPOWER or to an Officer or agent of OpenPOWER having custody of the book in which actions of Members without a meeting are recorded, need not be reproduced in paper form, and may be maintained in electronic form as long as they are capable of being readily reproduced in paper form, and (ii) may be otherwise delivered to the principal place of business of OpenPOWER or to an Officer or agent of OpenPOWER having custody of the book in which actions of Members without a meeting are recorded if, to the extent and in the manner provided by resolution of the Board.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

#### Section 3.2      Nomination and Election Procedures

Subject to the provisions of Section 4.3, the Board shall establish reasonable nomination and election procedures given the nature, size, and operations of OpenPOWER, including a reasonable means for Members of appropriate classes to nominate a person for election as a Director, a reasonable opportunity for a nominee to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy (if requested by such nominee), a reasonable opportunity for all nominees to solicit votes (if requested by any such nominee), and a reasonable opportunity for all Members entitled to vote thereon to choose among the nominees.



## ARTICLE IV

### DIRECTORS

#### Section 4.1      Powers: Voting

The business and affairs of OpenPOWER shall be managed by its Board. The Board may exercise all powers of OpenPOWER and do all such lawful acts and things as are not by statute or by these Bylaws directed or required to be exercised or done by the Members.

#### Section 4.2      Number of Directors

The Board initially shall not exceed seven (7) members. The members of the initial Board will serve for a three (3) year term. Additional Board seats may be established upon approval of the Board and shall be filled in accordance with the procedures set forth in these Bylaws. Subject to Section 4.4, the total number of Directors shall be at least one (1) and not more than fifteen (15). The Board shall comprise the Directors described in Section 4.3 below. No Member may be represented by more than one Director.

#### Section 4.3      Nomination, Election and Term of Office of Directors

(a) Each Platinum Member (while remaining in good standing) shall be entitled individually to appoint one Director (each a "Platinum Director"). Each Platinum Director shall serve until the next annual action of Members without a meeting and until his or her successor shall be duly appointed or until his or her earlier resignation or removal. The number of Platinum Directors will not exceed twelve (12). The pool of candidates for Board chairman will be nominated by the Platinum Members.

(b) Each Gold Member (while remaining in good standing) shall have the right to vote, together with the other Gold Members as a class, to elect a number of Directors (each, a "Gold Director") equal to the number of Gold Members then in good standing divided by three (3) (rounded down to the nearest whole number); provided that the number of Gold-elected Board seats plus the Silver-elected and Associate and Academic Board seats do not exceed three (3) in the event that there is a single Platinum Member, and the number of Gold-elected Board seats otherwise do not exceed the number of Platinum Directors plus four (4) In any event, Gold Members shall have at least one Board seat. A minimum of 3 Gold members are required to establish the first Gold Board seat.

Each Gold Director shall serve in accordance with Section 4.3(f) below and until his or her successor is elected and qualified or until his or her earlier resignation or removal. The selection of nominees for such position(s) shall be performed under such nominating procedures as may be set by the Board from time to time. Notwithstanding anything to the contrary contained herein, in the event that after any annual election of Directors, the number of Platinum Members decreases, resulting in a corresponding decrease in the Maximum Director Number, and such decrease causes a situation where the number of Gold Directors previously elected exceeds the number of Platinum Directors, then in such event all Gold Directors previously elected may serve until the next annual election of Directors, at which time the required decrease in the number of Gold Directors shall take effect.

(c) Each Silver Member (while remaining in good standing) shall have the right to vote, together with the other Silver Members as a class, to elect one (1) Director (the “Silver Director”), to serve until the next annual action of Members without a meeting and until his or her successor is elected and qualified or until his or her earlier resignation or removal, provided, however, that prior to the first annual action of Members, the initial Silver Director shall be elected by the Board. The selection of nominees for such position shall be performed under such nominating procedures as may be set by the Board from time to time. A minimum of 3 Silver members are required to establish the Silver Board seat.

(d) Following the expiration of the first six month period following the first Board meeting of OpenPOWER, each Associate and Academic Member (while remaining in good standing) shall have the right to vote, together with the other Associate and Academic Members as a class, to elect one (1) Director (the “Associate and Academic Director”), to serve until the next annual action of Members without a meeting and until his or her successor is elected and qualified or until his or her earlier resignation or removal. The selection of nominees for such positions shall be made by the Associate and Academic Members and approved by the Board through such nominating procedures as may be set by the Board from time to time. The Associate and Academic Director may attend meetings of the Board, but may not vote at such meetings.

(e) Any Director nominated, appointed or elected by any class of Members, or by any Member, may, but shall not automatically, be re-nominated, re-appointed and/or re-elected for additional terms.

(f) The Directors shall be divided into two (2) groups, which shall be as nearly equal in number as possible. The Directors in each group shall be as determined by the President of OpenPOWER. Except as provided in Section 4.2 with respect to the initial Board of Directors, Directors shall serve for staggered terms of two (2) years each, such that the term of one group of Directors expires each year, with each group to hold office until the successors to such group of Directors are elected and qualified. Except as otherwise provided in Section 4.6 of this Article, pursuant to each annual action of Members without a meeting, the successors of the group of Directors whose term expires that year shall be elected to hold office for a term expiring with the annual action of Members without a meeting executed in the second year following the year of their election. Any newly created directorships or any decrease in directorships shall be so apportioned among the two groups of Directors as to make both groups as nearly equal in number as possible; provided, however, that no such apportionment shall reduce the then-current term of any Director then in office.

(g) Each Director shall be an employee of the Member which nominated or appointed him or her. Each Director shall hold office until the earliest to occur of the expiration of the term for which such Director was elected and such Director’s successor is elected and qualified, or until his or her earlier death, resignation, removal or termination of employment for any reason with the nominating or appointing Member, and in the case of a Platinum, Gold or Silver Director, until the earlier of (i) expiration or termination of Membership of the Member that nominated or appointed such Director, (ii) the combination, by merger, acquisition or otherwise, of two Members that each have representatives on the Board, upon which event one of the two representatives, as designated by the surviving Member, shall be deemed to have resigned, or (iii) if requested by the Board or the employer of such Director, upon the termination of the employment of such Director by the Member represented by such Director. In addition, during

such times as the Membership of any Member that has a representative serving as a Director is suspended pursuant to Section 2.10 above, the attendance and voting rights of such Director representative shall also be suspended until such time, if ever, as the suspension of such Member is lifted.

(h) Each Platinum, Gold or Silver Director (or the Member that appointed or is the employer of such Director) may designate in writing (which designation may be withdrawn in writing at any time by such Director or Member) an individual to act as a Director in his or her stead, whether for a single meeting or as a standing alternate. Any such alternate Director shall also be an employee of the Member that appointed or nominated the original Director. Any such alternate Director shall be entitled to (i) attend and vote at all meetings which the designating Director does not attend, (ii) sign all written consents in lieu of the designating Director, and (iii) otherwise exercise the duties and enjoy the privileges of the designating Director in the absence or unavailability of the designating Director; provided, however, that no such alternate Director may propose a vote or vote upon any Committee of the Board. In addition, in lieu of making such a substitution, any Director who will be absent for any meeting may deliver a written proxy to the President, authorizing the President to either vote as instructed in such proxy, or to vote in the stead of such absent Director in such manner as the President may believe appropriate. Any such proxy shall be valid only with respect to the meeting and such specific matters (or with respect to all matters, if so desired) as may be stated in such proxy.

(i) The Board may approve from time to time such reasonable attendance and other requirements as it shall deem to be advisable to ensure that seats on the Board are held by active, contributing individuals. Such rules may provide that any Member which has appointed or nominated a Director, as the case may be, may lose its ability to appoint and/or nominate a representative to the Board in the event that such requirements have not been met, and/or that a Director who fails to meet such requirements shall automatically be deemed to have resigned from the Board, but no such rule may be imposed retroactively.

#### Section 4.4      Enlargement or Reduction

Subject to Section 2.9 above and Section 4.10 below, the number of Directors, the persons eligible to become Directors and the classes of Members eligible to appoint, elect and/or nominate Directors may be amended at any time by a Super Majority Vote (as defined in Section 4.10(.b)) of the Board.

#### Section 4.5      Resignation and Removal

Any Director may resign at any time upon notice to OpenPOWER in writing or by electronic transmission at the principal place of business of OpenPOWER or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any Director who was appointed by a Member under Section 4.3(a) may be removed by that Member at any time, and for any reason, or for no reason. Any or all of the Directors who were elected by a class of Members voting as a class or by the Board may be removed by a majority vote of such class of Members or the Board, respectively. Unless otherwise specified by law, any Director may be removed by a majority of the other Directors then in office for engaging in any conduct, either within or without OpenPOWER, that is contrary to the interests of OpenPOWER or to the advancement of OpenPOWER's business or industry goals; provided, however, that the Member or class of Members that appointed and elected or nominated and elected (as the case may be) such removed

Director shall be entitled to appoint and elect or nominate and elect (as the case may be) a replacement for such removed Director to serve for the balance of such removed Director's term.

#### Section 4.6      Vacancies

(a) Vacancies on the Board occurring as a result of the death, resignation, removal or termination of employment of a Director who was appointed and elected by a Member, or who was nominated and elected by a class of Members, may be filled by such Member or class of Members, as applicable. All other vacancies shall be filled by the vote of a majority of Directors then in office, whether or not less than a quorum, or by a sole remaining Director. The term of a Director so appointed or elected shall be the unexpired portion of the term of the Director, if any, whom the Director so appointed or elected is replacing.

(b) In the event of a vacancy in the Board, the remaining Directors, except as otherwise provided by law or these Bylaws, may exercise the powers of the full Board until the vacancy is filled.

#### Section 4.7      Place of Meetings

The Board may hold meetings, both regular and special, either within or without the State of Delaware.

#### Section 4.8      Regular Meetings

Regular meetings of the Board may be held as shall from time to time be determined by the Board. Thirty business days' notice to each Director, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or thirty business days' notice by written notice deposited in the mail, shall be given to each Director by the Secretary, by the Officer, or one of the Directors calling the meeting. A notice, waiver of notice, or any waiver by electronic transmission of a meeting of the Board need not specify the purpose(s) of the meeting.

#### Section 4.9      Special Meetings

Special meetings of the Board may be called by the President, Secretary, or on the written request of two or more Directors, or by one Director in the event that there is only one Director in office. Ten business days' notice to each Director, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or ten business days' notice by written notice deposited in the mail, shall be given to each Director by the Secretary or by the Officer or one of the Directors calling the meeting. A notice or waiver of notice or any waiver by electronic transmission of a meeting of the Board need not specify the purposes of the meeting.

#### Section 4.10      Quorum, Action at Meeting, Adjournments

(a) At all meetings of the Board a simple majority of Directors then in office, shall constitute a quorum for the transaction of business and the act of a majority of such Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws.

Robert's Rules of Order shall be the preferred method for conducting Board meetings and rendering decisions among voting Board Directors.

(b) In order to pass a “Super Majority Vote”, a resolution must be taken at a meeting of the Board at which a quorum is present and in support of which two-thirds of the Directors present and participating (whether in person, by proxy or otherwise) have voted affirmatively, or by an equivalent number of Directors acting by written consent in the manner described in Section 4.11 below. A Super Majority Vote of the Board shall be required with respect to the following matters:

- (i) Adopting or recommending to the Members an agreement of merger or consolidation;
- (ii) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of OpenPOWER’s property and assets;
- (iii) Approving or recommending to the Members the dissolution, liquidation or winding up of OpenPOWER or a revocation of any such dissolution, liquidation or winding up;
- (iv) Enlarging or reducing the size of the Board;
- (v) Amending or modifying the eligibility requirements for membership on the Board or the classes of Members eligible to appoint and/or elect Directors;
- (vi) Termination or suspension of a Member’s membership, pursuant to Section 2.11 above;
- (vii) Elimination of the Platinum Member rights set forth in Section 2.3(g) above;
- (ix) Amending or modifying the Intellectual Property Rights Policy
- (x) Chartering Work Groups, consistent with the Intellectual Property Rights Policy, which will include establishing voting and/or veto rights for each Work Group, scope of work, and confidentiality policy; and
- (xi) Approving Technical Steering Committee rules of process.

(c) No Director whose attendance and voting rights have been suspended shall be counted for purposes of determining quorum, the number of Directors then in office or the number of Directors required for voting purposes, unless otherwise required by law or these Bylaws. If a quorum shall not be present at any meeting of the Board, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. In the event that one or more of the Directors shall be disqualified from voting at any meeting upon any matter, then the number of Directors counted for purposes of determining quorum as it relates to the consideration of such matter shall be reduced by one for each such Director so disqualified.

Section 4.11    Action by Consent

(a) Unless otherwise restricted by these Bylaws, any action required or permitted to be taken by the Board may be taken without a meeting and without prior notice if a majority of Directors then in office (or such greater number of Directors as may be required by law or the Bylaws of OpenPOWER for the taking of any such action at a meeting) consent thereto in writing or by electronic transmission, and the writing or writings, or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board, provided that:

(i) such written consent or electronic transmission shall have been sent simultaneously to all Directors then in office for their consideration;

(ii) prompt written notice of any action so taken (which notice may be given by electronic transmission) is given to those Directors who have not consented in writing or by electronic transmission; and

(iii) two or more such Directors have not objected to the taking of any such action by written notice delivered to OpenPOWER within ten business days following the date that written notice of the Directors action is mailed or otherwise delivered to such Directors.

Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(b) Notwithstanding the foregoing, the ability of two or more non-consenting Directors to prevent the taking of an action by written consent under clause 4.11(a)(iii) above shall not prevent any such action from being taken at a later date at an actual meeting of the Board.

(c) Unless otherwise restricted by these Bylaws, any action required or permitted to be taken at any meeting of any Board Committee may be taken in the manner set forth in the preceding clauses 4.11(a) and (b).

Section 4.12    Telephonic Meetings

Unless otherwise restricted by these Bylaws, members of the Board or of any Board Committee may participate in a meeting of the Board or of any Board Committee, as the case may be, by means of conference telephone, video conference equipment, or other communications equipment by means of 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.

Section 4.13    Inspection Rights

Every Director shall have the absolute right at any time to inspect, copy and make extracts of, in person or by agent or attorney, all books, records and documents of every kind, and to inspect the physical properties of OpenPOWER.

Section 4.14    Fees and Compensation

Directors shall not receive any stated salary or reimbursements for their services as Directors; provided that, by resolution of a majority of the Board, OpenPOWER may reimburse Directors for expenses incurred while acting on behalf of OpenPOWER and/or expenses incurred in attending meetings of the Board, in such amounts as the Board may determine to be appropriate. Nothing herein contained shall be construed to preclude any Director from serving OpenPOWER in any other capacity as an Officer, agent, employee or otherwise, and receiving compensation therefor. The Directors may also approve reimbursement of expenses for members of Board Committees in connection with their service on such Board Committees.

ARTICLE V

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 5.1    Executive Committee

The Board may (but shall not be required), by resolution adopted by a majority of the Directors then in office (provided a quorum is present), create an Executive Committee, consisting of one or more Directors. The Board may designate one or more Directors as alternate members of such Executive Committee, who may replace any absent member at any meeting of such Executive Committee. The Executive Committee, subject to any limitations imposed by these Bylaws, statute and/or resolution adopted by the Board, shall have and may exercise all of the powers of the Board which are delegated to the Executive Committee from time to time by the Board; provided, however, that the Executive Committee shall have no authority with respect to:

- (a) Approving any action which requires approval of the Voting Members;
- (b) Filling vacancies on the Board;
- (c) Fixing compensation of the Directors, Executive Director, and other employees for serving on the Board or on any Board Committee;
- (d) Amending or repealing the Bylaws or adopting new Bylaws;
- (e) Amending or repealing any policy adopted by the Board, including, but not limited to, the Intellectual Rights Policy;
- (f) Amending or repealing any resolution of the Board which by its express terms is not so amendable or repealable;
- (g) Adopting an agreement of merger or consolidation;
- (h) Recommending to the Members the sale, lease or exchange of all or substantially all of OpenPOWER's property and assets;

- (i) Recommending to the Members a dissolution of OpenPOWER or a revocation of a dissolution; and
- (j) Taking any other action for which a vote of more than a simple majority of the Board is required by these Bylaws or by law.

#### Section 5.2 Other Committees of the Board

The Board may, by resolution adopted by a majority of the Directors then in office (provided a quorum is present), create such nominating, audit, compensation and other Board Committees, each consisting of one or more Directors appointed by the Board, as the Board may from time to time deem advisable, to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board, subject to the limitations imposed by these Bylaws. No Committee shall have the power or authority to take any action prohibited by Section 5.1 above to be taken by the Executive Committee. The Board may designate one or more Directors as alternate members of any Board Committees, who may replace any absent member at any meeting of such Board Committees. Any such Board Committee or Board Committees shall have such powers, duties and name or names as may be determined from time to time by resolution adopted by the Board. Each Board Committee shall keep regular minutes of its meetings and make such reports to the Board as the Board may request.

#### Section 5.3 Meetings of Committees of the Board

Except as otherwise provided in these Bylaws or by resolution of the Board, each Board Committee may adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and shall meet as provided by such rules, but unless otherwise provided by resolution of the Board or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the conduct of the business of the Board.

#### Section 5.4 Term of Office of Members of Committees of the Board

Each member of a Board Committee shall serve for such term as shall be established at the time of his or her election.

#### Section 5.5 Committees of the Members

(a) From time to time, the Board may establish Member Committees in addition to the Technical Steering Committee (as described in paragraph (b) below). Membership attendance and voting rights in all Member Committees shall be as specified in Article II. Unless otherwise specified in these Bylaws or by the Board, each Member Committee may have such sub-committees, working groups and special interest groups as from time to time may be approved by such Member Committee, within the strategic direction established by the Board (each a "Member Group").

(b) A Technical Steering Committee of OpenPOWER shall be established consisting of (i) the chair of each Work Group, and (ii) if not otherwise represented, for such period as may be established by the Board and to the extent a Platinum member is not otherwise represented on the Technical Steering Committee, a representative designated by each of the Platinum Members, subject to Section 2.3(g). Each member of the Technical Steering Committee will serve for a two year term. The operation of the Technical Steering Committee shall be governed by the rules of



process of such Committee as from time to time approved by the Board. The Technical Steering Committee shall be under the leadership of a Technical Steering Committee Chair elected by the Technical Steering Committee, with the advice and consent of the Board, who shall serve at the pleasure of the Technical Steering Committee and the Board. The Technical Steering Committee Chair may attend meetings of the Board, but may not vote at such meetings. The Technical Steering Committee Chair shall be elected for a two (2) year term and may serve consecutive terms.

The responsibilities of the Technical Steering Committee will be delegated by the Board and will include:

- (i) Recommending the charter of new Work Groups to the Board including scope of work and confidentiality obligation level;
- (ii) Resolving technical conflicts within and between Work Groups;
- (iii) Evaluating requests for inter-project collaboration and recommending the chartering of new Work Groups to facilitate such collaboration;
- (iv) Monitoring the technical progress of Work groups;
- (v) Approving OpenPower Standards Final Deliverables;
- (vi) Establishing OpenPower Standards Final Deliverable quality standards, technical best practices and release dates;
- (vii) Approving changes by Work Groups to OSS Communities and OSS Licenses in the Work Group's charter, and under section 3.5 of the Intellectual Property Rights Policy; and
- (viii) Regularly reporting on progress of Work Groups to the Board.

## ARTICLE VI

### OFFICERS

#### Section 6.1     Officers

The Officers of OpenPOWER shall be a Chairperson, a President, a Treasurer and a Secretary, each of whom shall also be a Director. OpenPOWER may also have, at the discretion of the Board, an Executive Director, one or more Vice-Presidents, one or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers with such titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3. The Chairperson shall be nominated by the Platinum Members, and shall preside over meetings of the Board. No two offices may be held by the same person and no two Officers may be employed by the same Company, unless there are fewer than four Directors at such time.

#### Section 6.2     Vacancies

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular elections to such office and may be filled by the Board, at its discretion.

### Section 6.3     Election

The Board at its annual meeting each year shall choose a President, Chairperson, a Secretary and a Treasurer. Other Officers may be elected by the Board at any such meeting, and any or all Officers may be replaced, at any other meeting of, or by written consent of, the Board.

### Section 6.4     Tenure

Each Officer of OpenPOWER shall hold office until his or her successor is chosen and qualifies, unless a different term is specified in the vote choosing or electing him, or until his or her earlier death, resignation or removal. Any Officer elected by the Board may be removed at any time by the Board or a Board Committee duly authorized to do so. Any Officer may resign by delivering his or her written resignation to OpenPOWER at its principal place of business or to the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

### Section 6.5     President and Executive Director

(a) The President shall have all of the powers normally associated with the role of chief executive officer and preside at all meetings of the Board (in the absence of a Chairperson) and the Members. The President shall oversee the management of the business of OpenPOWER and see that all orders and resolutions of the Board are carried into effect. Without limiting the foregoing, the President shall:

(i) Execute bonds, mortgages, and other contracts requiring a seal, under the seal of OpenPOWER, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of OpenPOWER; and

(ii) Oversee the Executive Director (if any).

(b) The Executive Director (if any) shall preside over the day-to-day affairs of OpenPOWER under the direction of the Board and the President and perform such other duties and have such other powers as the Board or the President may from time to time prescribe.

### Section 6.6     Vice-Presidents

In the absence of the President or in the event of his or her inability or refusal to act, a Vice-President, or if there be more than one Vice-President, the Vice-Presidents in the order designated by the Board (or in the absence of any designation, then in the order determined by their tenure in office), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board or the President may from time to time prescribe.

Section 6.7     Secretary

The Secretary shall have such powers and perform such duties as are incident to the office of Secretary under the General Corporation Law of Delaware, including without limitation a recording all the proceedings of the meetings of OpenPOWER and of the Board. The Secretary, and each Assistant Secretary, shall have authority to affix the Corporate seal to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board may give general authority to any other Officer to affix the seal of OpenPOWER and to attest the affixing by such Officer's signature.

Section 6.8     Assistant Secretaries

Any Assistant Secretary shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary. In the absence of the Secretary or any Assistant Secretary at any meeting of Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

Section 6.9     Treasurer

The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board or the President. Unless otherwise determined by the Board, the Treasurer shall chair the Audit and Finance Committees of OpenPOWER. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to OpenPOWER and shall deposit all moneys and other valuable effects in the name and to the credit of OpenPOWER in such depositories as may be designated by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, when the President or Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of OpenPOWER.

Section 6.10   Compensation

The compensation, if any, of the Officers shall be fixed from time to time by the Board, and no Officer shall be prevented from receiving such compensation by reason of the fact that the Officer is also a Director of OpenPOWER.

ARTICLE VII

NOTICES

Section 7.1     Delivery

(a) Whenever, under the provisions of law, or these Bylaws, written notice is required to be given to any Director or Member, such notice may be given by mail, addressed to such Director or Member, at his, her or its address as it appears on the records of OpenPOWER, with postage thereon prepaid. Unless written notice by mail is required by law or another provision of these Bylaws, and subject to the provisions below relating to notice by electronic transmission to Members, written notice may also be given by electronic mail, telecopy, commercial delivery

service, or similar means, addressed to such Director or Member at his, her or its address as it appears on the records of OpenPOWER. Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by OpenPOWER under any provision of law, the Certificate of Incorporation, or the Bylaws, unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these Bylaws, shall be effective if given by a form of electronic transmission consented to by the Member to whom the notice is given.

(b) Notice given pursuant to this Section shall be deemed given: (i) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Director, when directed to the number for such Director as it appears on the records of OpenPOWER; (ii) if by electronic mail to (A) a Member, when directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Director, when directed to the electronic mail address for such Director as it appears on the records of OpenPOWER; (iii) if by a posting on an electronic network together with separate notice to the Member or Director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (iv) if by any other form of electronic transmission, when directed to the Member or Director; (v) if by in-hand delivery or oral notice, at the time it is actually given; (vi) if by mail, at the time when the same shall be deposited in the United States mail; and (vii) if by commercial delivery carrier or similar means, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by OpenPOWER or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of OpenPOWER that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(d) Without limiting the foregoing, OpenPOWER adopts electronic mail as its principal source of communication with its Members. Each Member acknowledges and agrees that OpenPOWER shall not be under any obligation (except as required by law or these Bylaws) to send any notice to any Member by any means other than electronic mail, and it is therefore the responsibility of each Member to avail itself of and make such arrangements as may be necessary to receive notice in such fashion.

## Section 7.2 Waiver of Notice

Whenever any notice is required to be given under the provisions of law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent thereto.

## ARTICLE VIII

### INDEMNIFICATION

#### Section 8.1      Actions other than by or in the Right of OpenPOWER

Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, OpenPOWER shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of OpenPOWER) by reason of the fact that he or she is or was a Director, Officer, employee or agent of OpenPOWER, or is or was serving at the request of OpenPOWER as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of OpenPOWER, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of OpenPOWER, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

#### Section 8.2      Actions by or in the Right of OpenPOWER

Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, OpenPOWER shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of OpenPOWER to procure a judgment in its favor by reason of the fact that he or she is or was a Director, Officer, employee or agent of OpenPOWER, or is or was serving at the request of OpenPOWER as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of OpenPOWER; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

#### Section 8.3      Success on the Merits

To the extent that any person described in Section 8.1 or 8.2 of this Article VIII has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

#### Section 8.4      Specific Authorization

Any indemnification under Section 8.1 or 8.2 of this Article VIII (unless ordered by a court) shall be made by OpenPOWER only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (a) by a majority vote of such Directors who were not parties to such action, suit or proceeding, even though less than a quorum or (b) by the Members of OpenPOWER.

#### Section 8.5      Advance Payment

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by OpenPOWER in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by OpenPOWER as authorized in this Article VIII.

#### Section 8.6      Non-Exclusivity

The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VIII shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any By-law, agreement, vote of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

#### Section 8.7      Jurisdiction of Delaware Court of Chancery

The Delaware Court of Chancery is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification. The Delaware Court of Chancery may summarily determine OpenPOWER's obligation to advance expenses (including attorney's fees).

#### Section 8.8      Insurance

The Board may authorize OpenPOWER to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of OpenPOWER, or is or was serving at the request of OpenPOWER as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not OpenPOWER would have the power to indemnify him or her against such liability under the provisions of this Article VIII.

#### Section 8.9      Continuation of Indemnification and Advancement of Expenses

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall continue as to a person who has ceased to be a Director, Officer, employee or agent of OpenPOWER and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.10    Severability

If any word, clause or provision of this Article VIII or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 8.11    Intent of Article

The intent of this Article VIII is to provide for indemnification and advancement of expenses to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article VIII shall be amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by law.

ARTICLE IX

BOOKS AND RECORDS

Section 9.1    Books and Records

OpenPOWER shall keep adequate and correct books and records of account, minutes of the proceedings of the Members, the Board and Board Committees, and a record of the Members giving their names and addresses and the class of Membership held by each.

Section 9.2    Form of Records

Minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 9.3    Reports to Directors, Members and Others

The Board shall cause such reports to be prepared, filed and/or distributed as may be required.

Section 9.4    Record Date

In order that OpenPOWER may determine the Members entitled to express consent to corporate action in writing without a meeting, or the Members entitled to receive payment of any distribution, if any, permitted by law and OpenPOWER's then current federal and state tax status, or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Membership or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be (i) more than sixty (60) days prior to the adoption of the resolution by the Board and (in the case of consent to corporate action in writing without a meeting) the date upon which such written consent is delivered to the Members, nor (ii) later than the date upon which the Board adopts the resolution proposing the taking of such action. In the absence of such a determination, the record date shall be at the close of business on the day on which the Board adopts the resolution proposing the taking of such action.

Section 9.5     Registered Members

OpenPOWER shall be entitled to recognize the exclusive right of a person registered on its books as a Member or a representative of a Member to receive distributions, if any, and to vote, if such records indicate that such person is a Voting Member or a representative of a Voting Member, and to hold liable for Financial Obligations each Member registered on its books, and shall not be bound to recognize any equitable or other claim to or interest in Membership on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware General Corporation Law.

ARTICLE X

CERTAIN TRANSACTIONS

Section 10.1     Transactions with Interested Parties

No contract or transaction between OpenPOWER and one or more of its Directors or Officers, or between OpenPOWER and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such Director or Officer (or other director or officer) is present at or participates in the meeting of the Board or Board Committee which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

- (a) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or such Board Committee, and the Board or such Board Committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or
- (b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Voting Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Voting Members; or
- (c) The contract or transaction is fair as to OpenPOWER as of the time it is authorized, approved or ratified, by the Board, a Board Committee, or the Voting Members.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or Board Committee that authorizes the contract or transaction.



## ARTICLE XI

### GRANTS, CONTRACTS, LOANS, ETC.

#### Section 11.1    Grants

The making of grants and contributions, and otherwise rendering financial assistance for the Purposes of OpenPOWER, may be authorized by the Board. The Board may authorize any Officer or Officers, agent or agents, in the name of and on behalf of OpenPOWER to make any such grants, contributions or assistance.

#### Section 11.2    Execution of Contracts

The Board may authorize any Officer, employee or agent of OpenPOWER, in the name and on behalf of OpenPOWER, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the President shall be authorized to execute such contracts and instruments on behalf of OpenPOWER, but must inform the Board of any such actions.

#### Section 11.3    Checks, Drafts, Etc.

All checks, drafts and other orders for the payment of money out of the funds of OpenPOWER, and all notes or other evidences of indebtedness of OpenPOWER, shall be signed on behalf of OpenPOWER in such manner as shall from time to time be determined by resolution of the Board.

#### Section 11.4    Deposits

The funds of OpenPOWER not otherwise employed shall be deposited from time to time to the order of OpenPOWER in such banks, trust companies, or other depositories, or shall be otherwise invested, as the Board may select or direct, or as may be selected or directed by an Officer, employee or agent of OpenPOWER to whom such power may from time to time be specifically delegated by the Board.

## ARTICLE XII

### GENERAL PROVISIONS

#### Section 12.1    Fiscal Year

The fiscal year of OpenPOWER shall be determined, and may be changed, by resolution of the Board.

#### Section 12.2    Reserves

The Directors may set apart out of any funds of OpenPOWER a reserve or reserves for any proper purpose and may abolish any such reserve.

### Section 12.3 Seal

The Board may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of OpenPOWER, the year of its organization and the word “Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board.

### Section 12.4 Proprietary Rights

(a) Except as specifically provided to the contrary in such policies and procedures as may from time to time be approved by the Board, including the Intellectual Property Rights Policy, all information disclosed by any participant during any official meeting or activity of OpenPOWER, including but not limited to Member meetings, Member Committee Meetings, OpenPOWER meetings, electronic mail or the like, shall not waive any rights represented by valid patents, patent applications, and Federal and international statutory copyrights.

The Board will require and authorize the scope and shall specify the confidentiality mode (See Intellectual Property Rights Policy section 4.0) of specific work groups, committees, and projects at their formation. Meetings of the Board of Directors shall be deemed confidential and subject to a non-disclosure agreement.

(b) No express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other intellectual property right of any Member is or shall be deemed to be granted to OpenPOWER or to any other Member by reason of its membership in or participation in the activities of OpenPOWER, except as may be provided in the Intellectual Property Rights Policy or a separate written agreement.

(c) No Member shall at any time be required to exchange proprietary information with any other Member solely by reason of its being a Member of OpenPOWER.

## ARTICLE XIII

### COMPLIANCE

#### Section 13.1 General

OpenPOWER will conduct all of its activities in conformance with all international, U.S. federal and state antitrust laws and competition laws, including but not limited to the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and the EU Competition Regulations. OpenPOWER will conduct all of its activities in compliance with all other applicable laws and regulations, including those concerning export/import. The Board and the President shall consult legal counsel and seek legal review whenever necessary to insure that the activities of OpenPOWER are conducted in conformance with such laws.

Each of the Members of OpenPOWER is committed to fostering competition in the development of new products and services, and the activities of OpenPOWER are intended to promote such competition. Each

Member acknowledges that it may compete with other Members in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable state, federal or international antitrust laws or regulations. Without limiting the generality of the foregoing, Members that are competitors shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers, or any topic that would be prohibited by applicable antitrust laws.

Each Member shall assume responsibility to provide appropriate legal counsel to its representatives acting under these Bylaws regarding the importance of limiting the scope of their discussions to the topics that relate to the Purposes of OpenPOWER, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

### Section 13.2 No Obligation to Endorse

No Member shall, by reason of its membership or participation in OpenPOWER or otherwise, be obligated to license from OpenPOWER, use or endorse any intellectual property developed or endorsed by OpenPOWER, or to conform any of its products to any platform developed or adopted by OpenPOWER, nor shall any such Member be precluded from independently licensing, using or endorsing similar intellectual property, platform, software, specifications or documentation developed by it or by others. No provision of these Bylaws or the Membership Agreement shall be interpreted to prevent any Member from using a processor architecture other than the OpenPOWER technology, or from engaging in other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any Member.

## ARTICLE XIV

### AMENDMENTS

Except where such power is expressly limited by law, the Certificate of Incorporation or these Bylaws as to any specific action, these Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, in each case by an affirmative vote of a two-thirds majority of all then serving members of the Board.

## ARTICLE XV

### DISCLOSURE OF INFORMATION AND CONFIDENTIALITY

#### Section 15.1 Limitation on the Scope of Disclosed Information

The Members acknowledge that they will not disclose or exchange information as part of OpenPOWER activities among themselves unless such disclosure is necessary in order to achieve the lawful purposes of OpenPOWER. All information disclosed as a part of OpenPOWER's activities shall be deemed

nonconfidential except as may be provided below or as otherwise agreed to in a written agreement between the affected parties.

### Section 15.2 Confidential Information

From time to time a Member may deem it necessary to disclose information to the other Members which such Member considers confidential or proprietary ("Confidential Information"). In such instances the relevant information may be disclosed in confidence and shall be considered Confidential Information of the disclosing party if, and only if, the information is specifically designated as Confidential Information by the disclosing party at the time of disclosure; provided, however, that information shall be deemed confidential if a Member inadvertently discloses Confidential Information which was not identified as confidential at the time of disclosure but notifies all Members to whom such Confidential Information has been disclosed (in writing in accordance with the notification process in this Article 15) within thirty (30) days of disclosure of the disclosing Member's intention to maintain the confidentiality of such previously disclosed Confidential Information and the receiving Members have not disseminated the subject information outside of their Member organization prior to receiving such notice. Any such designation shall be effected by (1) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (2) by orally indicating that any information disclosed orally is the Confidential Information of the disclosing party and then within ten (10) days providing all other informed Members with a written summary of the orally disclosed Confidential Information so that such Confidential Information is more easily identified. By disclosing Confidential Information a Member agrees that should any such Confidential Information be necessarily or inferentially disclosed by a Specification or design guide adopted by OpenPOWER, such Member shall allow publication of such comment or recommendation. All information disclosed by Members prior to the date of this Agreement directly for the purposes of OpenPOWER shall be governed by the provisions of this Section 15.2. All information developed by OpenPOWER shall be deemed the Confidential Information of OpenPOWER until made publicly available. All works in progress, minutes of Board of Directors' meetings, minutes of Work Groups and Special Committees and attorney work product shall in all cases be deemed Confidential Information of OpenPOWER.

### Section 15.3 Nondisclosure

With respect to Confidential Information, the receiving party agrees, for a period of five (5) years, to use the same care and discretion to avoid disclosure, publication, and dissemination outside the receiving party and its subsidiaries, contractors and consultants as the receiving party employs with its own Confidential Information, but no less than reasonable care. Any disclosure by a receiving party to its subsidiaries, contractors and consultants should be subject to an obligation of confidentiality at least as restrictive as those contained in this Article 15. The foregoing obligation shall not apply to any information which is: (1) already known by the receiving party prior to disclosure; (2) publicly available through no fault of the receiving party; (3) rightfully received from a third party without a duty of confidentiality; (4) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (5) independently developed by the receiving party; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order; or (7) disclosed by the receiving party with the disclosing party's prior written approval. Notwithstanding anything to the contrary herein, any Member shall be free to use the residuals of Confidential Information for any purpose including use

in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "residuals" means that Confidential Information in nontangible form, which may be retained in the memories of individuals who have had rightful access to such Confidential Information under this provision of these Bylaws. It is understood that receipt of Confidential Information under these Bylaws shall not create any obligation in any way limiting or restricting the assignment or reassignment of any employees of a Member within Member's organization. However, this Section 15.3 shall not be deemed to grant to any party a license under the other party's copyrights or patents.

Nothing contained herein shall preclude OpenPOWER from entering into Nondisclosure Agreements with third party non-Members.

#### Section 15.4 Corporation Information

All original public disclosures regarding OpenPOWER must be approved by the Board of Directors, provided however that each Member may disclose the fact of its membership. Public disclosure of any Confidential Information shall be subject to the approval by the Board of Directors pursuant to terms hereof. However, OpenPOWER's general policy shall be to disclose fully, at the agreed-upon time, all information relating to OpenPOWER and its activities. If a Member shall be required to disclose any Confidential Information relating to OpenPOWER pursuant to a valid order of a court or other government body or any political subdivision thereof, the Member shall first give notice to the Board of Directors and make a reasonable effort to obtain a protective order requiring that any such Confidential Information so disclosed be used only for the purposes for which the order was issued.

### ARTICLE XVI ANTI-TRUST GUIDELINES

#### Section 16.1 Compliance with Antitrust Laws

The Organization is not intended to become involved, and will not become involved, in the competitive business decisions of its Member companies, nor will it take any action which would tend to restrain competition among and between such Members in violation of the antitrust laws.

The Organization unequivocally supports the policy of competition served by the antitrust laws and intends to comply strictly with such laws. It shall be the responsibility of every Member of the organization to be guided by this policy of strict compliance with the antitrust laws in all of the organization's activities. It shall be the special responsibility of the Organizations officers and Committee chairpersons to ensure that this policy is known and adhered to in the course of activities pursued under their leadership.

Each Member shall assume responsibility to provide appropriate legal counsel to its representatives acting under these Bylaws regarding the importance of limiting the scope of their discussions to the topics that relate to the purposes of the Organization, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

Any violation of this Article shall make the violator subject to remediation by the OpenPOWER Board up to and including termination of membership in the Organization and immediate removal from any office held by an official representative violating such rules or this Article.

### **Register of Amendments to the Bylaws**

<u>Date</u>	<u>Section Affected</u>	<u>Change</u>
April 9, 2014	Article XV	Added
April 9, 2014	Article XVI	Added