

OpenPOWER Foundation Intellectual Property Rights Policy

1 Introduction

The OpenPOWER Foundation Intellectual Property Rights (IPR) Policy, hereinafter referred to as the Policy, governs the treatment of intellectual property received and distributed or created 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 (“Board of Directors” or “Board”) may amend this Policy at any time pursuant to the OpenPOWER 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 each 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 In the event that such control ceases to exist, such Affiliate will be deemed to have withdrawn from all OpenPOWER Work Groups pursuant to the terms set forth in the withdrawal provisions in Section 11.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
 - (a) greater than fifty percent (50%) of the voting stock or equity in an entity
 - (b) 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, Hardware Description Language (HDL), Register Transfer Language (RTL), and other data or document formats.
3. **Code Mode WG** : an OpenPOWER Work Group that is chartered under the Code Mode described in Section 3.2 and Section 10.3.
4. **Confidentiality Mode** : See Section 4.
5. **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

6. Contribution : any material submitted to OpenPOWER in writing or electronically, whether in an in-person meeting or in any electronic conference, mailing list or online resource maintained by OpenPOWER which is or was proposed for inclusion in an OpenPOWER Deliverable or for distribution by OpenPOWER. For clarity, the term “Contribution” is inclusive of Feedback.
7. 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.
8. Contributor : a Work Group (WG) Party on whose behalf a Contribution is made by the WG Party’s WG Member.
9. 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.
10. 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.
11. Feedback :
 - (a) any written or electronic input provided to an OpenPOWER Work Group (WG) by individuals who are not Eligible Persons
 - (b) any written or electronic input provided to an OpenPOWER Work Group by Eligible Persons who are not WG Members of the relevant WGin each case provided in accordance with Section 7 of this Policy.
12. Final Maintenance Deliverable : Any OpenPOWER Standards Final Deliverable that results entirely from Maintenance Activity.
13. Guest Participation Agreement(s) : an agreement between a non-Eligible Person or non-WG Member of a particular Work Group and OpenPOWER that binds the non-Eligible Person or non-WG Member to contribution and/or participation terms substantially similar to those of a WG Member of the particular Work Group.
14. Inbound Patent License Mode WG : an OpenPOWER Work Group that is chartered under the Inbound Patent License Mode described in Section 3.2 and Section 10.1.
15. IPR Mode : an element of an OpenPOWER Work Group Charter, which specifies the type of licenses required for any Contributions and/or Essential Claims associated with the output produced by a given Work Group. This is further described in Section 3.2 and Section 10.

16. 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
 - (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 those portions of the optional part that must be implemented if the implementation is to comply with such optional part.
17. Licensee : any organization, including its Affiliates as defined in this Policy, or individual that licenses Essential Claims from Obligated Parties or OpenPOWER for a particular OpenPOWER Standards Final Deliverable. Licensees need not be OpenPOWER members.
18. 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
 - (b) does not add any feature
 - (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).
19. 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.
20. OpenPOWER Deliverable : a work product developed by a Work Group within the scope of its Charter.
21. 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 developed in accordance with the OpenPOWER Work Group Process. The OpenPOWER Work Group Process may refer to such deliverables as OpenPOWER Standards Track Draft Deliverables.
22. 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 developed in accordance with the OpenPOWER Work Group Process. The OpenPOWER Work Group Process may refer to such deliverables as OpenPOWER Standards Track Final Deliverables.
23. OpenPOWER Party : a member of OpenPOWER (i.e., an entity that has executed an OpenPOWER Membership Agreement) and its Affiliates.

24. 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
25. OpenPOWER Working Group (Work Group or WG) : a group of Eligible Persons formed, and whose actions are conducted, according to the provisions of the OpenPOWER Work Group Process.
26. OpenPOWER Working Group Charter (Work Group Charter, WG Charter or Charter) : a written charter document approved by the Board of Directors and specifying the IPR Mode, the OS Licensing Mode, OS licenses, OS Communities, eligibility requirements, and Confidentiality Mode under which the applicable Work Group will operate.
27. OpenPOWER Work Group Process : the “OpenPOWER WORK GROUP PROCESS”, as from time to time amended, which describes the operation of Work Groups at OpenPOWER.
28. Obligated Party - a Work Group Party that incurs a licensing obligation for its Essential Claims by either a Contribution Obligation or a Participation Obligation.
29. Open Source (OS) : A software package or hardware package released under an open source license approved by the Open Source Initiative (<https://opensource.org/licenses>) or the Board.
30. OS Community : A formal or informal community organized around an open source development model or software or hardware package, such as, but not limited to, The Apache Foundation and Eclipse Foundation.
31. OS Licensing Mode : See Section 3.4.
32. 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.
33. RF Mode WG : an OpenPOWER Work Group that is chartered under one of the RF IPR Modes described in Section 3.2.
34. WG Member : an Eligible Person who has completed the requirements to join a Working 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 Working Group Process. A WG Member may represent the interests of a WG Party in the WG.
35. WG Party : an OpenPOWER Party that is, or is represented by, a Work Group Member in the relevant Working Group.
36. WG-Specific Mode WG : an OpenPOWER Work Group that is chartered under the WG-Specific Mode described in Section 3.2 and Section 10.4.

3 Working Group

3.1 WG Formation

The OpenPOWER Board of Directors shall charter each WG in a WG Charter. At the time a WG is chartered, the proposal to form the WG must specify the IPR Mode, the OS Licensing Mode, OS licenses, OS Communities, eligibility requirements, and Confidentiality Mode under which the Work Group will operate.

3.2 IPR Modes

This Policy describes the following IPR Modes:

3.2.1 Inbound Patent License

This requires all Obligated Parties to license their Essential Claims in accordance with the licensing elements described in Section 10.1.

3.2.2 RF on RAND Terms

This requires all Obligated Parties to license their Essential Claims using the RF licensing elements described in Sections 10.2.1 and 10.2.2.

3.2.3 RF on Limited Terms

This requires all Obligated Parties to license their Essential Claims using the RF licensing elements described in Sections 10.2.1 and 10.2.3.

3.2.4 Code

This requires all WG Members and WG Parties to license their Contributions under an Open Source license as described in Section 10.3.

3.2.5 WG-Specific

This establishes licensing obligations as specified in the applicable WG Charter and approved by the Board of Directors in accordance with Section 10.4.

3.3 Confidentiality Mode

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 OS Licensing Mode

At the time a WG is chartered, the proposal to form the WG must also specify the “OS Licensing Mode” under which the Work Group will accept contributions and distribute deliverables. This Policy describes the following OS Licensing Modes :

3.4.1 Apache License, v2.0

This is the 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 to OpenPOWER under the Apache License, version 2.0 (<https://opensource.org/licenses/Apache-2.0>). For clarity, this requirement does not prevent the WG from making use of existing Open Source Code under a different license, as described in 3.5. The WG shall not accept Code from a WG Member or WG Party under a proprietary license. As a default position, all Code that is, or is made part of, an OpenPOWER Deliverable shall be licensed out by OpenPOWER under the Apache license, version 2.0, and shall at least be provided in source code form.

3.4.2 Other Mixed Licenses

Other or Mixed License Mode Use of any Open Source license for either inbound Contributions and/or outbound OpenPOWER Deliverables other than the Apache License, v2.0 must be specified in the corresponding WG Charter and approved by the Board.

3.4.3 No Code

This requires that a WG not generate Code or accept Contributions or Feedback involving Code.

3.5 OS Communities

At the time a WG is chartered, the proposal to form the WG must also specify the OS Communities the Work Group may accept Code from, the OS Communities the Work Group may contribute Code to and the OS 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 OS Communities and/or that no additional OS licenses are acceptable. Regardless of whether the Work Group accepts Code under additional OS licenses, WG Members

and WG Parties shall contribute Code developed by themselves under the chosen OS Licensing Mode in section 3.4.

3.6 WG Eligibility

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 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) or a Guest Participation Agreement. A WG may not change its IPR Mode, OS Licensing Mode, or Confidentiality Mode, except with respect to Section 3.5 by changing the OS Communities it will accept Code from, OS Communities it may contribute Code to and OS 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.

3.7 WG Amendments

A WG may not produce output except in compliance with its Charter, but may propose amendments to its Charter to the Board of Directors for its approval.

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

This is the 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, or until earlier public release in an OpenPOWER Deliverable.

4.3 Written Confidentiality

This 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 Party that is marked as confidential for the length of time specified in the WG Charter (with a default of five (5) years), or until earlier public release of such information in an OpenPOWER Deliverable, as described in Appendix C, section C.2.

4.4 Terms

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 Agreement

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, 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 and 6) :

5.1.1 Contribution

OpenPOWER has no duty to publish or otherwise use or disseminate any Contribution, except to the extent otherwise approved by the Board of Directors.

5.1.2 Attribution

OpenPOWER may reference the name(s) of the Contributor(s) for the purpose of acknowledging and publishing the Contribution.

5.1.3 Copyright

The Contribution properly identifies any holders of copyright interests in the Contribution.

5.1.4 Confidential

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.

5.1.5 Disclosure

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.

5.1.6 No limit

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

5.2.1 Copyright Holding

To the extent that a Contributor holds a copyright interest in its Contribution, such Contributor grants to OpenPOWER a perpetual, irrevocable, non-exclusive, royaltyfree, 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.

5.2.2 Contribution License

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.

5.2.3 Open Source License

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.

5.2.4 Perpetual License

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, royaltyfree, 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

5.3.1 Marking

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.

5.3.2 Usage

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 Contributions Not Intended for Incorporation Into OpenPOWER Deliverables

5.4.1 Tools

An OpenPOWER Party may contribute software tools, simulation models and other software items (“Tools”), in binary and/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

1. that shall allow both commercial and non-commercial use, linking, creation of derivative works, performance and distribution of such Tools in binary form,
2. 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)
3. that may optionally prohibit reverse engineering, decompilation and attempts to determine the source code thereof
4. 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>), or other Open Source license with Board approval.

5.4.2 Contribution

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 (<https://opensource.org/licenses/Apache-2.0>), or other Open Source license with Board approval.

5.4.3 Existing Documentation

OpenPOWER, either directly or at the request of an OpenPOWER Party, may make available existing Open Source and/or documentation (collectively, “Existing OS”) for general distribution

to OpenPOWER Parties, Work Groups generally and/or to the general public. Existing OS shall be provided under the license associated with the Existing OS.

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

7.1 Contribution License

OpenPOWER encourages Feedback, and WGs may explicitly solicit such Feedback, to OpenPOWER Deliverables from both OpenPOWER Parties that do not have a participating WG Member and those who are not Eligible Persons. Except as provided in 7.2, all nonEligible 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 the Contribution/Feedback License to the relevant WG(s). All non-WG Member Feedback of Eligible Persons 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 agree to grant, the Contribution/Feedback License upon becoming an Eligible Person and have forfeited any right to object to the granting of this Contribution/Feedback License.

7.2 Alternative License

As an alternative to the Contribution/Feedback License of Appendix A, and with Board approval, a WG Charter may provide a Guest Participation Agreement by which non-Eligible Persons and/or non-WG Members will be bound.

8 Disclosure

8.1 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.

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 any third parties.

8.2 Disclosure Requests

All OpenPOWER Parties are encouraged to review OpenPOWER Standards Final Deliverables and make appropriate disclosures.

8.3 Limitations

A disclosure request set forth above does 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.

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

1. the OpenPOWER Standards Final Deliverable produced by the WG that received the Contribution

2. 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
- 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 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 Inbound Patent License Mode WG Requirements

10.1.1 OpenPOWER Standards Final Deliverable

For an OpenPOWER Standards Final Deliverable developed by an Inbound Patent License Mode WG (under Section 3.2.1 of this Policy), each Obligated Party in such WG grants to OpenPOWER

a nonexclusive, worldwide, perpetual, royalty-free license under its Essential Claims covered by its Contribution Obligations or Participation Obligations to

1. make, have made, use, market, import, export, sell, offer for sale, and to otherwise directly or indirectly distribute
 - (a) Licensed Products that implement such OpenPOWER Standards Final Deliverable
 - (b) Licensed Products that implement any Final Maintenance Deliverable with respect to that OpenPOWER Standards Final Deliverable
2. authorize third parties to do the same

10.1.2 Suspension or Revocation

The license described in Section 10.1.1 may be suspended or revoked by the Obligated Party with respect to any OpenPOWER Party or third party if that OpenPOWER Party or third party asserts an Essential Claim in a suit first brought against, or attempts in writing to assert an Essential Claim against, a Licensee with respect to a Licensed Product that implements the same OpenPOWER Standards Final Deliverable or any such Final Maintenance Deliverable.

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, nonsublicensable, 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 3.2.2 or 3.2.3, to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute

1. Licensed Products that implement such OpenPOWER Standards Final Deliverable
2. 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 (RAND) 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 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 OpenPOWER Deliverable by the WG. Code released as a OpenPOWER Deliverable in a Code 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 OS Licensing Mode (see section 3.4).

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. Notwithstanding the preceding sentence, if the existing Open Source license is compatible with the WG's chosen OS Licensing Mode, it is permissible for the WG to license the Modified Code under the WG's chosen OS Licensing Mode.

10.4 WG-Specific Mode WG Requirements

10.4.1 OpenPOWER Deliverables

For an OpenPOWER Deliverable developed by a WG-Specific Mode WG, the WG, with approval of the OpenPOWER Board of Directors, may institute a specific contribution license agreement that contains other or different terms than are provided elsewhere in this IPR Policy, and to the extent of any inconsistency between such terms and other provisions of this IPR Policy, the terms of such agreements shall control. In any WG-Specific Mode WG, such contribution license must be included in the WG Charter.

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:

11.1.1 No Contribution nor Participation Obligation

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.

11.1.2 A Contribution Obligation prior to withdrawal

A WG Party that has incurred a Contribution Obligation prior to withdrawal continues to be subject to its Contribution Obligation.

11.1.3 A Participation Obligation prior to withdrawa

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

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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 Ratifying Documents

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. Perpetually maintain its existence
2. Provide for the perpetual existence of a website or other public means of accessing OpenPOWER Standards Final Deliverables
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 License Notices

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.

13.2.1 Responsibility

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.

13.2.2 Notification of Rights

Where the OpenPOWER WG Administrator is formally notified of rights, or claimed rights under Section 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.

13.3 Grants or Receives

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.

13.4 Bankruptcy

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 All Deliverables and Documents

All OpenPOWER Deliverables and documents produced by OpenPOWER shall include the copyright notice as follows replacing [copyright year] with the year or year range of publication: Copyright © OpenPOWER Foundation [copyright year]. All Rights Reserved.

14.2 OpenPOWER License

14.2.1 Notice Text

Any OpenPOWER Deliverable produced by an OpenPOWER Work Group, that is not otherwise governed by a separate license, shall include the following notices, in addition to the copyright notice provided in 14.1 :

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.

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14.2.2 Final Text

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.

14.3 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

All capitalized terms below are intended to have the same meanings assigned to them in the OpenPOWER Intellectual Property Rights (“IPR”) Policy, which can be found on the OpenPOWER Foundation website: <https://openpower.foundation/>.

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A.2 Patents

A.2.1 Essential Claims

You covenant to grant a patent license, or in the case of a Contribution submitted to an Inbound Patent License Mode WG, you hereby 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, or in the case of a Contribution submitted to an Inbound Patent License Mode WG, you hereby 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.

A.2.2 Code

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of the Contribution with the Code base to which it was submitted.

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You warrant to the best of your knowledge that you have rights to provide this Contribution, and if you are providing this Contribution on behalf of an organization, you warrant that you have the rights to provide this Contribution on behalf of your organization and to bind your organization and its Affiliates to the licensing obligations provided above.

A.4 Confidentiality

You further warrant that no information in this Contribution is confidential, and that OpenPOWER may freely disclose any information in the Contribution.

A.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

The Submitter 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 its submission in any way, and to prepare derivative works that are based on or incorporate all or part of its submission solely for the purpose of developing and promoting the OpenPOWER Deliverable and enabling the implementation of the same by Licensees (all above capitalized terms are defined in the OpenPOWER Intellectual Property Rights ("IPR") Policy, which can be found on the OpenPOWER Foundation website: <https://openpower.foundation/>).

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 Members and WG Parties that are members of this WG. The WG , TSC, and Board of Directors must 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
- 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
- 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 or Code released with such OpenPOWER Standards Final Deliverable
- 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. The terms under this Appendix C do not, in any way:

- i. grant 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. obligate 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. limit 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. limit the Discloser or the Recipient or their Affiliates from assigning or reassigning its or their employees in any way
- v. create any joint relationship, or authorizes the Discloser or the Recipient or their Affiliates to act or speak on behalf of the other
- vi. limit 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 Member and 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
- 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
- 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 or Code released with such OpenPOWER Standards Final Deliverable
- 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.

The terms under this Appendix C do not, in any way:

- i. grant 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. obligate 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. limit 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. limit the Discloser or the Recipient or their Affiliates from assigning or reassigning its or their employees in any way
- v. create any joint relationship, or authorizes the Discloser or the Recipient or their Affiliates to act or speak on behalf of the other
- vi. limit the Discloser or the Recipient or their Affiliates from entering into any business relationship with any other party