



OpenPower Foundation Intellectual Property Rights (IPR) Policy

1. Introduction

The OpenPOWER Foundation Intellectual Property Rights (IPR) Policy (hereinafter referred to as the Policy) governs the treatment of intellectual property in the production of deliverables by the OpenPOWER Foundation (hereafter referred to as OpenPOWER).

This Policy applies to all members of OpenPOWER Foundation and their Affiliates (as defined below). The OpenPOWER Board of Directors may amend this Policy at any time pursuant to the Bylaws. In the event of such change to this Policy, the Board will provide instructions for transition of membership and OpenPOWER Work Groups to the new Policy; however, no amendment to this Policy will be effective in less than 60 calendar days from the date that written notice of such amendment is given to the Member at its address of record with OpenPOWER.

2. Definitions

Each capitalized term within this document shall have the meaning provided below:

1. **Affiliate** - any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. In the event that such control ceases to exist, such Affiliate will be deemed to have withdrawn from all OpenPOWER Work Groups pursuant to the terms set forth in the withdrawal provisions in Section 11. 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.
2. **Code** – computer software (either source or object versions), including XML schema, DTDs, and other data or document formats.
3. **Continuing Licensing Obligation** - a licensing or non-assertion obligation, of the types defined by Sections 6 and 9 of this Policy, which survives a Work Group Party's withdrawal from an OpenPOWER Work Group.
4. **Contribution** - any material submitted to an OpenPOWER Work Group by a Work Group Member in writing or electronically, whether in an in-person meeting or in any electronic conference or mailing list maintained by OpenPOWER for the OpenPOWER Work Group and which is or was proposed for inclusion in an OpenPOWER Deliverable.
5. **Contribution Obligation** - a licensing or non-assertion requirement, as described in Section 10, that results from making a Contribution as described in Section 9.1.
6. **Contributor** - a Work Group (WG) Party on whose behalf a Contribution is made by the WGParty's WG Member.
7. **Eligible Person** - one of a class of individuals that include: persons holding individual memberships in OpenPOWER, employees or designees of organizational members of

OpenPOWER, and such other persons as may be designated by the OpenPOWER Board of Directors.

8. **Essential Claims** - those claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by an implementation of those portions of a particular OpenPOWER Standards Final Deliverable or OpenPOWER Standards Draft Deliverable created within the scope of the Work Group charter in effect at the time such deliverable was developed. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the Normative Portions of that particular OpenPOWER Standards Final Deliverable or OpenPOWER Standards Draft Deliverable. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the OpenPOWER Standards Final Deliverable is approved.
9. **Feedback** – (a) any written or electronic input provided to an OpenPOWER Work Group (WG) by individuals who are not Eligible Persons. All such non-Eligible Person Feedback must be made under the terms of the Contribution/Feedback License (Appendix A) and the non-Eligible Person shall provide a signed copy of such Contribution/Feedback License to the relevant WG(s); (b) any written or electronic input provided to an OpenPOWER Work Group by Eligible Persons who are not WG Members of the relevant WG. All such non-WG Member Feedback is hereby irrevocably granted under the Contribution/Feedback License (Appendix A) without further action by such Eligible Persons. For avoidance of doubt, such Eligible Persons, by virtual of their status as Eligible Persons, have granted, and agreed to grant, the Contribution/Feedback License upon becoming an Eligible Person and have forfeited any right to object to the granting of this Feedback License.
10. **Final Maintenance Deliverable** - Any OpenPOWER Standards Final Deliverable that results entirely from Maintenance Activity.
11. **IPR Mode** - an element of an OpenPOWER Work Group charter, which specifies the type of licenses required for any Essential Claims associated with the output produced by a given Work Group. This is further described in Section 3.2 and Section 10.
12. **Licensed Products** - includes only those specific portions of a Licensee's products (hardware, software or combinations thereof) that (a) implement and are compliant with all Normative Portions of an OpenPOWER Standards Final Deliverable that must be implemented to comply with such deliverable, and (b) to the extent that the Licensee's products implement one or more optional portions of such deliverable, those portions of Licensee's products that implement and are compliant with all Normative Portions that must be implemented to comply with such optional portions of the deliverable.
13. **Licensee** - any organization, including its Affiliates as defined in this Policy, or individual that licenses Essential Claims from Obligated Parties for a particular OpenPOWER Standards Final Deliverable. Licensees need not be OpenPOWER members.
14. **Maintenance Activity** - Any drafting or development work to modify an OpenPOWER Standards Final Deliverable that (a) constitutes only error corrections, bug fixes or editorial formatting changes to the OpenPOWER Standards Final Deliverable; and (b) does not add any feature; and (c) is within the scope of the Work Group that approved the OpenPOWER Standards Final Deliverable (whether or not the work is conducted by the same WG).
15. **Normative Portion** - a portion of an OpenPOWER Standards Final Deliverable that must be implemented to comply with such deliverable. If such deliverable defines optional parts, Normative Portions include those portions of the optional part that must be implemented if the implementation is to comply with such optional part. Examples and/or reference implementations and other specifications or standards that were developed outside the Work

Group and which are referenced in the body of a particular OpenPOWER Standards Final Deliverable that may be included in such deliverable are not Normative Portions.

16. **Code Mode WG** - an OpenPOWER Work Group that is chartered under the Code IPR Mode described in Section 3.2 and Section 10.3.
17. **OpenPOWER Deliverable** - a work product developed by a Work Group within the scope of its charter which is enumerated in and developed in accordance with the OpenPower Work Group Process.
18. **OpenPOWER Standards Draft Deliverable** - an OpenPOWER Deliverable that has been designated and approved by a Work Group as an OpenPOWER Standards Draft Deliverable and which is enumerated in and developed in accordance with the OpenPOWER Work Group Process.
19. **OpenPOWER Standards Final Deliverable** - an OpenPOWER Deliverable that has been designated and approved by a Work Group as an OpenPOWER Standards Final Deliverable and which is enumerated in and developed in accordance with the OpenPOWER Work Group Process.
20. **OpenPOWER Party** - a member of OpenPOWER (i.e., an entity that has executed an OpenPOWER Membership Agreement) and its Affiliates.
21. **OpenPOWER WG Administrator** - the person(s) appointed to represent/support OpenPOWER in administrative matters relating to Work Groups as provided by the OpenPOWER Work Group Process.
22. **OpenPOWER Work Group (WG)** - a group of Eligible Persons formed, and whose actions are conducted, according to the provisions of the OpenPOWER Work Group Process.
23. **OpenPOWER Work Group Process** - the "OpenPOWER WORK GROUP PROCESS", as from time to time amended, which describes the operation of Work Groups at OpenPOWER.
24. **Obligated Party** - a Work Group Party that incurs a licensing obligation for its Essential Claims by either a Contribution Obligation or a Participation Obligation.
25. **Open Source** – A software package released under an open source license approved by the Open Source Initiative (<http://opensource.org/licenses>).
26. **Open Source Software (OSS) Community** – A formal or informal community organized around an open source development model or software package, such as, but not limited to, The Apache Foundation and Eclipse Foundation.
27. **Participation Obligation** - a licensing requirement, as described in Section 10, that arises from membership in an OpenPOWER Work Group, as described in Section 9.2.
28. **RAND Mode WG** - an OpenPOWER Work Group that is chartered under the RAND IPR Mode described in Section 3.2.
29. **RF Mode WG** - an OpenPOWER Work Group that is chartered under one of the RF IPR Modes described in Section 3.2.
30. **WG Member** - an Eligible Person who has completed the requirements to join a Work Group (WG) as defined in the eligibility requirements section of the Work Group Charter during the period in which s/he maintains his or her WG membership as described by the OpenPOWER Work Group Process. A WG Member may represent the interests of a WG Party in the WG.
31. **WG Party** - an OpenPOWER Party that is, or is represented by, a Work Group Member in the relevant Work Group.

3. Work Group Formation

3.1 The OpenPOWER Board of Directors shall charter the WG.

At the time a WG is chartered, the proposal to form the WG must specify the IPR Mode, the OSS Licensing Mode, OSS Licenses, OSS Communities, eligibility requirements, and Confidentiality Mode under which the Work Group will operate.

3.2 IPR Modes

This Policy describes the following IPR Modes:

1. RAND - requires all Obligated Parties to license their Essential Claims using the RAND licensing elements described in Section 10.1.
2. RF on RAND Terms - requires all Obligated Parties to license their Essential Claims using the RF licensing elements described in Sections 10.2.1 and 10.2.2.
3. RF on Limited Terms - requires all Obligated Parties to license their Essential Claims using the RF licensing elements described in Sections 10.2.1 and 10.2.3.
4. Code - requires all Obligated Parties to license their Contributions and Feedback under an Open Source license as described in Section 10.3.

3.3 At the time a WG is chartered, the proposal to form the WG must also specify the Confidentiality Mode under which the Work Group will operate as described in Section 4.

3.4 At the time a WG is chartered, the proposal to form the WG must also specify the OSS Licensing Mode under which the Work Group will operate. This Policy describes the following OSS Licensing Modes:

3.4.1. Apache License, v2.0 – default status for a WG if not specified otherwise in the WG charter. All Code contributed to the WG by a WG Member or WG Party shall be licensed under the Apache License, version 2.0. <http://www.apache.org/licenses/LICENSE-2.0.html>. This requirement does not prevent the WG from making use of existing Open Source code under a different Open Source license. The WG shall not accepted Code from a WG Member or WG Party under a proprietary license.

All Code provided with a WG Deliverable shall be licensed under the Apache license, version 2.0, and shall not be provided solely in object code form.

3.4.2. No Code – requires that a WG not generate Code or accept Contributions or Feedback involving Code.

3.5 At the time a WG is chartered, the proposal to form the WG must also specify the OSS Communities the Work Group may accept code from, the OSS Communities the Work Group may contribute code to and the OSS Licenses that the Work Group may accept code under. The Work Group may alternatively specify that no Code will be accepted from and/or contributed by the Work Group to any OSS Communities and/or that no additional OSS licenses are acceptable. Regardless of whether the Work Group accepts

Code under additional OSS licenses, WG Members and WG Participants shall contribute Code developed by themselves under the chosen OSS Licensing Mode in section 3.4.

3.6 At the time a WG is chartered, the proposal to form the WG must also specify any eligibility requirements to join the WG. If no eligibility requirements are specified, eligibility will be limited to Eligible Persons. Only a WG operating under the Code IPR Mode may include members that are not Eligible Persons, so long as such non-Eligible Person members of the WG adhere to and abide by terms of the Contribution/Feedback License (Appendix A). A WG may not change its IPR Mode or Policy, except with respect to Section 3.5 by changing the OSS Communities it will accept code from, OSS Communities it may contribute code to and OSS Licenses it may accept code under, and except with respect to Section 3.6 by changing the WG's eligibility requirements, without closing and submitting a new charter.

4. Confidentiality

If the WG Charter states that Contributions are confidential, then Contributions and Feedback are subject to a requirement of confidentiality as described in the WG Charter. If the WG Charter specifies that Contributions are non-confidential, or is silent with respect to confidentiality, then neither Contributions nor Feedback that are subject to any requirement of confidentiality may be considered in any part of the OpenPOWER Work Group Process and all Contributions and Feedback will therefore be deemed to have been submitted on a non-confidential basis, notwithstanding any markings or representations to the contrary, and OpenPOWER shall have no obligation to treat any such material as confidential.

This Policy describes the following Confidentiality Modes:

- 4.1. No Confidentiality – default status for a WG if not specified otherwise in the WG charter where neither Contributions nor Feedback are subject to any requirement of confidentiality, all Contributions and Feedback are deemed to have been submitted on a non-confidential basis, notwithstanding any markings or representations to the contrary, and OpenPOWER, any WG Member and any WG Party shall have no obligation to treat any such material as confidential.
- 4.2. Formation Confidentiality – if a WG requires certain documents to be kept in confidence in order for a WG to be created, this Confidentiality Mode allows the WG to list specific documents in the WG charter that shall be kept confidential as described in Appendix C, section C.1, for the length of time specified by the WG (with a default of five (5) years) from the date of formation of the WG, until publicly released in an OpenPOWER Deliverable .
- 4.3. Written Confidentiality – requires that all WG Members and WG Parties keep confidential all written or electronic information provided to the WG by a WG Member or WG Parties that is marked as confidential for the length of time specified in the WG Charter (with a default of five (5) years), until such information is publicly released in an OpenPOWER Deliverable, as described in Appendix C, section C.2;
- 4.4 For avoidance of doubt, the detailed confidentiality terms in Appendix C respectively automatically apply when a WG selects a confidentiality mode under section 4.2 or 4.3 and are not optional or modifiable by the WG.

- 4.5 All OpenPOWER Parties are deemed to agree to the terms, as set forth in Appendix C of this Policy, of each WG's chosen confidentiality mode.

5. Contributions

5.1 General

At the time of submission of a Contribution for consideration by an OpenPOWER Work Group, each named co-Contributor (and its respective Affiliates) is deemed to agree to the following terms and conditions and to make the following representations (based on the actual knowledge of the WG Member(s) making the Contribution, with respect to items 3 - 5 below, inclusive):

1. OpenPOWER has no duty to publish or otherwise use or disseminate any Contribution.
2. OpenPOWER may reference the name(s) of the Contributor(s) for the purpose of acknowledging and publishing the Contribution.
3. The Contribution properly identifies any holders of copyright interests in the Contribution.
4. If the relevant WG Charter requires that information be kept confidential, such information shall be kept confidential according to the terms of the WG's chosen confidentiality policy.
5. If the relevant WG Charter does not require that information be kept confidential, no information in the Contribution is confidential, and OpenPOWER may freely disclose any information in the Contribution.
6. There are no limits to the Contributor's ability to make the grants, acknowledgments, and agreements required by this Policy or a WG Charter with respect to such Contribution.

5.2 Copyright Licenses

1. To the extent that a Contributor holds a copyright interest in its Contribution, such Contributor grants to OpenPOWER a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Contribution in any way, and to prepare derivative works that are based on or incorporate all or part of the Contribution solely for the purpose of developing and promoting the OpenPOWER Deliverable and enabling (subject to the rights of the owners of any Essential Claims) the implementation of the same by Licensees.
2. To the extent that a Contribution is subject to copyright by parties that are not Contributors, the submitter(s) must provide OpenPOWER with a signed "Copyright License Grant" (Appendix B of this Policy) from each such copyright owner whose permission would be required to permit OpenPOWER to exercise the rights described in Appendix B of this Policy.
3. To the extent that a Contribution is subject to copyright by parties that are not Contributors and the Contribution has been previously licensed under an Open Source

license, the Contribution shall be provided under the existing Open Source license. For avoidance of doubt, an OpenPOWER Party or Eligible Person shall not contribute code under an Open Source license and make use of this Section 5.2.3 to avoid the requirements of Section 5.2.1.

4. For each Contribution to a WG and to the extent that OpenPOWER holds a copyright interest and/or the right to license such Contribution, OpenPOWER grants, and agrees to grant, to each WG Party and each WG Member who is a member of the WG(s) receiving such Contribution a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Contribution in any way, and to prepare derivative works that are based on or incorporate all or part of the Contribution solely for the purpose of developing and promoting the OpenPOWER Deliverable and enabling (subject to the rights of the owners of any Essential Claims) the implementation of the same by Licensees.

5.3 Trademarks

1. Trademarks or service marks that are not owned by OpenPOWER shall not be used by OpenPOWER, except as approved by the OpenPOWER Board of Directors, to refer to work conducted at OpenPOWER, including the use in the name of an OpenPOWER WG, an OpenPOWER Deliverable, or incorporated into such work.
2. No OpenPOWER Party may use an OpenPOWER trademark or service mark in connection with an OpenPOWER Deliverable or otherwise, except in compliance with a written license agreement and usage guidelines as OpenPOWER may specify.

5.4 Tools and Documents

1. An OpenPOWER Party may contribute software tools, simulation models and other software items ("Tools"), in binary or source code form, to OpenPOWER for general distribution to Work Groups generally and/or to the general public. OpenPOWER may then make the Tools available from OpenPOWER. When the Tools are provided in binary only form, they shall be provided under a fee-free and royalty-free license (a) that shall allow both commercial and non-commercial use, linking, creation of derivative works, performance and distribution of such Tools in binary form, (b) that shall not restrict the form of distribution or type of software used therewith (by way of example and not of limitation, the license to the Tools shall not require distribution of software linked with the Tools to be distributed in source code form), (c) that may optionally prohibit reverse engineering, decompilation and attempts to determine the source code thereof, and (d) that may optionally require use of specific hardware for execution thereof. When the Tools are provided in source code form by an OpenPOWER Party, they shall be licensed under the Apache License, v2.0 (<http://opensource.org/licenses/Apache-2.0>).

2. An OpenPOWER Party may contribute documentation, specifications and other information ("Documents") to OpenPOWER for general distribution to other OpenPOWER Parties and/or the public at large. Such Documents provided to OpenPOWER shall be provided under the Apache License, v2.0 (<http://opensource.org/licenses/Apache-2.0>).

3. OpenPOWER, either directly or at the request of an OpenPOWER Party, may make available existing Open Source software and/or documentation (collectively, "Existing OSS") for general distribution to OpenPOWER Parties, Work Groups generally

and/or to the general public. Existing OSS shall be provided under the license associated with the Existing OSS.

6. Limited Patent Covenant for Deliverable Development

To permit WG Members and their WG Parties to develop implementations of OpenPOWER Standards Draft Deliverables being developed by a WG, each WG Party represented by a WG Member in a WG, at such time that the WG Member joins the WG, grants to each other WG Party in that WG automatically and without further action on its part, and on an ongoing basis, a limited covenant not to assert any Essential Claims required to implement such OpenPOWER Standards Draft Deliverable and covering making or using (but not selling or otherwise distributing) an implementation of such OpenPOWER Standards Draft Deliverable, solely for the purpose of testing and developing such deliverable and only until either the OpenPOWER Standards Draft Deliverable is approved as an OpenPOWER Standards Final Deliverable or the Work Group is closed.

7. Feedback

1. OpenPOWER encourages Feedback to OpenPOWER Deliverables from both OpenPOWER Parties and those who are not Eligible Persons. Feedback will be accepted only under the "Contribution/Feedback License" (Appendix A) from non-Eligible Persons.
2. OpenPOWER will require that non-Eligible Person submitters of Feedback agree to the terms of the Feedback License before transmitting submitted Feedback to the Work Group. Eligible Persons hereby agree to the Feedback License upon becoming Eligible Persons.

8. Disclosure

1. **Disclosure Obligations** - Each WG Party in a WG with an IPR Mode of "RAND" shall disclose to OpenPOWER in writing the existence of all patents and/or patent applications owned or claimed by such WG Party that are actually known to the WG Member directly participating in the WG, and which such WG Member believes may contain any Essential Claims or claims that might become Essential Claims upon approval of an OpenPOWER Standards Final Deliverable as such document then exists (collectively, "Disclosed Claims").
2. **Disclosure of Third Party Patent Claims** - Each WG Party whose WG Members become aware of patents or patent applications owned or claimed by a third party that contain claims that might become Essential Claims upon approval of an OpenPOWER Standards Final Deliverable should disclose such patents or patent applications, provided that such disclosure is not prohibited by any confidentiality obligation binding upon such WG Party and/or WG Member. It is understood that any WG Party that discloses third party patent claims to OpenPOWER does not take a position on the essentiality or relevance of the third party claims to the OpenPOWER Standards Final Deliverable in its then-current form.

In both cases (Sections 8.1 and 8.2), it is understood and agreed that such WG Party(s)' WG Member(s) do not represent that they know of all potentially pertinent claims of patents and patent applications owned or claimed by the WG Party or any third parties. For the avoidance of doubt, while the disclosure obligation under Sections 8.1 and 8.2 applies directly to all WG Parties, this obligation is triggered based on the actual knowledge of the WG Party's WG Members regarding the WG Party's patents or patent applications that may contain Essential Claims.

3. **Disclosure Requests** - All OpenPOWER Parties are encouraged to review OpenPOWER Standards Final Deliverables and make appropriate disclosures.
4. **Limitations** - A disclosure request and the obligation to disclose set forth above do not imply any obligations on the recipients of disclosure requests (collectively or individually) or on any OpenPOWER Party to perform or conduct patent searches. Nothing in this Policy nor the act of receiving a disclosure request for an OpenPOWER Standards Final Deliverable, regardless of whether it is responded to, shall be construed or otherwise interpreted as any kind of express or implied representation with respect to the existence or non-existence of patents or patent applications which contain Essential Claims, other than that such WG Party has acted in good faith with respect to its disclosure obligations.

9. Types of Obligations

9.1 Contribution Obligation

A WG Party has a Contribution Obligation, which arises at the time the Contribution is submitted to a WG, to license as appropriate for the IPR mode described in Section 10, any claims under its patents or patent applications that become Essential Claims when such Contribution is incorporated (either in whole or in part) into (a) the OpenPOWER Standards Final Deliverable produced by the WG that received the Contribution, or (b) any Final Maintenance Deliverable with respect to that OpenPOWER Standards Final Deliverable.

9.2 Participation Obligation

A WG Party has a Participation Obligation to license as appropriate for the IPR mode, as described in Section 10, any claims under its patents or patent applications that would be Essential Claims in the then current OpenPOWER Standards Draft Deliverable, if that draft subsequently becomes an OpenPOWER Standards Final Deliverable, even if the WG Party is not a Contributor, when all of the following conditions are met:

- An OpenPOWER Standards Final Deliverable is finally approved that incorporates such OpenPOWER Standards Draft Deliverable, either in whole or in part;
- The WG Party has been on, or has been represented by WG Member(s) on such WG for a total of sixty (60) calendar days, which need not be continuous; and
- The WG Party is on, or is represented by WG Member(s) on such WG after a period of seven (7) calendar days after the ballot to approve such OpenPOWER Standards Draft Deliverable has elapsed.

Once the foregoing conditions are met, that WG Party's Participation Obligation so to license continues with respect to that OpenPOWER Standards Final Deliverable, and any Final Maintenance Deliverable subsequently approved with respect to that OpenPOWER Standards Final Deliverable.

For organizational WG Parties, the WG membership threshold is met by one or more employees or organizational designees of such Parties having been a WG Member on any 60 calendar days, although any given calendar day is only one day of membership, regardless of the number of participants on that day.

Each time a new OpenPOWER Standards Draft Deliverable is approved by the WG, the Participation Obligation adjusts to encompass the material in the latest OpenPOWER Standards Draft Deliverable seven (7) days after such draft has been approved for publication.

10. Licensing Requirements

10.1 RAND Mode WG Requirements

For an OpenPOWER Standards Final Deliverable developed by a RAND Mode WG (under section 3.2.1 (“RAND”) of this Policy), except where a Licensee has a separate, signed agreement under which the Essential Claims are licensed to such Licensee on more favorable terms and conditions than set forth in this section (in which case such separate signed agreement shall supersede this Limited Patent License), each Obligated Party in such WG hereby covenants that, upon request and subject to Section 11, it will grant to any OpenPOWER Party or third party: a nonexclusive, worldwide, non-sublicensable, perpetual patent license (or an equivalent non-assertion covenant) under its Essential Claims covered by its Contribution Obligations or Participation Obligations on fair, reasonable, and non-discriminatory terms to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute (a) Licensed Products that implement such OpenPOWER Standards Final Deliverable, and (b) Licensed Products that implement any Final Maintenance Deliverable with respect to that OpenPOWER Standards Final Deliverable. Such license need not extend to features of a Licensed Product that are not required to comply with the Normative Portions of such OpenPOWER Standards Final Deliverable or Final Maintenance Deliverable. For the sake of clarity, the rights set forth above include the right to directly or indirectly authorize a third party to make unmodified copies of the Licensee’s Licensed Products and to license (optionally under the third party’s license) the Licensee’s Licensed Products within the scope of, and subject to the terms of, the Obligated Party’s license.

At the election of the Obligated Party, such license may include a term requiring the Licensee to grant a reciprocal license to its Essential Claims (if any) covering the same OpenPOWER Standards Final Deliverable and any such Final Maintenance Deliverable. Such term may require the Licensee to grant licenses to all implementers of such deliverable. The Obligated Party may also include a term providing that such license may be suspended with respect to the Licensee if that Licensee first sues the Obligated Party for infringement by the Obligated Party of any of the Licensee’s Essential Claims covering the same OpenPOWER Standards Final Deliverable or any such Final Maintenance Deliverable.

License terms that are fair, reasonable, and non-discriminatory beyond those specifically mentioned above are left to the Licensees and Obligated Parties involved.

10.2 RF Mode WG Requirements

10.2.1 Common. For an OpenPOWER Standards Final Deliverable developed by an RF Mode WG (under sections 3.2.2 (“RF on RAND Terms”) and 3.2.3 (“RF on Limited Terms”) of this Policy), except where a Licensee has a separate, signed agreement under which the Essential Claims are licensed to such Licensee on more favorable terms and conditions than set forth in this section (in which case such separate signed agreement shall supersede this Limited Patent License), each Obligated Party in such WG hereby covenants that, upon request and subject to Section 11, it will grant to any OpenPOWER Party or third party: a nonexclusive, worldwide, non-sublicensable, perpetual patent license (or an equivalent non-assertion covenant) under its Essential Claims covered by its Contribution Obligations or Participation Obligations without payment of royalties or

fees, and subject to the applicable Section 10.2.2 or 10.2.3, to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute (a) Licensed Products that implement such OpenPOWER Standards Final Deliverable, and (b) Licensed Products that implement any Final Maintenance Deliverable with respect to that OpenPOWER Standards Final Deliverable. Such license need not extend to features of a Licensed Product that are not required to comply with the Normative Portions of such OpenPOWER Standards Final Deliverable or Final Maintenance Deliverable. For the sake of clarity, the rights set forth above include the right to directly or indirectly authorize a third party to make unmodified copies of the Licensee's Licensed Products and to license (optionally under the third party's license) the Licensee's Licensed Products, within the scope of, and subject to the terms of, the Obligated Party's license.

At the election of the Obligated Party, such license may include a term requiring the Licensee to grant a reciprocal license to its Essential Claims (if any) covering the same OpenPOWER Standards Final Deliverable and any such Final Maintenance Deliverable. Such term may require the Licensee to grant licenses to all implementers of such deliverable. The Obligated Party may also include a term providing that such license may be suspended with respect to the Licensee if that Licensee first sues the Obligated Party for infringement by the Obligated Party of any of the Licensee's Essential Claims covering the same OpenPOWER Standards Final Deliverable and any such Final Maintenance Deliverable.

10.2.2 RF on RAND Terms. With WGs operating under the RF on RAND Terms IPR Mode, license terms that are fair, reasonable, and non-discriminatory beyond those specifically mentioned in Section 10.2.1 may also be included, and such additional RAND terms are left to the Licensees and Obligated Parties involved.

10.2.3 RF on Limited Terms. With WGs operating under the RF on Limited Terms IPR Mode, Obligated Parties may not impose any further conditions or restrictions beyond those specifically mentioned in Section 10.2.1 on the use of any technology or intellectual property rights, or other restrictions on behavior of the Licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship, including the following: choice of law and dispute resolution.

10.3 Code Mode WG Requirements

With WGs operating under the Code IPR Mode, only Code and related documentation may be generated and released as a Deliverable under this IPR Mode while specifications, standards and other non-Code related documentation shall not be released as a Deliverable by the WG. Code released as a Deliverable in a Code IPR Mode WG shall be one of the following:

10.3.1. New Code. New code is Code generated by WG Members or WG Parties and contributed to the WG under the WG's chosen OSS Licensing Mode (see section 4.4).

10.3.2 Modified Code. Modified code is Code that is added to or modified from an existing Open Source package under an existing Open Source license. Modified code shall be licensed under the same license as the underlying Open Source package.

11. Withdrawal and Termination

A WG Party may withdraw from a WG at any time by notifying the OpenPOWER WG Administrator in writing of such decision to withdraw. Withdrawal shall be deemed effective when such written notice is sent.

11.1 Withdrawal from a Work Group

A WG Party that withdraws from an OpenPOWER Work Group shall have Continuing Licensing Obligations based on its Contribution Obligations and Participation Obligations as follows:

1. A WG Party that has incurred neither a Contribution Obligation nor a Participation Obligation prior to withdrawal has no licensing obligations for OpenPOWER Standards Final Deliverable(s) originating from that OpenPower WG.
2. A WG Party that has incurred a Contribution Obligation prior to withdrawal continues to be subject to its Contribution Obligation.
3. A WG Party that has incurred a Participation Obligation prior to withdrawal continues to be subject to its Participation Obligation but only with respect to OpenPOWER Standards Draft Deliverable(s) approved more than seven (7) calendar days prior to its withdrawal.

11.2 Termination of an OpenPOWER Membership

An OpenPOWER Party that terminates its OpenPOWER membership (voluntarily or involuntarily) is deemed to withdraw from all WGs in which that OpenPOWER Party has WG Member(s) representing it, and such OpenPOWER Party remains subject to Continuing Licensing Obligations for each such WG based on its Obligated Party status in that WG on the date that its membership termination becomes effective.

12. Limitations on Liability

ALL OPENPOWER DELIVERABLES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND OPENPOWER , AS WELL AS ALL OPENPOWER PARTIES AND WG MEMBERS, EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR INTENDED PURPOSE, ACCURACY, COMPLETENESS, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY OTHER WARRANTY.

In no event shall OpenPOWER or any of its constituent parts (including, but not limited to, the OpenPOWER Board of Directors), be liable to any other person or entity for any loss of profits, loss of use, direct, indirect, incidental, consequential, punitive, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this Policy, whether or not such party had advance notice of the possibility of such damages.

In addition, except for grossly negligent or intentionally fraudulent acts, OpenPOWER Parties and WG Members (or their representatives), shall not be liable to any other person or entity for any loss of profits, loss of use, direct, indirect, incidental, consequential, punitive, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this Policy, whether or not such party had advance notice of the possibility of such damages.

OpenPOWER assumes no responsibility to compile, confirm, update or make public any assertions of Essential Claims or other intellectual property rights that might be infringed by an implementation of an OpenPower Deliverable.

If OpenPOWER at any time refers to any such assertions by any owner of such claims, OpenPOWER takes no position as to the validity or invalidity of such assertions, or that all such assertions that have or may be made have been referred to.

13. General

13.1. By ratifying this document, OpenPOWER warrants that it will not inhibit the traditional open and free access to OpenPOWER documents for which license and right have been assigned or obtained according to the procedures set forth in this section. This warranty is perpetual and will not be revoked by OpenPOWER or its successors or assigns as to any already adopted OpenPOWER Standards Final Deliverable; provided, however, that neither OpenPOWER nor its assigns shall be obligated to:

1. 13.1.1. Perpetually maintain its existence; nor
2. 13.1.2. Provide for the perpetual existence of a website or other public means of accessing OpenPOWER Standards Final Deliverables; nor
3. 13.1.3. Maintain the public availability of any given OpenPOWER Standards Final Deliverable that has been retired or superseded, or which is no longer being actively utilized in the marketplace.

13.2. Where any copyrights, trademarks, patents, patent applications, or other proprietary rights are known, or claimed, with respect to any OpenPOWER Deliverable and are formally brought to the attention of the OpenPOWER WG Administrator, OpenPOWER shall consider appropriate action, which may include disclosure of the existence of such rights, or claimed rights. The OpenPOWER Work Group Process shall prescribe the method for providing this information.

1. 13.2.1. OpenPOWER disclaims any responsibility for identifying the existence of or for evaluating the applicability of any claimed copyrights, trademarks, patents, patent applications, or other rights, and will make no assurances on the validity or scope of any such rights.
2. 13.2.2. Where the OpenPOWER WG Administrator is formally notified of rights, or claimed rights under Section 8.8 with respect to entities other than Obligated Parties, the OpenPOWER President shall attempt to obtain from the claimant of such rights a written assurance that any Licensee will be able to obtain the right to utilize, use, and distribute the technology or works when implementing, using, or distributing technology based upon the specific OpenPOWER Standards Final Deliverable (or, in the case of an OpenPOWER Standards Draft Deliverable, that any Licensee will then be able to obtain such a right) under terms that are consistent with this Policy. All such information will be made available to the WG that produced such deliverable, but the failure to obtain such written assurance shall not prevent votes from being conducted, except that the OpenPOWER WG Administrator may defer approval for a reasonable period of time where a delay may facilitate the obtaining of such assurances. The results will, however, be recorded by the OpenPOWER WG Administrator, and made available to the public. The OpenPOWER Board of Directors may also direct that a summary of the results be included in any published OpenPOWER Standards Final Deliverable.
3. 13.2.3. Except for the rights expressly provided herein, neither OpenPOWER nor any OpenPOWER Party grants or receives, by implication, estoppel, or otherwise, any rights under any patents or other intellectual property rights of the OpenPOWER Party, OpenPOWER, any other OpenPOWER Party, or any third party.

13.3. Solely for purposes of Section 365(n) of Title 11, United States Bankruptcy Code, and any equivalent law in any foreign jurisdiction, the promises under Section 10 will be treated as if they were a license and any OpenPOWER Party or third-party may elect to retain its rights under this promise if Obligated Party, as a debtor in possession, or a Bankruptcy trustee in a case under the United States Bankruptcy Code, rejects any obligations stated in Section 10.

14. Notices

14.1 Documents

1. Any Code produced by an OpenPOWER Work Group shall be released under the Apache License, v2.0 (<http://opensource.org/licenses/Apache-2.0>) or include the following notices replacing [copyright year] with the year or range of years of the publication. All other documents produced by OpenPOWER Foundation shall include the following notices replacing [copyright year] with the year or range of years of publication:

Copyright © OpenPOWER Foundation [copyright year]. All Rights Reserved.

All capitalized terms in the following text have the meanings assigned to them in the OpenPOWER Intellectual Property Rights Policy (the "OpenPOWER IPR Policy"). The full Policy may be found at the OpenPOWER website.

This document and translations of it may be copied and furnished to others, and derivative works that comment on or otherwise explain it or assist in its implementation may be prepared, copied, published, and distributed, in whole or in part, without restriction of any kind, provided that the above copyright notice and this section are included on all such copies and derivative works. However, this document itself may not be modified in any way, including by removing the copyright notice or references to OpenPOWER, except as needed for the purpose of developing any document or deliverable produced by an OpenPOWER Work Group (in which case the rules applicable to copyrights, as set forth in the OpenPOWER IPR Policy, must be followed) or as required to translate it into languages other than English.

2. Regardless of the licensing chosen in 14.1.1 above, the following notices shall be included with any document produced by an OpenPOWER Work Group:

The limited permissions granted above are perpetual and will not be revoked by OpenPOWER or its successors or assigns.

This document and the information contained herein is provided on an "AS IS" basis AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE OpenPOWER Foundation AS WELL AS THE AUTHORS AND DEVELOPERS OF THIS STANDARDS FINAL DELIVERABLE OR OTHER DOCUMENT HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, OF LACK OF NEGLIGENCE OR NON-INFRINGEMENT.

3. All OpenPOWER Standards Final Deliverables documents shall also include the following:

OpenPOWER requests that any OpenPOWER Party or any other party that believes it has patent claims that would necessarily be infringed by implementations of this OpenPOWER Standards Final Deliverable, to notify OpenPOWER WG Administrator and provide an indication of its willingness to grant patent licenses to such patent claims in a

manner consistent with the IPR Mode of the OpenPOWER Work Group that produced this deliverable.

OpenPOWER invites any party to contact the OpenPOWER WG Administrator if it is aware of a claim of ownership of any patent claims that would necessarily be infringed by implementations of this OpenPOWER Standards Final Deliverable by a patent holder that is not willing to provide a license to such patent claims in a manner consistent with the IPR Mode of the OpenPOWER Work Group that produced this OpenPOWER Standards Final Deliverable. OpenPOWER may include such claims on its website, but disclaims any obligation to do so.

OpenPOWER takes no position regarding the validity or scope of any intellectual property or other rights that might be claimed to pertain to the implementation or use of the technology described in this OpenPOWER Standards Final Deliverable or the extent to which any license under such rights might or might not be available; neither does it represent that it has made any effort to identify any such rights. Information on OpenPOWER procedures with respect to rights in any document or deliverable produced by an OpenPOWER Work Group can be found on the OpenPOWER website. Copies of claims of rights made available for publication and any assurances of licenses to be made available, or the result of an attempt made to obtain a general license or permission for the use of such proprietary rights by implementers or users of this OpenPOWER Standards Final Deliverable, can be obtained from the OpenPOWER WG Administrator. OpenPOWER makes no representation that any information or list of intellectual property rights will at any time be complete, or that any claims in such list are, in fact, Essential Claims.

14.2 Other Deliverables

Other OpenPOWER Deliverables may include just the copyright notice as follows replacing [copyright year] with the year or year range of publication:

Copyright © OpenPOWER Foundation [copyright year]. All Rights Reserved.

14.3 Additional Copyright Notices

Additional copyright notices identifying Contributors and/or copyrights held by non-OpenPOWER Parties may also be included with the OpenPOWER copyright notice.

Appendix A. Contribution/Feedback License

1. Copyright - You (and your represented organization and its Affiliates) grant to OpenPOWER a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Feedback in any way, and to prepare derivative works that are based on or incorporate all or part of the Feedback, solely for the purpose of developing and promoting the OpenPOWER Deliverable and enabling the implementation of the same by Licensees or Beneficiaries.
 2. Essential Claims - You covenant to grant a patent license under any patent claims that you (or your represented organization or its Affiliates) own or control that become Essential Claims because of the incorporation of such Contribution into the OpenPOWER Standards Final Deliverable, and any Final Maintenance Deliverable with respect to that OpenPOWER Standards Final Deliverable, on terms consistent with Section 10 of the OpenPower IPR Policy for the IPR Mode specified in the charter of this OpenPOWER Work Group. You also covenant to grant a patent license under any patent claims that you (or your represented organization or its Affiliates) own or control that are Essential Claims because of the incorporation of such Contribution into an OpenPOWER Standards Draft Deliverable and covering making or using (but not selling or otherwise distributing) an implementation of such OpenPOWER Standards Draft Deliverable, solely for the purpose of testing and developing such deliverable and only until either the OpenPOWER Standards Draft Deliverable is approved as an OpenPOWER Standards Final Deliverable or the relevant Work Group(s) is closed.
 3. Right to Provide - You warrant to the best of your knowledge that you have rights to provide this Contribution, and if you are providing Contribution behalf of an organization, you warrant that you have the rights to provide Contribution behalf of your organization and to bind your organization and its Affiliates to the licensing obligations provided above.
 4. Confidentiality - You further warrant that no information in this Contribution is confidential, and that OpenPOWER may freely disclose any information in the Contribution.
 5. No requirement to Use - You also acknowledge that OpenPOWER is not required to incorporate your Contribution into any version of any OpenPOWER Deliverable.
-

Appendix B. Copyright License Grant

All OpenPOWER Foundation Members grant to OpenPOWER a perpetual, irrevocable, non-exclusive, royalty-free, world-wide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Contribution in any way, and to prepare derivative works that are based on or incorporate all or part of the Contribution solely for the purpose of developing and promoting the OpenPOWER Deliverable and enabling the implementation of the same by Licensees or Beneficiaries (all above capitalized terms are defined in the OpenPOWER Intellectual Property Rights ("IPR") Policy, see <http://www.open-power.org/>).

Appendix C: Formal Confidentiality Terms

C.1 Formation Confidentiality

All WG Parties and WG Members are subject to the following confidentiality obligation to OpenPOWER, with each WG Party and WG Member being third-party beneficiaries thereof, immediately upon joining the WG. "WG Confidential Information" shall mean the confidential items disclosed to OpenPOWER. "Discloser" shall mean the WG Member or WG Party that provides the WG Confidential Information. "Recipient" shall mean all WG Parties that are members of this WG. The WG, TSC, and Board of Directors must both approve public release of WG Confidential Information by the WG.

WG Confidential Information may be disclosed by: (i) presentation; (ii) delivery; (iii) authorized access, such as to a database; or (iv) any other express means. The Discloser will not disclose any WG Confidential Information which the Discloser does not have the right to disclose to the Recipient. For the Confidentiality Term specified in the WG Charter, with a default of five (5) years, after the date of disclosure, the Recipient will use the same care and discretion to avoid disclosure of the Discloser's WG Confidential Information as the Recipient uses with its own similar information which it does not wish to disclose. Subject to this obligation, the Recipient may use Discloser's WG Confidential Information for WG purposes.

The Recipient may disclose the Discloser's WG Confidential Information to: (i) its employees and contractors, and employees and contractors of any Affiliate, who have a need to know; (ii) any other party with the Discloser's prior written consent; and (iii) other WG Parties and WG Members who are members of this WG. Prior to any such disclosure by the Recipient, the Recipient must have an appropriate agreement with any such party sufficient to require the party to treat WG Confidential Information in accordance with this charter. The Recipient may disclose WG Confidential Information to the extent required by law, but must give the Discloser reasonable prior notice to allow the Discloser a reasonable opportunity to obtain a protective order. Notwithstanding the foregoing, no obligation will apply to any WG Confidential Information that is: (i) already rightfully in the Recipient's possession, or rightfully received by the Recipient, without a nondisclosure obligation; (ii) developed independently by the Recipient; (iii) publicly available when received, or thereafter becomes publicly available through no fault of the Recipient; (iv) disclosed by Discloser to a third party without a nondisclosure obligation; (v) inherently disclosed by the Recipient in the use, distribution, or marketing of any product or service; (vi) included in an OpenPOWER Standards Final Deliverable and Code released with such OpenPOWER Standards Final Deliverable with the consent of the Discloser; or (vii) an OpenPOWER Deliverable or OpenPOWER Standards Draft Deliverable, including any Code, that is publicly released outside the WG.

THE DISCLOSER PROVIDES WG CONFIDENTIAL INFORMATION SOLELY ON AN "AS IS" BASIS. Any WG Confidential Information regarding the Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's and its Affiliates' products and services remains at Discloser's sole discretion.

Neither this Agreement, nor any disclosure of WG Confidential Information hereunder, in any way: (i) grants to Recipient or its Affiliates any right or license under any copyright, patent, mask work or trademark now or hereafter owned or controlled by the Discloser; (ii) obligates the Discloser or the Recipient or their Affiliates to disclose any WG Confidential Information, perform

any work, enter into any license, business engagement or other agreement; (iii) limits the Discloser or the Recipient or their Affiliates from developing, manufacturing or marketing products or services which may be competitive with those of the other; (iv) limits the Discloser or the Recipient or their Affiliates from assigning or reassigning its or their employees in any way; (v) creates any joint relationship, or authorizes the Discloser or the Recipient or their Affiliates to act or speak on behalf of the other; or (vi) limits the Discloser or the Recipient or their Affiliates from entering into any business relationship with any other party.

C.2 Written Confidentiality

All WG Parties and WG Members are subject to the following confidentiality obligation to OpenPOWER, with each WG Party and WG Member being third-party beneficiaries thereof, immediately upon joining the WG. "WG Confidential Information" shall mean the confidential items that have been disclosed to the WG by the WG Parties and WG Members. . . A WG Member or WG Party that joins after the listing of such confidential documents in the WG shall be bound by the duty of confidentiality immediately upon joining and the consent of such new WG Members or WG Parties shall not be required.

"Discloser" shall mean the WG Member or WG Party that provides the WG Confidential Information. "Recipient" shall mean all WG Parties that are members of this WG. The WG and the Discloser must both approve public release of WG Confidential Information by the WG.

WG Confidential Information may be disclosed by: (i) presentation; (ii) delivery; (iii) authorized access, such as to a database; or (iv) any other express means. The Discloser will not disclose any WG Confidential Information which the Discloser does not have the right to disclose to the Recipient. For the Confidentiality Term specified in the WG Charter, with a default of five (5) years if no Confidentiality Term is specified in the WG Charter, the Recipient will use the same care and discretion to avoid disclosure of the Discloser's WG Confidential Information as the Recipient uses with its own similar information which it does not wish to disclose. Subject to this obligation, the Recipient may use Discloser's WG Confidential Information for WG purposes.

The Recipient may disclose the Discloser's WG Confidential Information to: (i) its employees and contractors, and employees and contractors of any Affiliate, who have a need to know; (ii) any other party with the Discloser's prior written consent; and (iii) other WG Parties and WG Members who are members of this WG. Prior to any such disclosure by the Recipient, the Recipient must have an appropriate agreement with any such party sufficient to require the party to treat WG Confidential Information in accordance with this charter. The Recipient may disclose WG Confidential Information to the extent required by law, but must give the Discloser reasonable prior notice to allow the Discloser a reasonable opportunity to obtain a protective order. Notwithstanding the foregoing, no obligation will apply to any WG Confidential Information that is: (i) already rightfully in the Recipient's possession, or rightfully received by the Recipient, without a nondisclosure obligation; (ii) developed independently by the Recipient; (iii) publicly available when received, or thereafter becomes publicly available through no fault of the Recipient; (iv) disclosed by Discloser to a third party without a nondisclosure obligation; (v) inherently disclosed by the Recipient in the use, distribution, or marketing of any product or service; (vi) included in an OpenPOWER Standards Final Deliverable and Code released with such OpenPOWER Standards Final Deliverable; or (vii) an OpenPOWER Deliverable or OpenPOWER Standards Draft Deliverable, including any Code, that is publicly released outside the WG.

THE DISCLOSER PROVIDES WG CONFIDENTIAL INFORMATION SOLELY ON AN "AS IS" BASIS. Any WG Confidential Information regarding the Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's and its Affiliates' products and services remains at Discloser's sole discretion.

Neither this Agreement, nor any disclosure of WG Confidential Information hereunder, in any way: (i) grants to Recipient or its Affiliates any right or license under any copyright, patent, mask work or trademark now or hereafter owned or controlled by the Discloser; (ii) obligates the Discloser or the Recipient or their Affiliates to disclose any WG Confidential Information, perform any work, enter into any license, business engagement or other agreement; (iii) limits the Discloser or the Recipient or their Affiliates from developing, manufacturing or marketing products or services which may be competitive with those of the other; (iv) limits the Discloser or the Recipient or their Affiliates from assigning or reassigning its or their employees in any way; (v) creates any joint relationship, or authorizes the Discloser or the Recipient or their Affiliates to act or speak on behalf of the other; or (vi) limits the Discloser or the Recipient or their Affiliates from entering into any business relationship with any other party.