

POWER.ORG DEVELOPER MEMBERSHIP AGREEMENT

This DEVELOPER MEMBERSHIP AGREEMENT is entered into between Power.Org, an unincorporated association operating as a program of the IEEE Industry Standards and Technology Organization, a not for profit corporation of the State of Delaware, and the undersigned entity (“Member”). Member agrees to be a Member of Power.org on the terms and conditions stated in this Membership Agreement (“Agreement”), as well as the terms and conditions stated in the Bylaws (as defined below) (the entirety of which is incorporated herein by reference). If and to the extent that any provision of this Membership Agreement limits, qualifies, or conflicts with any provision of the Bylaws, the Bylaws govern.

1. DEFINITIONS

Board of Directors shall have the meaning set forth in Article 1 of the Bylaws.

Bylaws means Power.org bylaws, as in effect and as amended from time to time.

Change of Control means a change in ownership or control of Member effected through any of the following transactions: (a) a merger, consolidation or reorganization approved by Member’s equity holders, unless securities representing more than sixty percent (60%) of the total combined voting power of the voting securities of the successor entity are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the persons who beneficially owned Member’s outstanding voting securities immediately prior to such transaction; (b) any transfer or other disposition of all or substantially all of Member’s assets; or (c) the acquisition, directly or indirectly, by any person or related group of persons (other than Member or any Subsidiary of Member or any person currently owning, beneficially or of record, equity securities of Member), of beneficial ownership (within the meaning or Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing more than forty percent (40%) of the total combined voting power of Member’s outstanding securities.

Committee shall have the meaning set forth in Article 1 of the Bylaws.

Contribution means an oral or written disclosure or submission to Power.org, or to a Subcommittee, Board of Directors, or Committee, including but not limited to disclosures related to a Draft Specification or Draft Implementation, or an addition to or modification of an existing Specification or Implementation, or portion thereof.

Derivative Work means work which is based upon a preexisting copyrighted work, such as a revision, modification, translation, abridgement, condensation, expansion, compilation or any other form in which such preexisting work may be recast, transformed or adapted, and which, if prepared without authorization of the owner(s) of the copyright in such preexisting work, would constitute a copyright infringement.

Developer Member means a Member who has signed this Agreement, and has not signed any other agreement with Power.org for a different level of membership.

Draft Implementation means a proposal, document, or documents entitled Power.org Implementation in draft or non-final form, and any additions or modifications thereto, being worked on or considered by a Subcommittee, Committee, or the Board of Directors prior to formal adoption as an Implementation.

Draft Specification means a proposal, document, or documents entitled Power.org Specification in draft or non-final form, and any additions or modifications thereto, being worked on or considered by a Subcommittee, Committee, or the Board of Directors prior to formal adoption as a Specification.

IBM shall mean International Business Machines Corporation, having an office to conduct business in Armonk, New York.

Implementation means a hardware, software, or firmware embodiment of a Specification or Draft Specification, which has been adopted and approved for release by the Board of Directors, and any updates or revisions adopted and approved for release by the Board of Directors. Implementation does not include the ISA.

Members means all Power.org members pursuant to the Bylaws, including Developer Members, and such Members who may become Members after the undersigned Developer Member joins.

Power Architecture ISA or ISA means the instruction set architecture, including base instructions, special purpose instructions, privileged instructions, proprietary instructions, and other instructions, as designated by IBM from time to time in the current official Power Architecture documentation as issued by IBM.

Specification means a document entitled Power.org Specification adopted and approved for release by the Board of Directors, and any updates or revisions adopted and approved for release by the Board of Directors, that pertains or relates to the ISA or compatibility with the ISA. Specification does not include the ISA.

Subsidiary shall have the meaning set forth in Article 1 of the Bylaws.

2. MEMBERSHIP

2.1 Qualifications. Subject to the terms and conditions of this Agreement and the Bylaws, and subject to meeting the qualifications for membership as set forth in the Bylaws, you or your organization shall be a Developer Member of Power.org. Member's assignment to a class is subject to meeting the qualifications for membership as set forth in the Bylaws, and approval by the Board of Directors.

2.2 Support for Mission. During the term of its membership in Power.org, Developer Member expects to support the design, development, or application of hardware or software products that will be Fully Compliant with Specifications or Implementations released by Power.org. However, nothing in this Agreement shall obligate Developer Member to manufacture or use products complying with Specifications or Implementations or preclude the use of processor architecture technology other than the Power Architecture.

2.3 Member Benefits. Developer Member shall be entitled to the benefits provided by this Agreement and the Bylaws for “Developers” or “Developer Members.” The Member shall be entitled to receive materials disseminated to Power.org Members, and to the other benefits of such membership as may be determined by the Board of Directors or enacted pursuant to the Bylaws.

3. OBLIGATIONS OF MEMBERS

3.1 Bylaws. Developer Member has reviewed, hereby approves, and agrees to abide by the Bylaws. Terms used in this Agreement have the same meaning as when the same terms are used in the Bylaws.

3.2 Dues and Other Fees. The Developer Member shall pay dues, fees and other assessments, which may be established from time to time by the Board of Directors for Developer Members. Dues within a class shall be nondiscriminatory. The Board of Directors may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership.

3.3 Expenses. Unless otherwise authorized by the Board of Directors, Developer Member shall bear its own costs and expenses for its participation in any and all activities conducted pursuant to this Agreement, such as travel, employee compensation, and incidental expenses.

3.4 Antitrust Policy. As more fully provided in Section 2.6 of the Bylaws, Developer Member agrees to comply with all applicable antitrust laws pertaining to the Member’s participation in Power.org. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law. Developer Member consents to the disclosure of its name and any other required information for the purposes of permitting Power.org to invoke the protection of the National Cooperative Research and Protection Act of 1993 (15 U.S.C. sec. 4301 et seq.).

4. INFORMATION

4.1 Non-Confidentiality of Information. All information exchanged under this Agreement shall be deemed non-confidential.

4.2 Independent Development. The terms of this Agreement shall not be construed to limit any Member's right to independently develop or acquire products. Subject to any licenses as may be set forth in this Agreement, all Members may use information disclosed under this Agreement for any purpose.

5. INTELLECTUAL PROPERTY

5.1 No Patent Rights. DEVELOPER MEMBER OBTAINS AND GRANTS NO PATENT RIGHTS IN THIS AGREEMENT. DEVELOPER MEMBER SPECIFICALLY ACKNOWLEDGES THAT IT IS THE RESPONSIBILITY OF MEMBER TO OBTAIN A LICENSE UNDER ANY PATENT RIGHTS (BE THEY OWNED OR CONTROLLED BY OTHER MEMBERS OF POWER.ORG OR BY THIRD PARTIES) AS MAY BE REQUIRED TO PRACTICE THE SPECIFICATIONS AND IMPLEMENTATIONS RELEASED UNDER THIS AGREEMENT.

5.2 Power.org. Developer Member may publicly disclose that it is a Developer Member of Power.org. However, unless otherwise authorized by the Board of Directors, Developer Member may not identify any product or service as being sanctioned by, sponsored by or associated with Power.org. Power.org shall have the right to include the Developer Member's name in any lists of Developer Members published by Power.org and to announce that Developer Member has joined Power.org.

5.3 Member Submissions. Developer Member will have the right to submit materials, including questions and comments, to Power.org communication media such as blogs, mailing lists, forums and the like. Developer Member acknowledges that all materials submitted to such communication media are Contributions. Developer Member agrees that all materials submitted to such communication media are non-confidential in accord with Section 4.1. Developer Member further agrees it shall not submit any Contributions that are claimed in any issued patent or are claimed or may be claimed in any pending patent application of Developer Member or its Subsidiaries, either as of the date of such submission or thereafter. Furthermore, Developer Member agrees to avoid including in any such Contribution any aspect known to Developer Member to be claimed in any issued patent or pending patent application of any third party.

5.4 Copyrights in Contributions. In the event that Developer Member submits a Contribution to Power.org, Developer Member hereby grants to Power.org a worldwide, fully paid-up, royalty-free, irrevocable, perpetual, non-exclusive, non-transferable copyright license to create Derivative Works of such Contributions, as well as such Contributions as implemented in (i) Draft Specifications, (ii) Specifications, (iii) Draft Implementations, and (iv) Implementations, and to use, execute, reproduce, distribute, display, and perform such Contributions, Draft Specifications, Specifications, Draft Implementations, and Implementations and Derivative Works thereof including the right to sublicense the foregoing rights to any other Members of Power.org and their Subsidiaries, and third parties. Contributions owned or developed by Developer Member

shall remain the property of Developer Member and no interest in the ownership of the Contributions shall be conveyed to Power.org or to any other Member.

5.5 Copyright License from Power.org. Power.org hereby grants to Developer Members a worldwide, fully paid-up, royalty-free, irrevocable, perpetual, non-exclusive, non-transferable copyright license to create Derivative Works of Contributions, Draft Specifications, Draft Implementations, Specifications and Implementations, and to use, execute, reproduce, and distribute such Contributions, Draft Specifications, Draft Implementations, Specifications, Implementations, and Derivative Works thereof for research, evaluation, educational, design exploration and other internal, noncommercial purposes only.

5.6 No Other License. Unless expressly set forth herein, no license, immunity or other intellectual property right is granted under this Agreement by Developer Member or its Subsidiaries to any other Member or its Subsidiaries or to Authorized Licensees, either directly or by implication, estoppel or otherwise. Section 5 shall not relieve Developer Member of any obligation or liability accrued to another Member of Power.org prior to the signing of the Agreement.

6. TERM AND TERMINATION

6.1 Term. Unless terminated as provided in Section 12.9 of the Bylaws, this Agreement shall remain in full force and effect, renewing annually upon Developer Member's payment of such dues as may be charged by Power.org to Developer Members, so long as Power.org is in operation.

6.2 Effect of Termination. In the event that this Agreement is terminated, Sections 4, 5, 6, 7, and 8 shall survive.

7. NO WARRANTY/LIMITATION OF LIABILITY/REPRESENTATION

7.1 NO WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONTRIBUTIONS, DRAFT SPECIFICATIONS, SPECIFICATIONS, DRAFT IMPLEMENTATIONS AND IMPLEMENTATIONS PROVIDED OR RELEASED HEREUNDER TO POWER.ORG BY DEVELOPER MEMBER, OR TO DEVELOPER MEMBER BY POWER.ORG, OR FROM OR TO ANY OTHER MEMBERS, ARE PROVIDED AND RELEASED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DEVELOPER MEMBER ACKNOWLEDGES THAT IT IS THE RESPONSIBILITY OF EACH MEMBER TO OBTAIN A LICENSE UNDER ANY PATENT RIGHTS REQUIRED TO PRACTICE THE SPECIFICATIONS AND IMPLEMENTATIONS RELEASED UNDER THIS AGREEMENT.

7.2 LIMITATION OF LIABILITY. IN CASE OF A BREACH OF THIS AGREEMENT, IN NO EVENT SHALL DEVELOPER MEMBERS OR THEIR SUBSIDIARIES OR POWER.ORG BE LIABLE TO OTHER MEMBERS OR SUBSIDIARIES OR TO POWER.ORG FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO REASONABLE ROYALTY, LOSS OF PROFITS, OR OTHER SIMILAR MONETARY DAMAGES RESULTING FROM CLAIMS FOR INTELLECTUAL PROPERTY INFRINGEMENT OR UNAUTHORIZED DISCLOSURE OR MISUSE OF CONFIDENTIAL INFORMATION. THE FOREGOING LIMITATION OF LIABILITY FURTHER SHALL NOT AFFECT THE AGGRIEVED PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF IN CASE OF A BREACH OF THIS AGREEMENT.

7.3 REPRESENTATION AND WARRANTY. DEVELOPER MEMBER, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, REPRESENTS AND WARRANTS THAT ITS REPRESENTATIVES TO POWER.ORG SHALL NOT SUBMIT A CONTRIBUTION THAT ITS REPRESENTATIVES KNOW VIOLATES THE COPYRIGHT OR TRADE SECRET RIGHTS OF ANY OTHER MEMBER OR THIRD PARTY.

8. OTHER PROVISIONS

8.1 No Transfer. Unless otherwise permitted pursuant to the terms of this Agreement, Developer Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of Power.org pursuant to Section 12.8 of the Bylaws. A third party further may not assume any of the rights or obligations under this Agreement incident to a Change of Control of Developer Member, without the written consent of Power.org pursuant to Section 12.8 of the Bylaws. Any attempted transfer in violation of this Section is null and void.

8.2 Notice. The Member designates the representative identified below for the purpose of receiving notice under this Agreement. The Member may change the designated representative by written notice to Power.org. If the Member fails to designate a representative, notice may be sent to the Member at its address stated below. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by electronic mail, by facsimile, by express mail or by courier, or three (3) days after being sent first-class mail, postage prepaid, addressed to the Member's designated representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.

8.3 No Joint Venture. Nothing contained in this Agreement and no action taken by the Member shall be deemed to render Developer Member an employee, agent or representative of Power.org or any other Member, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Members or with Power.org.

8.4 Compliance with Laws. The obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, pertaining to Developer Member's participation in Power.org.

8.5 Governing Law. This Agreement shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of the State of New York, including contract formation principles, and excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction. Any proceedings to enforce or to resolve disputes relating to this Agreement must be brought before a court sited in the State of New York. In such proceedings, neither party shall claim that a court lacks jurisdiction over such party or the subject matter of the claim, and the parties agree to treat this agreement as formed in, and fully performed in, the State of New York. The parties hereto expressly waive any right they may have to a jury trial in any dispute arising out of this Agreement.

8.6 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

8.7 Amendments. This Agreement may be amended on a nondiscriminatory basis in accordance with Sections 7.3 and Article 10 of the Bylaws. Developer Member shall be given at least sixty (60) days' prior written notice of the effective date of an amendment, and amendments shall be prospective only. Developer Member shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its membership in Power.org.

8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.9 Integration. This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in Power.org, except the Bylaws, unless Member is already a Member at a Founder, Sponsor or Participant level, in which case this Agreement is null and void and the prior membership agreement remains in force.

8.10 Authority. Developer Member represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of Developer Member.

9. EFFECTIVE DATE

9.1 Effective Date. This Agreement shall be effective when it is executed by an authorized representative of Developer Member and approved by the Board of Directors.

MEMBER:

Organization: _____

By: _____

Printed Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

e-mail Address: _____

Dated: _____

Requested Membership Class is Developer. Refer to the Power.org General Membership Agreement for other membership classes.