

## POWER.ORG MEMBERSHIP AGREEMENT

This 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 and any Attachments thereto (“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

**Advisory Council** means (a) IBM and (b) a group of Founders and Sponsors that meet the requirements of Article 7 of the Bylaws, have agreed to the terms of Attachment 3 of this Agreement, and provide recommendations to IBM regarding changes to the Power Architecture ISA.

**Advisory Council Member** means a member of the Advisory Council, including Members who may join the Advisory Council after the undersigned Member joins. Advisory Council Member does not include IBM, which shall serve as chair of the Advisory Council pursuant to Article 7 of the Bylaws.

**Attachment** means an attachment to this Agreement that sets forth specific terms applicable to the Advisory Council and to Subcommittees.

**Authorized Licensee** means an entity that as of the effective date of this Attachment and throughout the period of Member’s membership on the Advisory Council, has an unexpired license from IBM to 32-bit, 64-bit, and follow on instruction sets of the Power Architecture ISA, which license grants such entity the right to create processor designs based on the Power Architecture ISA, and shall not include licenses from IBM that are limited to instantiation of one or more PowerPC cores licensed from IBM.

**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, the Advisory Council, 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. Contribution does not include an ISA Contribution or a Non-Council Member ISA Contribution.

**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.

**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.

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

**Fully Compliant** means: (a) an implementation of a Specification or Implementation that supports or implements all of the portions of that Specification or Implementation defined by that Specification or Implementation as being "Required", or (b) an implementation of all portions of a Specification or Implementation required for a specific type of application thereof.

**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.

**ISA Contribution** means an oral or written disclosure or submission to Power.org, or to the Advisory Council, Board of Directors, Committee, Subcommittee, or IBM, specifically regarding the addition of instructions to or the modification of instructions in the Power Architecture ISA, which is made by one or more Advisory Council Members.

**Joint Invention** means a potentially patentable invention conceived by individuals associated with two or more Members in the furtherance of the activities of Power.org.

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

**Necessary Claims** means those claims of all patents having a priority date up to eighteen (18) months after the date a Member either withdraws from membership in Power.org or the Member's membership in Power.org otherwise terminates, under which a Member or any of its Subsidiaries has the right to grant licenses of the scope contemplated herein, and which are necessarily infringed by an implementation of a version of a Specification or Implementation adopted by the Board of Directors up to eighteen (18) months after the date a Member either withdraws from membership in Power.org or the Member's membership in Power.org otherwise terminates, where such infringement could not have been avoided by another commercially feasible non-infringing alternative implementation of such Specification or Implementation.

Notwithstanding anything else in this Agreement, "Necessary Claims" shall not include: (1) enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Specification or Implementation and are not themselves expressly set forth in such Specification or Implementation (for example and without limitation, semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology); (2) the implementation of a Specification or Implementation, or any portion thereof, in or with any product and/or any portion or combinations thereof, the sole purpose or function of which is not required in order to be a Fully Compliant product; (3) claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties; and (4) design patents and design registrations.

**Non-Council Member** means a Member that is not an Advisory Council Member.

**Non-Council Member ISA Contribution** means an oral or written disclosure or submission to Power.org, or to the Advisory Council, Board of Directors, Committee, Subcommittee, or IBM, regarding an addition to or modification of the Power Architecture ISA, which is made by a Non-Council Member.

**Non-Council Member ISA Contribution Patent Claims** means those claims of all patents owned, controlled, or licensable by a Non-Council Member or its Subsidiaries

having a priority date up to eighteen (18) months after the date such Member either withdraws from membership in Power.org or such Member's membership in Power.org otherwise terminates, under which such Member or any of its Subsidiaries has the right to grant licenses of the scope contemplated herein, and which would be infringed by implementation or other use of a Non-Council Member ISA Contribution.

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

**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.

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

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

**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, Member agrees to be a Member of Power.org in the class designated on the signature page of this Agreement. 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, the 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 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.** The Member shall be entitled to the benefits provided by this Agreement and the Bylaws. The Member shall be entitled to participate in Power.org membership meetings, 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.** The 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 Contributions.** Founders, Sponsors, and Participants may make Contributions, Non-Council Member ISA Contributions, or ISA Contributions, subject to the terms and conditions of this Agreement, the applicable Attachment, and the Bylaws. Nothing in this Agreement shall obligate a Member to make Contributions, Non-Council Member ISA Contributions, or ISA Contributions.

**3.3 Dues and Other Fees.** The Member shall pay dues, fees and other assessments, which are established from time to time by the Board of Directors. 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.

**3.4 Expenses.** Unless otherwise authorized by the Board of Directors, the 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.

**3.5 Antitrust Policy.** As more fully provided in Section 2.6 of the Bylaws, the 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. 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, except for (a) information designated as confidential and exchanged pursuant to Attachment 3; or (b) information acknowledged as confidential by the Board of Directors and disclosed pursuant to confidentiality terms accepted by the recipient and approved by the Board of Directors.

**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 Member Trademark Nonassert.** In the event that Power.org proposes to adopt any name or logo as a trademark or trade name, Power.org shall notify the Member (“Receiving Member” for this paragraph) in writing of the proposal. The Receiving Member will have not less than forty-five (45) days’ notice to review the trademark or trade name proposal (“Review Period”). The Receiving Member agrees that unless the Receiving Member provides written notice to the Executive Director of the Receiving Member’s objection to the proposed trademark or trade name within the Review Period, then the Receiving Member and its Subsidiaries shall not assert against Power.org or any Member any trademark or trade name rights the Receiving Member or its Subsidiaries may have or thereafter possess in the proposed trademark or trade name.

**5.2 Power.org.** The Member may publicly disclose that it is a Member of Power.org. However, unless otherwise authorized by the Board of Directors, the 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 Member’s name in any lists of Members published by Power.org and to announce that the Member has joined Power.org.

**5.3 Patent License.** Each Member shall grant to each Founder, Sponsor and Participant of Power.org, a worldwide, patent license under the Necessary Claims of such grantor Member that are infringed by grantee Member’s Fully Compliant implementation of Specifications or are infringed by Fully Compliant portions of Implementations, under reasonable and nondiscriminatory terms and conditions (which may include defensive suspension), in accordance with grantor Member’s standard licensing practices, if any. Such licenses shall be sufficient to allow grantee Members to make, have made, use, import, offer to sell, lease and sell and otherwise distribute such Fully Compliant implementation of the Specification and such Implementations, and to sublicense the foregoing rights to their Subsidiaries. Notwithstanding the foregoing, any applicable patent license from a Member that may be required by an Attachment shall supercede the terms of this Section 5.3.

**5.4 Copyrights in Contributions.** Each Member that has proposed a Contribution 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 Member shall remain the property of 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 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, distribute, display, and perform such Contributions, Draft Specifications, Draft Implementations, Specifications, Implementations, and Derivative Works thereof, including the right to sublicense the foregoing rights to others.

**5.6 Patent License under Non-Council Member ISA Contribution Patent Claims.** Upon submission, all Non-Council Member ISA Contribution Patent Claims of a Non-Council Member pertaining to its Non-Council Member ISA Contribution are subject to a fully paid up, royalty free, non-exclusive, non-transferable, irrevocable, perpetual, worldwide license hereby granted to IBM by such Non-Council Member to make, have made, use, import, offer to sell, lease and sell and otherwise distribute products that implement or embody such Non-Council Member ISA Contribution, and to sublicense the foregoing rights to IBM's Subsidiaries and third parties.

**5.7 Copyrights in Non-Council Member ISA Contributions.** Each Non-Council Member that has proposed a Non-Council Member ISA Contribution hereby grants to IBM and all Advisory Council Members a worldwide, fully paid-up, royalty-free, irrevocable, perpetual, non-exclusive, non-transferable copyright license to create Derivative Works of such Non-Council Member ISA Contributions, as well as such Non-Council Member ISA Contributions as implemented in the ISA, and to use, execute, reproduce, distribute, display, and perform such Non-Council Member ISA Contribution 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. Non-Council Member ISA Contributions owned or developed by Non-Council Member shall remain the property of the Non-Council Member and no interest in the ownership of the Non-Council Member ISA Contributions shall be conveyed to IBM, any Advisory Council Member or to any other Member.

**5.8 Joint Inventions.** Subject to the rights and licenses set forth elsewhere in this Agreement and in the Bylaws, any patent application that claims a Joint Invention and any patent, reissue, reexamination, or continuation based thereon will be owned jointly by the inventing Members, title therein shall be joint, and each owning Member shall have the right to grant licenses and sublicenses thereunder without accounting to one another.

**5.9 Transfer of Intellectual Property.** Any assignment or other transfer of ownership by a Member or its Subsidiaries of any copyrights, trade secrets, or Necessary Claims, shall be subject to the licenses and obligations to license such intellectual property to other Members as set forth herein. Member, on behalf of itself and its Subsidiaries, agrees not to assign, reassign or otherwise transfer ownership of any such intellectual property in order to avoid the license obligations in this Agreement. Any and all assignments and licenses granted by a Member under this Agreement shall be granted on behalf of the Member and its Subsidiaries.

**5.10 Licenses to Subsidiaries.** The licenses in this Agreement include the right of each Member to grant sublicenses to its Subsidiaries existing on or after the effective date of this Agreement, which sublicenses may include the right of the sublicensed Subsidiaries to sublicense other Subsidiaries of said Member. No sublicense shall be broader in any respect at any time during the life of this Agreement than the license held at that time by the party that granted the sublicense.

**5.11 No Other License.** Unless expressly set forth herein, no license, immunity or other intellectual property right is granted under this Agreement by any 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 any Member of any obligation or liability accrued to another Member hereunder 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 the Member's payment of dues, 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. Additional consequences of termination of this Agreement as to a particular Attachment are set forth in such Attachment.

## **7. NO WARRANTY/LIMITATION OF LIABILITY/REPRESENTATION**

**7.1 NO WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY ATTACHMENT HERETO, ALL CONTRIBUTIONS, ISA CONTRIBUTIONS, NON-COUNCIL MEMBER ISA CONTRIBUTIONS, DRAFT SPECIFICATIONS, SPECIFICATIONS, DRAFT IMPLEMENTATIONS AND IMPLEMENTATIONS PROVIDED OR RELEASED HEREUNDER TO POWER.ORG BY MEMBER, OR TO 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. MEMBER ACKNOWLEDGES THAT, EXCEPT FOR THOSE PATENT RIGHTS GRANTED IN THIS AGREEMENT, 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 ANY MEMBERS OR 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.** THE MEMBER, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, REPRESENTS AND WARRANTS THAT ITS REPRESENTATIVES TO POWER.ORG SHALL NOT SUBMIT A CONTRIBUTION OR NON-COUNCIL MEMBER ISA 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, 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 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 the 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 the 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, 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. 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 and any Attachments thereto may be amended on a nondiscriminatory basis in accordance with Sections 7.3 and Article 10 of the Bylaws. The 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. A 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, along with its Attachments, supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in Power.org, except the Bylaws.

**8.10 Authority.** The 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 the Member.

**8.11 Third Party Beneficiary Status.** Both Power.org and Member hereby grant third party beneficiary status hereunder to IBM and its Subsidiaries, with such parties having the right to independently enforce all obligations of Member that relate to ISA Contributions and Non-Council Member ISA Contributions as if IBM and its Subsidiaries were signatory parties hereto.

**9. EFFECTIVE DATE**

**9.1 Effective Date.** This Agreement shall be effective when it is executed by an authorized representative of Member and Power.org.

**MEMBER:**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

e-mail Address: \_\_\_\_\_

*Requested Membership Class*

\_\_\_ *Founder*

\_\_\_ *Sponsor*

\_\_\_ *Participant*

\_\_\_ *Developer*

**ACCEPTED AND AGREED:**

**POWER.ORG**, a program of the IEEE Industry Standards and Technology Organization

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Attachment 1

**ROYALTY BEARING, REASONABLE AND  
NON-DISCRIMINATORY  
INTELLECTUAL PROPERTY RIGHTS  
POLICY SUPPLEMENTAL TERMS AND CONDITIONS**

**1. CONTRIBUTIONS**

A Founder, Sponsor or Participant may make Contributions subject to the terms and conditions of the Agreement, this Attachment and the Bylaws.

**2. INTELLECTUAL PROPERTY**

**2.1 Patents.** Each Member on a Subcommittee to which the Subcommittee Intellectual Property Rights Policy in this Attachment 1 applies shall grant to each Founder, Sponsor and Participant of Power.org, a worldwide, patent license under the Necessary Claims of such grantor Member that are infringed by grantee Member's Fully Compliant implementation of the Subcommittee Specification or are infringed by Fully Compliant portions of such Implementations, under reasonable and nondiscriminatory terms and conditions (which may include defensive suspension), in accordance with grantor Member's standard licensing practices, if any. Such licenses shall be sufficient to allow grantee Members to make, have made, use, import, offer to sell, lease and sell and otherwise distribute such Fully Compliant implementation of the Specification and such Implementations, and to sublicense the foregoing rights to their Subsidiaries.

**2.2 Disclosure of Necessary Claims.** Each Member, on behalf of itself and its Subsidiaries, shall use commercially reasonable efforts to disclose, in writing to Power.org, the existence of any claims of any of its patents or patent applications that may be Necessary Claims that are personally known to the individuals acting on behalf of such Member on the Subcommittee to which the Subcommittee Intellectual Property Rights Policy in this Attachment 1 applies. With respect to unpublished patent applications, such individuals shall be obligated to disclose the existence of the unpublished application and identify the area of the Draft Specification or Draft Implementation where the patent may apply, if issued. When such application is published, such individuals shall update the Member's disclosure with additional specific information concerning the potential Necessary Claim. Each Member shall use commercially reasonable efforts to declare Necessary Claims(s) pursuant to the terms of this Attachment as soon as possible after discovering it has or is likely to have such Necessary Claims(s). Members (collectively or individually) are not obligated to perform or conduct patent searches.

**2.3 Information.** Pursuant to section 4 of the Agreement, all Contributions, Non-Council Member ISA Contributions, and Subcommittee minutes and other materials shall be deemed non-confidential.

**2.4 Non-Council Member ISA Contributions.** Non-Council Member ISA Contributions shall be licensed or assigned, as the case may be, pursuant to sections 5.6 and 5.7 of the Agreement.

**2.5 No Other License.** Unless expressly set forth herein, no patent license, immunity or other right is granted under this Agreement by any Member or its Subsidiaries to any other Member or its Subsidiaries, either directly or by implication, estoppel or otherwise. This Section 2 shall not relieve any Member of any obligation or liability accrued to another Member hereunder prior to the signing of the Agreement.

### **3. SURVIVAL**

**3.1 Survival.** In the event this Agreement is terminated or the Member's participation on a Subcommittee ceases for any reason, Sections 2 and 3 of this Attachment shall survive.

## Attachment 2

**ROYALTY FREE, REASONABLE AND  
NON-DISCRIMINATORY  
INTELLECTUAL PROPERTY RIGHTS  
POLICY SUPPLEMENTAL TERMS AND CONDITIONS**

**1. CONTRIBUTIONS**

A Founder, Sponsor or Participant may make Contributions subject to the terms and conditions of the Agreement, this Attachment and the Bylaws.

**2. INTELLECTUAL PROPERTY**

**2.1 Patents.** Each Member on a Subcommittee to which the Subcommittee Intellectual Property Rights Policy in this Attachment 2 applies shall grant to each Founder, Sponsor and Participant of Power.org, a worldwide, royalty free patent license under the Necessary Claims of such grantor Member that are infringed by grantee Member's Fully Compliant implementation of the Subcommittee Specification or are infringed by Fully Compliant portions of such Implementations, under reasonable and nondiscriminatory terms and conditions (which may include defensive suspension), in accordance with grantor Member's standard licensing practices, if any. Such licenses shall be sufficient to allow grantee Members to make, have made, use, import, offer to sell, lease and sell and otherwise distribute such Fully Compliant implementation of the Specification and such Implementations, and to sublicense the foregoing rights to their Subsidiaries.

**2.2 Disclosure of Necessary Claims.** Each Member, on behalf of itself and its Subsidiaries, shall use commercially reasonable efforts to disclose, in writing to Power.org, the existence of any claims of any of its patents or patent applications that may be Necessary Claims that are personally known to the individuals acting on behalf of such Member on the Subcommittee to which the Subcommittee Intellectual Property Rights Policy in this Attachment 2 applies. With respect to unpublished patent applications, such individuals shall be obligated to disclose the existence of the unpublished application and identify the area of the Draft Specification or Draft Implementation where the patent may apply, if issued. When such application is published, such individuals shall update the Member's disclosure with additional specific information concerning the potential Necessary Claim. Each Member shall use commercially reasonable efforts to declare Necessary Claims(s) pursuant to the terms of this Attachment as soon as possible after discovering it has or is likely to have such Necessary Claims(s). Members (collectively or individually) are not obligated to perform or conduct patent searches.

**2.3 Information.** Pursuant to section 4 of the Agreement, all Contributions, Non-Council Member ISA Contributions, and Subcommittee minutes and other materials shall be deemed non-confidential.

**2.4 Non-Council Member ISA Contributions.** Non-Council Member ISA Contributions shall be licensed or assigned, as the case may be, pursuant to sections 5.6 and 5.7 of the Agreement.

**2.5 No Other License.** Unless expressly set forth herein, no patent license, immunity or other right is granted under this Agreement by any Member to any other Member or its Subsidiaries, either directly or by implication, estoppel or otherwise. This Section 2 shall not relieve any Member of any obligation or liability accrued to another Member hereunder prior to the signing of the Agreement

### **3. SURVIVAL**

**3.1 Survival.** In the event the Agreement is terminated or Member's participation on a Subcommittee ceases for any reason, Sections 2 and 3 of this Attachment shall survive.

## Attachment 3

**POWER ARCHITECTURE ADVISORY COUNCIL  
SUPPLEMENTAL TERMS AND CONDITIONS****1. DEFINITIONS**

**Confidential Information** is limited to: (i) the Power Architecture ISA and written ISA Contributions marked as confidential at the time of disclosure; (ii) orally-disclosed ISA Contributions that are designated as confidential at the time of disclosure and in a written memorandum sent to the chair of the Advisory Council within thirty (30) days of disclosure, summarizing the ISA Contribution sufficiently for identification; and (iv) all minutes of meetings of the Advisory Council. Notwithstanding the foregoing, Confidential Information does not mean or include Non-Council Member ISA Contributions.

**Fully ISA Compliant** means: (a) an implementation of the Power Architecture ISA that supports or implements all of the portions of the Power Architecture ISA defined as being "Required", or (b) an implementation of all portions of the Power Architecture ISA required for a specific type of application thereof.

**ISA Necessary Claims** means those claims of all patents of an Advisory Council Member having a priority date up to eighteen (18) months after the date such Advisory Council Member either withdraws from membership in Power.org or such Advisory Council Member's membership in Power.org otherwise terminates, under which such Advisory Council Member has the right to grant licenses of the scope contemplated herein, and which are necessarily infringed by an implementation of a version of an ISA Contribution submitted to the Advisory Council for consideration, where such infringement could not have been avoided by another technically feasible non-infringing alternative implementation of such ISA Contribution.

Notwithstanding anything else in this Agreement, "ISA Necessary Claims" shall not include: (1) enabling technologies that may be necessary to make or use any product or portion thereof that complies with the ISA Contribution and are not themselves expressly set forth in such ISA Contribution (for example and without limitation, semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology); (2) the implementation of the ISA Contribution contained in the Power Architecture ISA or any portion thereof in or with any product and/or any portion or combinations thereof, the sole purpose or function of which is not required in order to be a Fully ISA Compliant product; (3) claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties; (4) design patents and design registrations; or (5) Non-Council Member ISA Contribution Patent Claims.

## 2. MEMBERSHIP IN ADVISORY COUNCIL

**2.1 Qualifications.** The Advisory Council Member is a Founder or Sponsor Member that meets all the following criteria:

- (i) it is a manufacturer of Fully ISA Compliant Power Architecture microprocessors or systems based on Fully ISA Compliant Power Architecture processors, or has otherwise demonstrated a commitment to distribute products that implement, are Fully ISA Compliant with or otherwise leverage Power Architecture technology; and
- (ii) it is an Authorized Licensee; and
- (iii) it has one or more patent license agreements with IBM by which Advisory Council Member and IBM have licensed each other under applicable current and future patents to make, have made, use, and sell products that implement the Power Architecture ISA, and products that incorporate such implementations; and
- (iv) it has an appropriate United States export authorization, as determined by IBM, to receive transfers of information related to the Power Architecture ISA, including but not limited to information related to microprocessors or computers based on the Power Architecture ISA.

**2.2 Support for Mission.** During the term of its membership in the Advisory Council, the Advisory Council Member expects to support the design, development, or application of hardware or software products that will be Fully ISA Compliant with the Power Architecture ISA. However, nothing in this Section or in this Agreement shall obligate the Advisory Council Member to manufacture or use such products or preclude the use of alternate or competing processor architectures.

**2.3 Purpose of Advisory Council.** The purpose of the Advisory Council is to meet to discuss potential ISA Contributions to the Power Architecture ISA, and to vote on recommendations to IBM regarding such ISA Contributions. IBM retains the sole right to determine whether or not to incorporate such ISA Contributions into the Power Architecture ISA, and such determination shall not be subject to the Bylaws or this Agreement. In no event shall IBM be liable for any damages related to IBM's acceptance or rejection of any recommendation of the Advisory Council, IBM's determination whether or not to incorporate an ISA Contribution into the Power Architecture ISA, or IBM's failure to communicate plans and directions as set forth in Section 3.

## 3. ISA CONTRIBUTIONS

**3.1** The Advisory Council Member may make ISA Contributions relating to the Power Architecture ISA for consideration by IBM, subject to the terms and conditions of the Agreement, this Attachment, and the Bylaws. In order for an ISA Contribution to be considered by IBM for inclusion in the ISA, such ISA Contribution must be submitted in writing, or if submitted orally, be reduced to writing. It is IBM's objective to communicate Power Architecture ISA plans and directions to Advisory Council Members on a periodic basis.

#### 4. CONFIDENTIAL INFORMATION

**4.1 Confidential Information.** IBM, the Advisory Council Member and their sublicensed Subsidiaries agree that Confidential Information shall be maintained in confidence by using the same degree of care that each uses to protect its own confidential information, but no less than a reasonable degree of care under the circumstances. Subject to applicable patents and copyrights, the recipient shall be free to use intangible Confidential Information for any purpose. IBM, the Advisory Council Member and their sublicensed Subsidiaries may disseminate Confidential Information to its employees or contractors (under a comparable confidentiality agreement restricting the contractor's right to use to be solely with respect to work done for IBM or the Advisory Council Member) with a need to know. This obligation of confidentiality will expire ten (10) years from the date of the disclosure of the Confidential Information.

**4.2 Exceptions.** No obligation will apply to any Confidential Information that is:

- (i) publicly available when disclosed or received or in the public domain other than by the recipient's breach of a duty of confidentiality; or
- (ii) rightfully received from a third party without any obligation of confidentiality; or
- (iii) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party; or
- (iv) independently developed by employees or contractors of the recipient; or
- (v) disclosed as required by law; or
- (vi) made public in a published version of the Power Architecture; or
- (vii) inherently disclosed in the manufacture, marketing, sale or maintenance of a product or service.

**4.3 Permitted Disclosures.** IBM and Advisory Council Members may disclose ISA Contributions to third parties following IBM's written notice to Advisory Council Members of the adoption of such ISA Contributions and the projected date of release for publication of such ISA Contributions as part of the ISA. Such disclosures may commence nine (9) months prior to such projected date of publication and shall be made under written confidentiality terms no less restrictive than the terms of this section 4.

**4.4 Disclaimers.** Neither this Attachment, nor any disclosure of Confidential Information hereunder, in any way, limits IBM, Advisory Council Members, or their Subsidiaries from (i) developing, manufacturing or marketing products or services that may be competitive with those of the other; or (ii) limits IBM, Advisory Council Members, or their Subsidiaries from assigning or reassigning its employees in any way.

#### 5. INTELLECTUAL PROPERTY

**5.1 Patents.** Upon submission to the Advisory Council for consideration, all ISA Necessary Claims of Advisory Council Members pertaining to a given ISA Contribution

are subject to a fully paid up, royalty free, non-exclusive, non-transferable, irrevocable, perpetual, worldwide license hereby granted to IBM by the submitting Advisory Council Member to make, have made, use, import, offer to sell, lease and sell and otherwise distribute products that implement or embody the ISA Contribution, provided such product is Fully ISA Compliant, and to sublicense the foregoing rights to IBM's Subsidiaries and third parties. To the extent that the agreements by which Advisory Council Members are Authorized Licensees have provisions that are inconsistent with or otherwise do not reflect the foregoing, Advisory Council Member agrees to amend such agreements to incorporate the foregoing license grant.

**5.2 Copyrights and Tangible Confidential Information.** Each Advisory Council Member that has proposed an ISA Contribution that is accepted by IBM into the ISA pursuant to written notice to Advisory Council Members hereby grants a royalty-free, fully paid-up, worldwide, irrevocable, perpetual, non-exclusive, non-transferable copyright and trade secret license to IBM and all Advisory Council Members to create Derivative Works of such ISA Contribution, as well as such ISA Contributions implemented in the ISA, and to use, execute, reproduce, distribute, display, and perform the ISA Contribution and Derivative Works thereof, and to sublicense the foregoing rights to its Subsidiaries and to third parties. With respect to rights to copyright and tangible Confidential Information granted by IBM under this section, the foregoing license does not grant Advisory Council Members the right to design or develop any microprocessor based on the Power Architecture ISA or any IBM variation thereof; such rights, if granted, shall be as set forth in other agreements between IBM and Advisory Council Member. Such license is subject to Section 4 of this Attachment. To the extent that the agreements by which Advisory Council Members are Authorized Licensees have provisions that are inconsistent with or otherwise do not reflect the foregoing, Advisory Council Member agrees to amend such agreements to incorporate the foregoing license grant.

**5.3 Patent, Copyright and Tangible Information License to ISA Contributions Not Accepted Into the ISA.** Each Advisory Council Member that has proposed an ISA Contribution that has not been accepted by IBM into the ISA hereby agrees to grant to IBM and all other Advisory Council Members a worldwide, irrevocable, perpetual, non-exclusive, non-transferable license under the contributing Member's patents, copyrights and trade secrets to make, have made, use, import, offer to sell, lease and sell and otherwise distribute products that implement or embody the ISA Contribution and Derivative Works thereof; to use, execute, reproduce, distribute, display, make Derivative Works and perform the ISA Contribution and Derivative Works thereof; and to sublicense the foregoing rights to its Subsidiaries and to third parties. Such license shall be made under such other reasonable and non-discriminatory terms as may be agreed to by the granting Advisory Council Member and the grantee under this section.

**5.4 License to Contributions.** All Contributions made to the Advisory Council, other than ISA Contributions, shall be licensed by the contributing Advisory Council Member to IBM and other Advisory Council Members pursuant to the terms of the base Agreement and Attachment 1. Any Contributions made to the Advisory Council by IBM

shall be licensed to Advisory Council Members as set forth in other agreements between IBM and the Advisory Council Member.

**5.5 No Other License.** Unless expressly set forth herein, no patent license, immunity or other right is granted under this Agreement by any Advisory Council Member to any other Member or to Authorized Licensees, or any Subsidiaries of the foregoing, either directly or by implication, estoppel or otherwise. Section 5 shall not relieve any Advisory Council Member of any obligation or liability accrued to another member hereunder prior to the signing of the Agreement.

## **6. REPRESENTATION AND WARRANTY**

**6.1** THE ADVISORY COUNCIL MEMBER, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, REPRESENTS AND WARRANTS TO IBM THAT ITS ISA CONTRIBUTIONS UNDER THIS ATTACHMENT DO NOT VIOLATE THE COPYRIGHT OR TRADE SECRET RIGHTS OF ANY OTHER MEMBER OR THIRD PARTY.

**7. SURVIVAL**

**7.1** In the event the Agreement is terminated or the Advisory Council Member's participation on the Advisory Council ceases for any reason, Sections 4, 5, 6, 7 and 8 of this Attachment shall survive.

**MEMBER:**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**POWER.ORG**, a program of the IEEE Industry Standards and Technology Organization

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**International Business Machines Corporation**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_