

**BYLAWS  
OF  
OPEN ALLIANCE, INC.**

(A Delaware Nonstock Corporation)

**ARTICLE 1. DEFINITIONS**

**SECTION 1.1 “Adopter”** means all Members of the Corporation who so qualify in accordance with the provisions of Article 12 and Section 14.2 below.

**SECTION 1.2 “Affiliate” or “Affiliates”** means any entity that is controlled by, under common control with, or that controls the subject party. For purposes of this definition “control” means direct or indirect control of more than 50% of the voting power to elect directors of a corporation or, for any other entity, the power to direct management of such entity.

**SECTION 1.3 “Alternate”** means an individual who serves in the capacity of a Director on a temporary basis in the event of the absence of the Director.

**SECTION 1.4 “Board of Directors” or the “Board”** means the group of individuals charged with directing the activities and affairs of the Corporation in accordance with Article 4.

**SECTION 1.5 “IRS Code”** means the Internal Revenue Code of 1986, as amended from time to time.

**SECTION 1.6 “Confidential Information”** means only the following: (i) Draft Specifications; (ii) meeting minutes of any Working Group, Member Committee, and the Board; (iii) non-technical information that is developed by the Corporation or any Member for the purpose of promoting the Corporation or a specification, such as the Corporation’s public relations or promotional materials, trade show, Member recruiting or specification promotion plans, or drafts of any of the foregoing that are distributed by or to Members (via the Corporation’s information distribution infrastructure or otherwise) and identified or designated as confidential; (iv) all confidential information disclosed by any Member in the manner specified in Section 16; and (v) all other information distributed to Members by the Corporation except that information the Board of Directors has marked or designated as non-Confidential or publicly available. For the avoidance of doubt, information defined as “Confidential Information” under the IPR Policy shall be deemed as Confidential Information under these Bylaws as well, and subject to the terms and conditions of these Bylaws in addition to those set forth under the IPR Policy.

**SECTION 1.7 “Corporation”** means OPEN Alliance, Inc., a Delaware nonstock corporation doing business as OPEN Alliance. For purposes of these Bylaws, the terms “Corporation” and “OPEN Alliance” will be used interchangeably.

**SECTION 1.8 “DGCL”** means the Delaware General Corporation Law, as it may be amended from time to time.

**SECTION 1.9 “Director”** means an individual member of the Board and **“Directors”** means individual members of the Board.

**SECTION 1.10 “Disinterested Director”** in the context of Board approvals of contracts involving goods or services means those Directors who will not receive compensation from the contracts being evaluated for approval, or whose Member organization will not receive compensation from contracts being evaluated for approval.

**SECTION 1.11 “Draft Specification”** and **“Final Specification”** will have the respective meanings given to each of them in the IPR Policy.

**SECTION 1.12 “Executive Director,”** if any, means an officer of the Corporation whose duties and responsibilities are set forth in Section 5.9. The Executive Director is not a member of the Board.

**SECTION 1.13** A Member is in **“good standing”** if a Member has paid all applicable dues and currently meets all the qualification for Membership under these Bylaws.

**SECTION 1.14 “IPR Policy”** means the Corporation’s intellectual property rights policy, as adopted by the Board of Directors and in effect, and as may be amended from time to time.

**SECTION 1.15 “Organizational Meeting”** means the meeting held via consent resolution of the Corporation on the date set forth in the Consent of Incorporator and Board of Directors of OPEN Alliance in lieu of a meeting, or the meeting held by the Corporation to take such initial actions of the Board and to accept the resignation of the Incorporator.

**SECTION 1.16 “Member”** means a general reference to the collective group of Promoters, Adopters, such other levels of participation in the Corporation as the Board of Directors may from time to time designate, and those Affiliates of each as further described in Sections 4.3(a) and 12.3. Member will not mean a “member” as that term is used in Section 215 of Title 8 of the DGCL. The Corporation will not be deemed to have “members” for purposes of Delaware law.

**SECTION 1.17 “Promoter”** means all Members of the Corporation who so qualify in accordance with the provisions of Article 12 and Section 14.1, below.

**SECTION 1.18 “Participation Agreement”** means the agreement, approved by the Board of Directors, that each prospective Member is required to enter into in order to become a Member, with such agreement designating the applicable Membership Classification of the Member.

**SECTION 1.19** A **“Supermajority Vote”** means the three-quarters (3/4) vote of all Directors of the Corporation’s Board of Directors. If there are only three or fewer Directors left a Supermajority Vote means a two-third (2/3) vote of all Directors of the Corporation’s Board of Directors.

## **ARTICLE 2. OFFICES**

### **SECTION 2.1 PRINCIPAL OFFICE**

The principal office of the Corporation will be located at 3855 SW 153rd Drive, Beaverton, Oregon 97003.

## **SECTION 2.2 CHANGE OF ADDRESS**

The designation of the Corporation's principal office may be changed from time to time by the Board of Directors. Such change of address will be effective upon written notice to all Members.

## **SECTION 2.3 OTHER OFFICES**

The Corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

## **SECTION 2.4 REGISTERED AGENT AND OFFICE**

The Corporation will continuously maintain in the State of Delaware both:

(a) a registered agent, who will be (1) an individual who resides in the State of Delaware; (2) a corporation, a domestic business corporation, domestic limited liability company or domestic professional corporation with an office in the State of Delaware; or (3) a foreign corporation, foreign business corporation, foreign limited liability company or foreign professional corporation authorized to transact business in the State of Delaware with an office in the State of Delaware; and

(b) a registered office of the Corporation which will be the residence or office address of the registered agent.

## **ARTICLE 3. PURPOSE AND POWERS**

### **SECTION 3.1 IRS CODE SECTION 501(c)(6) PURPOSES**

The Corporation is formed as a business league within the meaning of section 501(c)(6) of the IRS Code and Section 1902(b)(3) of Title 30 of the Delaware Administrative Code. All references to the IRS Code contained herein are deemed to include corresponding provisions of any future United States federal tax code. The Corporation may exercise all of the rights and powers conferred on nonprofit nonstock corporations under the laws of the State of Delaware. The Corporation may engage in any lawful act or activity for which a nonprofit nonstock corporation (as defined in Section 114(d)(3) of the DGCL) may be organized, provided such activity is first approved by the Board of Directors.

### **SECTION 3.2 SPECIFIC OBJECTIVE**

OPEN Alliance is a nonprofit nonstock corporation formed for purposes of (i) promoting the development and adoption of open, accessible standards and specifications relating to Ethernet-based automotive communications, including but not limited to the BroadR-Reach Ethernet Specification; (ii) examining interoperability requirements relating to its standards and specifications and promoting related independent interoperability testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with its standards and specifications; and (iii) undertaking such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. In furtherance of these efforts, the OPEN Alliance and its Members will seek to solicit the participation and comments of all interested parties on a fair, equitable and open basis. In addition, as part of these efforts, the

OPEN Alliance may interface with other groups or bodies developing standards and specifications related to the purpose of the OPEN Alliance.

To this end it is anticipated that the OPEN Alliance will engage in the following as appropriate:

- (a) drive the development of, disseminate, support, and maintain standards and specifications;
- (b) promote the development of automotive suitable higher speed physical layer solutions by a standard setting organization;
- (c) assess and promote the filling of gaps within existing specifications;
- (d) develop and/or support the development of interoperability and/or certification tests;
- (e) promote the administration of interoperability testing services;
- (f) create various printed and/or electronic materials for distribution to members and non-members;
- (g) maintain its own website;
- (h) coordinate the promotion of the OPEN Alliance specifications among members and non-members, as well as create basic marketing promotional collateral (e.g., both web pages as well as tangible materials);
- (i) maintain relations with other standard setting organizations and industry consortia, and strive for coherence among specifications maintained by the OPEN Alliance and those of such other organizations; and
- (j) undertake those other activities which its Board of Directors may from time to time approve.

### **SECTION 3.3 DURATION**

The duration of the Corporation will be perpetual, but may be dissolved at any time upon a vote of a three-fourths (3/4) of the Board of Directors.

### **SECTION 3.4 COMPLIANCE WITH ANTITRUST LAWS**

Each of the Members of the Corporation is committed to fostering competition in the development of new products and services, and the work of the Corporation is intended to promote such competition. Each Member further acknowledges that it may compete with other Members in various lines of business and that it is therefore imperative that each Member and its representatives act in a manner which does not violate any applicable state, federal, or international antitrust laws or regulations or applicable orders. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under these Bylaws regarding the importance of limiting the scope of their discussions to the topics that relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Each Member further acknowledges that it and each other Member is free to develop competing technologies and to license its intellectual property rights to third parties, including without limitation, to enable competing technologies and standards, and has no obligation to adopt or implement the Corporation's specifications. The

Corporation will adopt Antitrust Compliance Guidelines substantially similar to the ones attached hereto as Exhibit A.

## **ARTICLE 4. DIRECTORS**

### **SECTION 4.1 NUMBER**

The authorized number of Directors of the Corporation shall be identical to the total number of Promoter Members. The Corporation shall have a minimum of three (3) Directors. For purposes of these Bylaws, a Director will mean the Promoter's designated representative to the Board to serve as Director, and shall not mean its alternate representative (as set forth below) although such alternate representative may vote on behalf of the Director in their absence, and in no case shall a Director and an alternative representative have more than one vote on the Board of Directors. The Board of Directors shall consist of one (1) Director appointed by each of the Promoter Members admitted to the Corporation. Promoter Members are required to appoint a Director for so long as such Promoter Member is a Promoter Member of the Corporation.

### **SECTION 4.2 POWERS**

Subject to the provisions of the DGCL and any limitations in the Certificate of Incorporation or these Bylaws, the activities and affairs of this Corporation will be conducted and all corporate powers will be exercised by or under the direction of the Board of Directors.

### **SECTION 4.3 QUALIFICATION, APPOINTMENT AND ELECTION OF DIRECTORS**

(a) *Qualification:* Each Director must be an employee of the Promoter Member appointing or nominating such individual. No Member may have more than one employee elected or appointed to the Board of Directors (plus Alternates as set forth below). For purposes of these Bylaws, a Member and its Affiliates shall be deemed as one (1) Member. Each Director or their Alternate must attend (a) two out of three consecutive face-to-face meetings of the Board of Directors ("Board of Directors' Meeting" or "Meeting of the Board of Directors") and (b) participate in two-thirds of the total teleconferences held (*e.g.*, 4 out of 6) during any six-month period. A Promoter Member whose representative on the Board fails to meet the participation requirements in the Board meetings may be downgraded to Adopter Member by the vote of the Board of Directors and thereby may lose its right to appoint a representative to the Board of Directors.

(b) *Alternates:* Each Member with an employee appointed or elected to the Board of Directors may also name an Alternate to serve on the Board of Directors, who is bound to the same responsibilities and benefits of a Director. Even if a Director is present, that Director's Alternate may also attend and participate in Meetings of the Board of Directors, but in a nonvoting capacity. By providing written notice to the Secretary, a Member with an employee appointed or elected to the Board of Directors may at any time replace such Director or his or her designated Alternate with another employee of the Member.

### **SECTION 4.4 TERM AND TERM LIMITS**

The effective term of a Director will cease upon (a) his or her death, (b) the resignation of the Director from the Board, termination of employment by an appointing Promoter Member, (c) appointment of a successor Director by a Promoter Member, or (d) when the appointing Promoter

Member ceases to be a Promoter Member. A Promoter Member will be permitted to reappoint the same individual to serve as its representative.

#### **SECTION 4.5 DUTIES**

The duties of the Board of Directors include:

- (a) Performing any and all duties imposed on them collectively or individually by: applicable law, the Corporation's Certificate of Incorporation, or by these Bylaws;
- (b) Appointing and removing, employing and discharging, and, except as otherwise provided in these Bylaws, prescribing the duties and fixing the compensation, if any, of all officers, agents, and employees of the Corporation;
- (c) Supervising all officers, agents, and employees of the Corporation to assure that their duties are performed properly;
- (d) Meeting at such times and places in accordance with these Bylaws;
- (e) Providing the Executive Director or Secretary of the Corporation with a proper address for notices of Board of Directors' Meetings to be given in accordance with Section 4.10;
- (f) Electing a Chairperson annually to preside over meetings of the Board of Directors or to take such action as may be prescribed by the Board;
- (g) Establishing, chartering, modifying the charter of, and disbanding Working Groups and Committees of the Corporation as appropriate;
- (h) Establishing policies and procedures for the consideration of changes or refinements to Final Specifications;
- (i) Adopting Final Specifications of the Corporation or any Reference Document (as such term is defined in the IPR Policy) or technical document to be published by the Corporation;
- (j) Considering for approval or rejection any public statement, press release, or similar public materials concerning the Final Specifications or the business of the Corporation prior to making such materials public;
- (k) Considering for approval or rejection the Corporation's budget, and, if the annual budget is not approved at the start of each calendar year, determining how the Corporation will operate based on the prior budgets, to the extent practical, until a budget is approved;
- (l) Establishing annual dues for the various classes of Members and to determine the rights and obligations for each class of Members not otherwise stated in these Bylaws;
- (m) Making a yearly evaluation of the Corporation's fulfillment of its purposes as set forth in these Bylaws and the need to continue the existence of the Corporation;
- (n) Establishing or revising participation classes and the rights and privileges of the various classes of Members;

(o) Adopting and modifying the Bylaws, the IPR Policy, and any other policy of the Corporation;

(p) Conducting such other duties as are customary for the Directors of a Nonprofit Business League organized under Section 501(c)(6) of the IRS Code; and

(q) Adopting such procedures to govern operations of Working Groups, or if necessary, for specific Member Committees or Working Groups, (“Operating Procedures”).

#### **SECTION 4.6 COMPENSATION**

Directors will serve without compensation by the Corporation. Nothing contained herein will be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefore so long as such compensation is approved by a two-thirds (2/3) majority vote of the disinterested Directors.

#### **SECTION 4.7 PLACE OF MEETINGS**

Board of Directors’ Meetings will be held at places and times as may be agreed to by a simple majority of the Board of Directors. Meetings may be held in person or by any combination of audio, document or videoconferencing techniques, or any other means permitted under Section 211 of the DGCL.

#### **SECTION 4.8 ANNUAL MEETINGS**

The Corporation will establish the time for the Annual Meetings of the Board of Directors. Unless otherwise provided for by the Corporation, the first of the in-person meetings of the Board of Directors during a calendar year will be designated as its Annual Meeting.

#### **SECTION 4.9 SPECIAL MEETINGS**

Special Meetings of the Board of Directors may be called by the Chairperson, Secretary, or on the written request of one third (1/3) or more Directors.

#### **SECTION 4.10 REGULAR MEETINGS**

Regular Meetings of the Board of Directors will take place on a schedule determined by two-thirds (2/3) majority vote of the Board of Directors, and notice will be deemed given for any Regular Meeting if the approved schedule of meetings contains the date and participation information for such Regular Meeting and is approved more than two (2) weeks prior to such Regular Meeting.

#### **SECTION 4.11 NOTICE OF MEETINGS**

Unless otherwise provided by the Certificate of Incorporation, these Bylaws, or provisions of applicable law, the following provisions will govern the giving of notice for meetings of the Board:

(a) *Annual Meetings.* If the Corporation has an Executive Director, the Executive Director of the Corporation will give at least sixty (60) days’ prior written notice to each Director;

otherwise, the President or Secretary will give such notice. Unless otherwise provided for by the Corporation, the first of the in-person meetings of the Board of Directors during a calendar year will be designated as its Annual Meeting.

(b) *Special Meetings.* If the Corporation has an Executive Director, the Executive Director of the Corporation will give at least forty-eight (48) hours' prior notice to each Director; otherwise, the President or Secretary of the Board will give such notice.

(c) *Regular Meetings.* Notice of Regular Meetings will be deemed to have been given in the manner set forth in Section 4.10.

The primary means for the provision of notice will be via electronic mail to the Directors at the electronic mail address that appears in the records of the Corporation. Directors are responsible for providing the Corporation with any change in their electronic mail address. If notification is provided by express courier services and the like, such notice will be deemed to be delivered after three (3) days from the date of deposit to his or her business or home address. Personal notification may also include notification by telephone, facsimile, or other electronic means; *provided, however*, such notification will be subject to any and all acknowledgment requirements as may be set forth in the DGCL. Notwithstanding the foregoing, one calendar week prior notice period may be waived by unanimous consent of Promoters and/or Members, as appropriate.

In addition to all other information required to be provided by the DGCL, notice to Directors will include a copy of all resolutions to be considered at the forthcoming meeting.

**SECTION 4.12 QUORUM FOR MEETINGS**

A quorum (“Quorum”) of the Board will consist of two-thirds (2/3) of the total number of Directors. In the absence of a continued quorum at any Meeting of the Board already in progress, a simple majority of the Directors present may adjourn the meeting.

**SECTION 4.13 BOARD ACTION AND VOTING PERCENTAGES**

Except as otherwise provided in the Certificate of Incorporation, or these Bylaws, or if provisions of Delaware law require a greater or lesser voting percentage or different rules for approval of a matter by the Board, every act or decision done or made upon a two-thirds (2/3) majority vote of the Directors present at a meeting duly held at which a Quorum is present is the act of the Board of Directors.

In addition to such other special voting thresholds as may be provided for under these Bylaws, the following shall also apply:

<b>Matter to be Voted On</b>	<b>Number of Affirmative Votes Required</b>
(a) Removal of a Director or alternate.	Supermajority Vote
(b) Revocation or suspension of membership.	Supermajority Vote
(c) Revision or modification of membership agreements.	Supermajority Vote
(d) Amendment of Bylaws	Supermajority Vote
Adding new Promoters	Supermajority Vote
Removal of Chairperson or Officer	Supermajority Vote
Terminating the Alliance	Supermajority Vote



Establishing new WGs	Simple majority vote meeting Quorum
Electing the Chairperson or Officers	Simple majority vote meeting Quorum
Compensation for Executive Director	Simple majority vote of Disinterested Directors meeting Quorum
Adjourn BoD meetings if no Quorum is present	Simple majority of Directors present
Choose acting Chairperson in BoD meeting if neither Chairperson nor President are present	Simple majority of Directors present
Decide on places and times of BoD meetings	Simple majority of all Directors

#### **SECTION 4.14 CONDUCT OF MEETINGS**

Meetings of the Board of Directors will be presided over by the Chairperson of the Board of Directors, or in the Chairperson’s absence, by the President, or in the absence of both by an acting Chairperson chosen by a simple majority of the Directors present at that meeting. The Secretary of the Corporation will act as secretary of all Meetings of the Board, or in the Secretary’s absence the President will act as the Secretary, or in absence of both the presiding officer will appoint another person to act as Secretary for that meeting.

To the extent permitted by applicable law, an Alternate may attend a Board of Directors’ Meeting and vote in place of an absent Director should said Director be unavailable to attend such meetings. An Alternate may also attend Meetings of the Board of Directors in a nonvoting capacity even if a Member’s appointed or elected representative to the Board of Directors is present. Should neither the Director nor the Alternate be available for a meeting, a Director may designate another Director to vote by proxy, provided a signed proxy is delivered in advance of the meeting by the Director to the Chairperson or Secretary.

Meetings will be governed by such procedures as may be approved from time to time by the Board, insofar as such rules are not inconsistent with or in conflict with the Certificate of Incorporation, these Bylaws, or with provisions of applicable law. Where practical, *Robert’s Rules of Order* will be used as a guide in the conduct of meetings.

Directors may participate in any Board of Directors’ Meeting through use of teleconference, videoconference, or similar communications, so long as all people participating in such meeting can hear one another during such meeting. Participation in a meeting pursuant to this Section 4.14 constitutes presence in person at such meeting; and will satisfy the Director’s attendance obligations described in Section 4.3, provided the participation exceeds 75% of the duration of the meeting.

In addition to the above, in support of development activities by the Corporation and its members, the Corporation may invite a non-Member guest (“Guest”) to participate in a Board Meeting.

#### **SECTION 4.15 VACANCIES; RESIGNATIONS**

Vacancies on the Board of Directors will exist whenever: (a) the number of authorized Directors, i.e. the number of Promoter Members is increased; (b) a Director resigns from the Board of Directors; (c) a Director resigns from or is terminated from employment by the organization employing the Director at the time of the Director’s appointment or election; (d) a Director is no longer able to continue as a Director due to death or disability; and (e) whenever a Director is

removed from office with or without cause, as permitted by and in accordance with the laws of the State of Delaware.

Any Director may resign effective upon giving written notice to the Chairperson, President, the Secretary, Executive Director (if the Corporation has an Executive Director), or the Board. If the Corporation is left with fewer than three (3) duly appointed Directors in charge of its affairs for a period of six (6) months, the Corporation will dissolve. If the Corporation is left with no duly appointed Director or Directors in charge of its affairs for a period of thirty (30) days, the Corporation will dissolve at the end of the thirty (30) days.

The Promoter Member employing the resigning or removed Director shall replace that Director with another employee or representative by providing the Board of Directors with written notice of the same within three (3) months after the effective date of the Director's resignation, termination, or removal, during such three (3) month period a Promoter Member shall not be downgraded to a different membership level on the grounds of lack of participation by its representative. Except as otherwise herein provided, a Director will be conclusively deemed to resign if the Director's employment with the Promoter is for any reason terminated.

If the Promoter who has the right and obligation under this Section 4.15 to appoint a replacement Director to the Board fails to appoint such Director within the prescribed time period, the Promoter may be downgraded by the vote of the Board to Adopter Member. In the event that two or more Directors' Member organizations are merged or a Director's Member organization is acquired by another Director's Member organization, the resulting or acquiring Member will designate which of the Directors is to remain on the Board and the other Director or Directors will be removed from the Board immediately upon the closing of the acquisition or merger.

#### **SECTION 4.16 NONLIABILITY OF DIRECTORS**

To the extent permissible under Delaware and U.S. Federal law, Directors will not be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **SECTION 4.17 INDEMNIFICATION BY THE CORPORATION OF DIRECTORS AND OFFICERS**

To the fullest extent permitted by the DGCL, as it exists on the date hereof or is hereafter amended, the Corporation will indemnify and defend any person who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the Corporation), by reason of the fact that the person is or was a Director of the Corporation and acting on behalf of the Corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

This Section 4.17 will not be deemed exclusive of any other provisions or insurance for the indemnification of Directors, officers, employees, or agents that may be included in any statute, bylaw, agreement, resolution of Directors or otherwise, both as to action in any official capacity and action in any other capacity while holding office, or while an employee or agent of the Corporation.

#### **SECTION 4.18 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Board of Directors, in its sole discretion, may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any particular agent of the Corporation (including a Director, officer, employee, or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Certificate of Incorporation, these Bylaws, or applicable provisions of law.

#### **SECTION 4.19 BOARD ACTION WITHOUT A MEETING**

Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to that action. Consent by a member of the Board sent by electronic mail or other electronic means is considered written consent to the extent permissible under the DGCL. Such action by signed consent will have the same force and effect as any other validly approved action of the Board. All consents will be filed with the minutes of the proceedings of the Board.

#### **SECTION 4.20 CHAIRPERSON OF THE BOARD**

At each Annual Meeting of the Board, the Board of Directors will elect by simple majority vote a Chairperson of the Board from among the Directors. The Chairperson of the Board may also act as the President of the Corporation, however is not required to also be the President of the Corporation. The Chairperson is a Member of the Board of Directors and elected with incumbency of twelve months. The Board of Directors may remove the then-current Chairperson of the Board, with or without cause, via a Supermajority Vote. Said removal as the Chairperson of the Board of Directors may not act as a removal from the Board of Directors without further action as provided for under these Bylaws. In the event that the Chairperson steps down or is removed for any reason, the Board of Directors will elect a new Chairperson of the Board to serve until the next Annual Meeting of the Board.

### **ARTICLE 5. OFFICERS**

#### **SECTION 5.1 DESIGNATION OF OFFICERS**

Officers of the Corporation will be a President, a Secretary, and a Treasurer. If appointed by the Board of Directors, the Corporation may have an Executive Director. The Corporation may also have such other officers with such titles as may be determined from time to time by the Board of Directors. New officer positions can be created by the Board of Directors. The creation of the officer position must contain the following description: (a) Name of position; (b) a task description; and (c) duration of one election period (default twelve months). With the exception of the Executive Director, each officer will be an employee of a Promoter and, to the extent practicable, also a current member of the Board of Directors.

## **SECTION 5.2 ELECTION AND TERM OF OFFICE**

Officers will be elected by simple majority vote of the Board of Directors at each Annual Meeting of the Board of Directors and each officer will hold office until such officer dies, resigns, or is removed or is otherwise disqualified to serve, or until a successor will be appointed at the next Annual Meeting, whichever occurs first.

## **SECTION 5.3 REMOVAL AND RESIGNATION**

The Board of Directors may remove any officer from the officer's elected office, either with or without cause, at any time upon Supermajority Vote. An officer who is also an employee of a Member will automatically be removed if the employer of the officer terminates its participation in the Corporation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President, Secretary, or Executive Director (if any) of the Corporation. Any such resignation will take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. The provisions of this Section 5.3 will be superseded by any conflicting terms of a contract that has been approved or ratified by the Board of Directors relating to the employment of any officer of the Corporation.

## **SECTION 5.4 VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer will be filled by the Board of Directors by a simple majority vote at a Board Meeting at which a quorum is present. In the event of a vacancy in any office other than that of the President, such vacancy may be filled temporarily by appointment by the President until such time as the Board will fill the vacancy.

## **SECTION 5.5 DUTIES OF THE PRESIDENT**

The President will be the chief executive officer. The President, acting in the capacity of the President, will, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. The President will perform all duties incident to the office and such other duties as may be required by law, the Certificate of Incorporation, these Bylaws, or which may be prescribed from time to time by the Board of Directors, including presiding as chairperson at all meetings of the Members ("Meetings of Members" or "Members' Meetings").

Furthermore, the President keeps the overall interest and direction of the Alliance and is the 'spokesperson' of the Alliance (i.e. is authorized to communicate with journalists, analysts and media on behalf of the Alliance).

Except as otherwise expressly provided by law, by the Certificate of Incorporation, or by these Bylaws, the President will, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board, in accordance with Section 7.2.

President may act as the Secretary at Board Meetings in the event that the Secretary is unavailable to attend such Board Meeting, and will perform the duties of the Secretary during any such Board Meeting.

## **SECTION 5.7 DUTIES OF THE SECRETARY**

The Secretary will:

(a) Certify and keep at the principal office of the Corporation the original, or a copy, of the Certificate of Incorporation, these Bylaws, and any amendments to either document.

(b) Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all Meetings of the Board of Directors, and, if applicable, meetings of Member Committees, recording therein the time and place of holding, whether regular or special, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.

(c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

(d) Be custodian of the records of the Corporation, as authorized by law or the provisions of these Bylaws and to duly execute documents of the Corporation.

(e) Keep at the principal office of the Corporation a member book containing the name and address of each and any Members, and, in the case where any participation has been terminated, he or she will record such fact in the member book together with the date on which such participation ceased.

(f) Exhibit at all reasonable times to any Members of the Corporation, or to the Member's agent or attorney, on request thereof, these Bylaws, the member book, and the minutes of the proceedings of the Members of the Corporation.

(g) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Certificate of Incorporation, these Bylaws, or which may be assigned to him or her from time to time by the Board.

(h) Secretary may stand-in for the President at Board Meetings in the event that the President is unavailable to attend such Board Meeting, and will perform the duties of the President during any such Board Meeting in addition to the duties of Secretary.

If the Secretary wishes to withdraw, or if the Promoter through which the Secretary participates withdraws as Promoter, the Secretary shall notify the Chairperson in writing immediately. The Board of Directors can also enforce a withdrawal of the Secretary by a Supermajority Vote. In all cases the Board of Directors shall vote for a new Secretary by a simple majority vote as described in Section 5.2. The outgoing Secretary shall provide the new Secretary with his or her files of membership agreements and such form. The respective documentation shall be changed to reflect the identity of the new Secretary.

## **SECTION 5.8 DUTIES OF THE TREASURER**

The Treasurer will:

(a) Have charge and custody of, and be responsible for, all funds and securities belonging to the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as will be selected by the Board of Directors.

(b) Receive, or cause to be received, and give receipt for, or cause a receipt to be given for, monies due and payable to the Corporation from any source whatsoever.

(c) Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

(d) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

(e) Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to the Director's agent or attorney, on request thereof.

(f) Render to the President and Directors, whenever requested, an account of any or all of the transactions as Treasurer and of the financial condition of the Corporation.

(g) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

(h) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, the Certificate of Incorporation, these Bylaws, or which may be assigned to the Treasurer from time to time by the Board.

## **SECTION 5.9 EXECUTIVE DIRECTOR**

If appointed by the Board of Directors, the Executive Director of the Corporation will perform such undertakings as are necessary to manage the day-to-day needs of the Corporation, including:

(a) Scheduling and setting up the meetings of the Corporation, for Board Meetings as may be requested by the Chairperson, and for Working Group meetings as may be requested by the Chair or Vice Chair of such Working Group.

(b) Facilitating communication between Members as may be requested by the Board of Directors.

(c) Providing Members with timely minutes, summaries and other reports with respect to the activities of the Corporation as may be prepared by the Secretary or the Executive Director.

(d) Receiving and processing Participation Agreements, and executing them on behalf of the Corporation.

(e) In general, performing all duties incident to the office of Executive Director and such other duties as may be required by law, the Certificate of Incorporation, these Bylaws, or which may be assigned to him or her from time to time by the Board.

The Executive Director may engage third parties to undertake such activities, provided that the Executive Director enters into appropriate contracts protective of the Corporation, and ensures compliance with terms and conditions of these Bylaws including confidentiality obligations. If the Corporation chooses not to have an Executive Director the duties listed for the Executive Director will become the duties of the Secretary.

## **SECTION 5.10 COMPENSATION**

With the exception of the Executive Director, whose services may be provided pursuant to a consulting and services agreement between the Corporation and an outside contractor, the officers will serve without compensation by the Corporation, unless the Board authorizes compensation. Nothing herein contained will be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise, and receiving compensation therefore as long as such compensation is approved by a simple majority of disinterested Directors.

## **ARTICLE 6. MEMBER COMMITTEES AND WORKING GROUPS**

### **SECTION 6.1 MEMBER COMMITTEES OVERVIEW**

The Corporation will have committees of Members as may from time to time be designated upon vote of the Board of Directors (“Member Committees” or “Committees”). Member Committees will be formed to focus on supervision, management, coordination and such other purposes as the Board of Directors shall determine.

### **SECTION 6.2 MEETINGS AND ACTION OF MEMBER COMMITTEES**

(a) *Formation.* Any Promoter may propose to the Board of Directors the establishment of one or more Member Committee, subject to following the Operating Procedures. Such proposal will include the proposed charter of such Member Committee, and the Members that initially desire to participate in such Member Committee. The Board of Directors will (1) approve or disapprove the formation of each Member Committee, (2) approve or disapprove the charter of such Member Committee and (3) appoint the initial Chair and Vice Chairperson of such Member Committee, which Chairperson will serve for a term of one year after which time the Board of Directors must either replace or reappoint said Chairperson. The Board of Directors will provide timely notice of the formation and Chairperson of each Member Committee to all Members.

(b) *Composition.* Any Member in good standing is eligible to apply for membership in any Member Committee; however, it is expected that the Member company meet and maintain objective minimum requirements for membership in a Member Committee. The Board of Directors may develop and publish guidelines which establish the objective minimum requirements as part of Operating Procedures.

(c) *Record of Activities.* The Member Committee will elect a secretary or other person to document and record the Member Committee’s activities. If the Member Committee has a Vice Chairperson, the Vice Chairperson will take over these tasks.

(d) *Meetings.* Member Committees will hold regular meetings on a schedule as determined by such Member Committee. The noticing of meetings of the Member Committee and the governance thereof will be subject to the Operating Procedures adopted by the Board of Directors. When practical, *Robert’s Rules of Order* will be used as a guide in the conduct of meetings.

(e) *Removal from Member Committee.* The then-current Operating Procedures will govern the removal of any member of a Member Committee.

(f) *Termination of Member Committee.* The Board of Directors may vote to terminate any Member Committee either upon a determination of the completion of its charter or otherwise.

### **SECTION 6.3 WORKING GROUPS OVERVIEW**

The Corporation will have such groups of Members as may from time to time be designated upon vote of the Board of Directors (“**Working Groups**”). Meetings and actions of Working Groups will be governed by, noticed and held in accordance with written Operating Procedures to be adopted by the Board of Directors, which may be amended by the Board from time to time.

### **SECTION 6.4 MEETINGS AND ACTION OF WORKING GROUPS**

(a) *Formation.* Any Member may propose to the Board of Directors the establishment of one or more Working Groups to carry out the work of the Corporation, subject to following the Operating Procedures. Such proposal will include the proposed charter of such Working Group, and the Members that initially desire to participate in such Working Group. The Board of Directors will (1) approve or disapprove the formation of each Working Group, (2) approve or disapprove the charter of such Working Group, (3) appoint the initial Chairperson of such Working Group from among the Members, which Chairperson will serve for a term of two years after which time the Board of Directors must either replace or reappoint said Chairperson, and (4) appoint the initial Vice Chairperson of such Working Group from among the Members, which Vice Chairperson will serve for a term of two years after which time the Board of Directors must either replace or reappoint said Vice Chairperson. The Board of Directors will provide timely notice of the formation and Chairperson of each Working Group to all Members as well as the then-current Operating Procedures that will govern the actions of such Working Group. Without limiting the powers of the Board of Directors as stated in these Bylaws, all output of Working Groups, including but not limited to Draft Specifications, and modifications thereto, will be subject to review and approval of the Board of Directors in accordance with the IPR Policy prior to publication or disclosure by the Corporation and before becoming binding upon the Corporation and the Members.

(b) *Composition.* Any Member in good standing is eligible to apply for membership in any Working Group; however, it is expected that the Member company meet and maintain objective minimum requirements for membership in a Working Group. The Board of Directors may develop and publish guidelines which establish the objective minimum requirements as part of the general Operating Procedures.

(c) *Record of Activities.* It is the duty of the Vice Chairperson to document and record the Working Group’s activities.

(d) *Meetings.* Working Groups will hold regular meetings on a schedule as determined by such Working Group. The noticing of meetings of the Working Group and the governance thereof will be subject to the Operating Procedures adopted by the Board of Directors. When practical, Robert’s Rules of Order will be used as a guide in the conduct of meetings.

(e) *Removal from Working Groups.* The then-current Operating Procedures will govern the removal of any Member of a Working Group.



(f) *Termination of a Working Group.* The Board of Directors may vote to terminate any Working Group either upon a determination of the completion of its charter or otherwise.

## **ARTICLE 7. EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS**

### **SECTION 7.1 EXECUTION OF INSTRUMENTS**

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee will have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **SECTION 7.2 CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation with a value of less than Two Thousand Dollars (U.S.) will be signed by the President, Treasurer, or Executive Director (if any). Checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness in excess of Two Thousand Dollars (U.S.), will require the signatures of two or more of the above-listed officers.

### **SECTION 7.3 DEPOSITS**

All funds of the Corporation will be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

## **ARTICLE 8. CORPORATE RECORDS AND REPORTS**

### **SECTION 8.1 MAINTENANCE OF CORPORATE RECORDS**

The Corporation will keep at its principal office:

(a) Minutes of all Meetings of the Board, all meetings of any Working Group and Member Committees, and all Meetings of Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies;

(b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;

(c) A record of its Members, if any, indicating their names and addresses and, if applicable, the class of participation held by each Members and the termination date of any Participation Agreement; and

(d) A copy of the Corporation's Certificate of Incorporation and these Bylaws as amended to date, which will be open to inspection by the Members, if any, of the Corporation at all reasonable times during office hours.

## **SECTION 8.2 INSPECTION RIGHTS**

Subject to such confidentiality and nondisclosure requirements as the Board may reasonably deem appropriate, or restrictions imposed via any confidentiality and nondisclosure agreement concerning any particular record, book or document, all Members will have the right at a reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and will have such other rights to inspect the books, records and properties of this Corporation as may be required under the Certificate of Incorporation, other provisions of these Bylaws, and applicable provisions of law.

## **ARTICLE 9. SECTION 501(c)(6) OF THE IRS CODE TAX EXEMPTION PROVISIONS**

### **SECTION 9.1 LIMITATION ON ACTIVITIES**

Notwithstanding any of the above statements of purposes and powers, the Corporation shall not engage in any activities or exercise any powers, whether express or implied, so as to disqualify the Corporation from exemption from federal income tax under section 501(a) of the IRS Code by reason of being an organization described in section 501(c)(6) of the IRS Code and from exemption from Delaware income tax by reason of being an organization described in Section 1902(b)(3) of Title 30 of the Delaware Administrative Code and corresponding provisions of any future United States federal tax code or Delaware code.

### **SECTION 9.2 PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of the Corporation will inure to the benefit of, or be distributable to, its Members, Directors or trustees, officers, or other private persons, except that the Corporation will be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.

### **SECTION 9.3 DISTRIBUTION OF ASSETS**

In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary, or by operation of law), the Board of Directors will, after paying or making provisions for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of the Corporation to one or more "Qualified Organizations," as defined below, as the Board of Directors will determine. For purposes of this Section 9.3 "Qualified Organization" will mean a corporation or other organization organized and operated exclusively for religious, charitable, educational or other purposes meeting the requirements as will at the time qualify either (i) as exempt from Federal income tax under Section 501(a) of the IRS Code by reason of being an organization described in Section 501(c)(6) of the IRS Code, or (ii) as a corporation or other organization to which contributions are deductible under Section 170(c)(1) of the IRS Code.

## **ARTICLE 10. AMENDMENT OF BYLAWS**

Except where otherwise provided for in individual Articles herein, or Attachments, these Bylaws and any Attachments, or any of them, will only be altered, amended, or repealed, and new Bylaws adopted, upon Supermajority Vote of the Board of Directors.

## **ARTICLE 11. CONSTRUCTION AND TERMS**

### **SECTION 11.1 CONFLICT**

If there is any conflict between the provisions of these Bylaws and the Certificate of Incorporation of the Corporation, the provisions of the Certificate of Incorporation will govern.

### **SECTION 11.2 UNENFORCEABLE**

Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws will be unaffected by such holdings.

### **SECTION 11.3 REFERENCES**

All references in these Bylaws to the Certificate of Incorporation will be to the Certificate of Incorporation filed with an office of the State of Delaware and used to establish the legal existence of the Corporation.

## **ARTICLE 12. PARTICIPATION PROVISIONS**

### **SECTION 12.1 DETERMINATION AND RIGHTS OF MEMBERS**

The Corporation will have such classes of participation (“Membership Classifications”) as defined by the Board, including the initial classifications set forth in the definition of Member above. No Member will hold more than one Participation Agreement in the Corporation. For purposes of this Section, a Member and its Affiliates will be deemed one Member. Except as expressly provided in or authorized by the applicable Participation Agreements, the Certificate of Incorporation, these Bylaws, the IPR Policy or applicable provisions of law, all Members will have the rights, privileges, restrictions and conditions established by resolution of the Board of Directors.

Among the benefits generally to be afforded to the Members are the right to attend Member Meetings of the Corporation, access to Final Specifications and market requirements documents as may be approved by the Board of Directors, and access to the Members’ portions of the Corporation’s website.

### **SECTION 12.2 QUALIFICATIONS FOR PARTICIPATION; PARTICIPATION IN CERTAIN MEETINGS BY FORMER OPEN ALLIANCE SIG MEMBERS**

The qualifications for participation in the Corporation are as follows:

(a) Any company supportive of the Corporation’s purposes as defined in Section 3.2, and not otherwise prohibited by treaty, law or regulation from abiding by the terms of these Bylaws and the Corporation’s IPR Policy, and who pays the then-current annual dues applicable to its Membership Classification.

(b) Additionally, each Member hereby agrees not to load the membership of any Working Group or Member Committee of the Corporation for the purpose of obstructing the purpose of the Corporation or the progress or purpose of that Working Group or Member Committee.

In addition the following applies to participation in the Corporation's activities:

Members acknowledge that the Board of Directors may approve a plan for the former members of the OPEN Alliance SIG that was in operation prior to the formation of the Corporation to participate in certain meetings, including Working Group meetings, for a limited period of time, and will provide notices regarding any separation of activities that related to these former OPEN Alliance SIG members.

### **SECTION 12.3 PARTICIPATION OF AFFILIATES AND RELATED ENTITIES**

Representatives of Affiliates of a Member Company are permitted to participate in all activities in which representatives of the Member Company are permitted to participate. If a Member is itself a consortium, membership organization, user group or other entity which has members, then the rights and privileges granted to such Member shall extend only to the paid employees or volunteer leader of such Member, and not to its members or users.

### **SECTION 12.4 FEES AND DUES**

The annual dues payable to the Corporation by each class of Members will be established and may be changed from time to time by resolution of the Board. Initial dues will be due and payable upon written commitment to join the Corporation. Thereafter, yearly dues will be due and payable as specified in the Participation Agreement. If any Member is delinquent in the payment of dues, such Member's rights will be deemed suspended upon written notice from the Corporation until all delinquent dues are paid.

### **SECTION 12.5 NUMBER OF MEMBERS**

There is no limit on the number of Members the Corporation may admit. The Board of Directors may, however, in its sole discretion, limit the number of new Members in each membership class (except the number of Adopter Members cannot be limited) so long as such limitations are not imposed for the purpose of excluding otherwise qualified applicants from such Member classification. Any limitation on the number of Members in a Membership class cannot be below the number of Members in that Membership Class at the time of the decision to impose such limitation.

### **SECTION 12.6 MEMBER ROLL**

The Corporation will keep a participant roll containing the name and address, including electronic mail addresses, of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member organization who will serve as a primary contact for the Corporation, receive all correspondence and information, distribute this information within the Member's organization, and vote on all issues submitted to a vote of the Member. Termination of the Participation Agreement of any Member will be recorded in the roll, together with the date of termination of such participation. Such roll will be kept at the Corporation's principal office. Participation in the Corporation is a matter of public record; however, participation lists will not be sold or otherwise be made available to third parties.

### **SECTION 12.7 NONLIABILITY OF MEMBERS**

No Members of this Corporation, as such, will be individually liable for the debts, liabilities, or obligations of the Corporation.

## **SECTION 12.8 NONTRANSFERABILITY OF PARTICIPATION AGREEMENTS**

All rights of participation cease upon the Member's dissolution, either as described under Section 12.9(e) of these Bylaws or upon the filing of certificate of a dissolution of the corporation or equivalent for such Member's jurisdiction. No Participation Agreement may be assigned without the prior written consent of the Corporation, which in the case of a Member assigning its Participation Agreement to an Affiliate such written consent of the Corporation will not be unreasonably withheld, and any purported assignment without such written approval will be null and void.

## **SECTION 12.9 TERMINATION OF PARTICIPATION**

The Participation Agreement of a Member will terminate upon the occurrence of any of the following events:

(a) Upon a failure to initiate or renew a Participation Agreement by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Member, or sent to the Member by electronic mail if the Member has provided its written consent to receive such notices by electronic mail, to the extent permissible under the DGCL, by the Secretary or Executive Director (if any) of the Corporation. A Member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the Member's receipt of the written notification of delinquency.

(b) Upon fifteen (15) days' written notice from the Member.

(c) Immediately upon withdrawal pursuant to the applicable provisions of the IPR Policy.

(d) Upon Supermajority Vote when such Directors determine, after affording the Member in question the right to be heard on the issue, that the Member has violated the policies, procedures and duties of participation herein, including the requirements for participation as stated in Section 12.2.

(e) Upon a Member's dissolution.

In the event that two or more Member organizations are merged or a Member organization is acquired by another Member organization, the Member has the duty to give a written notice to the Board concerning the merger. The resulting entity will be a Member and have only one Participation Agreement and one vote in all Member votes thereafter. In the event a Member company splits into separate entities, a parent company and a spin-off company, the membership status of the parent company should not change. The newly spun-off company is not automatically granted membership and must submit the signed Agreement for membership if desired.

All rights of a Member in the Corporation will cease on termination of a Participation Agreement as herein provided. A Member terminated from the Corporation will not receive any refund of dues already paid for the current dues period. A Member may withdraw as a Member or cease participation in the activities of the Corporation at any time and for any reason.

## **SECTION 12.10 RESIGNATION**

Any Member may resign as a Member at any time upon at least 15 days' prior written notice to the Secretary. Such resignation shall be effective on the date specified by the Member but no earlier than 15 days after the date of receipt of such notice of resignation by the Secretary; provided, however, that any obligation of such resigning Member, which has accrued before such resignation is effective, shall survive resignation and shall stay in force.

## **SECTION 12.11 EFFECT OF RESIGNATION /TERMINATION OF MEMBERSHIP**

A Member whose membership is terminated pursuant to Section 12.9 or who resigns pursuant to Section 12.10 shall no longer have the right to participate in any of the activities of OPEN Alliance and/or receive information, as applicable.

No resignation, termination or suspension of any Membership shall relieve any Member from full payment of any and all fees incurred in relation to Member's participation in any activities of OPEN Alliance prior to such resignation, suspension or termination. Members will not be entitled to refunds for any amounts paid, for any reason, or in any event, including events of resignation, suspension or termination of membership.

Suspension of any Membership shall not relieve a Member from any other obligation under these Bylaws.

The Member's obligations created by the OPEN Alliance IPR Policy will survive a Member's withdrawal, resignation or suspension, any termination of Member's Membership and the dissolution of the OPEN Alliance.

## **SECTION 12.12 RESTRICTIONS FOR NON-COMPLIANCE WITH APPLICABLE LAWS**

The Corporation may determine it is necessary to suspend a Member's membership, or to restrict a Member's access to OPEN Alliance materials or meetings in the case where a Member's participation in OPEN Alliance activities or access to OPEN Alliance materials would cause, or likely cause, the Corporation to violate any laws, regulations, or court order, subsequent to the Corporation having received the advice of legal counsel with regards to such laws, regulations, or court order. The Corporation may adopt one or more policies setting forth procedures for suspension and reinstatement for Members that have suspended or restricted under this provision or for any other reason, taking into account the importance to set forth a Member's right to appeal, payment of dues and procedures for reinstatement.

## **SECTION 12.13 MEMBER OBLIGATION TO COMPLY WITH APPLICABLE EXPORT CONTROL LAWS.**

In connection with the activities of the Corporation, each Member shall comply with all applicable export laws and regulations including but not limited to the US Export Administration Regulations and any other applicable jurisdiction.

Each Member further agrees that it will not transfer, divert, export or re-export, directly or indirectly, any product, software, including software source code, or technology restricted by such regulations or by other applicable national regulations, received from the other Member(s) under this Agreement, or any direct product of such software or technical data to any person,

firm, entity, country or destination to which such transfer, diversion, export or re-export is restricted or prohibited, without obtaining prior written authorization from the applicable competent government authorities to the extent required by those laws. For the avoidance of doubt, U.S. technology and software may not be exported, reexported, transferred, diverted, directly or indirectly to U.S. sanctioned countries and regions, currently Iran, Syria, North Korea, Sudan, Cuba and the Crimea region of Ukraine or nationals of these countries and region without prior written authorization from the U.S. Government. Additionally, US national security controlled Software and and/or Technology (or any direct foreign product thereof), that is exported under § 740.6 License Exception Technology and Software Under Restriction (TSR), may not be exported, reexported, or transferred to Country Groups EI and D1. Notwithstanding the description of prohibited actions in this Section 12.13, further restrictions may apply and this is a non-exhaustive list of Member’s obligations to comply with applicable export control laws.

**SECTION 12.14. NO OTHER LICENSES.** Except for the rights expressly provided by the Corporation’s Bylaws, its IPR Policy and any Participation Agreement, no Promoter or Member grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

**SECTION 12.15. GOOD FAITH DEALING.** Each Member represents and warrants as a Member that it has and shall have power to cause all patents and copyrights owned or controlled by it and all of its Affiliates to be licensed as set forth in the Corporation’s IPR Policy and Bylaws.

## **ARTICLE 13. MEETINGS OF MEMBERS**

### **SECTION 13.1 CALL FOR MEETINGS OF MEMBERS**

The annual meeting of the Members (“Annual Member Meeting”) will be held for the purpose of transacting such business as may be properly brought before the Members. Other regular meetings of the Members (“Members’ Meeting” or “Meetings of Members”) may be called only by Board constituting at least one-half of the total number of Directors.

### **SECTION 13.2 NOTICE OF MEETING**

The Executive Director (if any) or Secretary if no Executive Director will give at least one calendar week prior notice of a Members’ Meeting to each Member, provided that at least two calendar weeks prior notice will be required for all Members’ Meetings requesting in-person attendance; otherwise another Officer on behalf of the Board of Directors will give such notice. The primary means for the provision of notice will be via electronic mail to the Members at the electronic mail address as it appears in the Secretary’s records. If notification is also provided by airmail, such notice will be deemed to be delivered after fourteen (14) days from the date deposited in the airmail addressed to the Members at the address as it appears in the Executive Director’s records, with postage prepaid. If notification is provided by express courier services and the like, such notice will be deemed to be delivered after three days from the date of deposit. Personal notification may also include notification by telephone, facsimile, or other electronic means. Notwithstanding the foregoing, the one calendar week prior notice period may be waived by vote of the Board of Directors.

### **SECTION 13.3 MEETINGS OF MEMBERS**

A Meeting of Members will be held at places and times as may be determined by the Board of Directors. Members' Meetings may be attended in person or by any combination of in person or audio, document or videoconferencing techniques (provided such videoconferencing is offered by the Corporation).

### **SECTION 13.4 QUORUM FOR MEETING OF MEMBERS**

A quorum of the Members will consist of those Members in attendance.

### **SECTION 13.5 REPRESENTATIVES**

Each Member will designate in writing to the Executive Director, and if the Corporation has no Executive Director then to the Secretary, one individual to act as its primary representative. Each Member may also designate an alternate to act in the event that the primary representative is unable to attend a Members' Meeting or to otherwise act on its behalf. Directors will not be considered the primary representative of a Member unless designated by the Member as the official representative. In case of a change in name of a Member, the primary representative of that Member shall submit an official letter with an authorized signature to the Chairperson or Secretary of the Corporation.

### **SECTION 13.6 CONDUCT OF MEETINGS**

Meetings of Members will be presided over by the Executive Director (if any), or in the absence of that person, by an acting Chairperson chosen by a simple majority of the Members present at that meeting. The Secretary will act as secretary of all Meetings of Members, provided that, in the Secretary's absence, a person appointed by the Secretary will act as secretary for that meeting. Meetings will be governed by such procedures as may be approved from time to time by the Board of Directors

### **SECTION 13.7 MEMBERS' ADVISORY VOTING**

All votes of Members at Members' Meetings are advisory in nature only and do not act to bind or direct the Corporation's decisions, actions, or policies. Each Member will have only one vote on each matter submitted to a vote. A Member's designated representative or alternate, if applicable, will be the only person entitled to cast a vote on behalf of the Member. Voting at Members' Meetings will be by a show of hands in the case of Members attending in person, by voice ballot for Members attending by audio, videoconferencing or teleconferencing, or electronically for matters submitted for vote via electronic means.

## **ARTICLE 14. MEMBERSHIP CLASSIFICATIONS**

The Corporation will have multiple classes of membership. The Board will define and may modify the required dues, obligations, and associated benefits for the various membership levels in accordance with provisions of Section 4.12. The Board may adopt additional classes of membership from time to time. The Board may establish more detailed descriptions of the rights and privileges of each classification of membership, provided it will make such information available to all members. The OPEN Alliance will be open for participation by any corporation, partnership, association, trust, governmental body, or other legal entity having an interest in



participating in the activities of the OPEN Alliance. The membership classifications are listed below.

#### **SECTION 14.1 PROMOTERS**

The Corporation will have Promoter Members. Applicants for Promoter Member, qualified under Section 12.2 above and applying for participation, will be admitted upon a Supermajority Vote of the Board to participate in the Corporation and upon such applicant's affirmation of the Certificate of Incorporation, these Bylaws, and the IPR Policy; the execution of a Participation Agreement; and payment of the applicable annual dues.

All Promoters must execute a Participation Agreement and pay the fees called for therein for Promoters and all Promoters will be entitled to all rights and bound to all obligations generally afforded and imposed upon all Members. In addition, Promoters will be granted the specific additional rights stated in this Section 14.1.

Among other benefits and duties specifically afforded to Promoters who remain in good standing will be in addition to the general rights of the Adopters:

1. Nomination of a representative to the Board of Directors of the Corporation;
2. Eligibility to nominate a representative for election for any position as an officer of the Corporation, while being expected to take turns in officer positions;
3. Eligibility to vote on any matter submitted to a vote of the Board of Directors;  
and
4. For the avoidance of doubt, the following rights afforded to Adopters is afforded to Promoters:
  - a. Access to Final Specifications, including the BroadR-Reach Ethernet Specification, and market requirements documents as may be approved by the Board of Directors; and
  - b. Licensing to the BroadR-Reach Ethernet Specification under reasonable and non-discriminatory terms under license from Broadcom Inc.

Effect of Withdrawal by Promoter: If a Promoter withdraws all licenses granted by the withdrawing Promoter Members shall survive and continue in full force and effect for all remaining Members. If Broadcom withdraws as a Promoter or Member, Broadcom agrees that the BroadR-Reach Ethernet Specification license granted shall survive even if Broadcom has withdrawn, and all licenses granted to BroadR-Reach Ethernet Specification shall be effective until expiration of relevant patents.

#### **SECTION 14.2 ADOPTER MEMBERS**

The Corporation will have Adopter Members. Applicants for Adopter Member, qualified under Section 12.2 above and applying for participation, will be admitted to participation upon the affirmation of the Certificate of Incorporation, these Bylaws, and the IPR Policy; the execution of a Participation Agreement designating the applicable Membership Classification; and payment of the applicable annual dues as specified in the Participation Agreement.

All Adopter Members must execute a Participation Agreement and pay the fees called for thereon for Adopter Members. Once the Participation Agreement is accepted, Adopter Members will be entitled to all rights and bound to all obligations generally afforded and imposed upon all Members, including the specific rights stated in this Section 14.2, and will be subject to the rights and obligations applicable to Adopter Members as provided in the IPR Policy.

Among other benefits afforded to Adopter Members who remain in good standing will be:

- (a) Eligibility to participate in Working Groups;
- (b) Eligibility to appoint one voting representative (on a one vote per Member basis) to each Working Group (subject to any attendance limitations of such Working Group) that the Corporation may establish;
- (c) Eligibility to appoint additional non-voting representatives to each Working Group (subject to any attendance limitations of such Working Group);
- (d) The right to propose new Working Groups and initiatives for consideration by the Board of Directors;
- (e) Rights to attend Meetings of Members;
- (f) Access to Final Specifications, including the BroadR-Reach Ethernet Specification, and market requirements documents as may be approved by the Board of Directors;
- (g) Licensing to the BroadR-Reach Ethernet Specification under reasonable and non-discriminatory terms under license from Broadcom Inc.;
- (h) Subject to procedures as may be adopted by the Board of Directors, the right to use the Corporation's name and/or logo in connection with identifying Member's membership in the Corporation; and
- (i) Such other benefits, rights and privileges applicable to such Member's Membership class as the Board of Directors may designate.

## **ARTICLE 15. PUBLICITY**

No Member may make a press or other public announcement (including website listings) regarding its activities as a Member of the Corporation which names the identities of any other Member unless prior written consent is received from any Member named in the press release or public announcement. The Corporation may make a press or other public announcement (including website listings) regarding any subject germane to its purposes provided that prior written consent is received from any Member named in the press release, website listing, or public announcement.

## **ARTICLE 16. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**

### **SECTION 16.1 LIMITATION ON THE SCOPE OF DISCLOSED INFORMATION**

The Members acknowledge that they will not disclose or exchange information as part of the Corporation's activities among themselves unless such disclosure is necessary in order to achieve

the lawful purposes of the Corporation. In the course of participation in the Corporation's activities all Member information disclosed to a Working Group or Member Committee is deemed "Confidential Information" Unless explicitly marked "Public Information" or its equivalent.

## **SECTION 16.2 NONDISCLOSURE**

With respect to Confidential Information, the receiving party agrees, for a period of five (5) years from the date of disclosure, not to use the Confidential Information for any purpose other than to enjoy its rights or perform its obligations under the Bylaws or other Corporation-related documents and to use the same care and discretion to avoid disclosure, publication, and dissemination outside the receiving party and its Affiliates, contractors and consultants as the receiving party employs with its own Confidential Information, but no less than reasonable care. Any disclosure by a receiving party to its subsidiaries, contractors and consultants should be subject to an obligation of confidentiality at least as restrictive as those contained in this Article 16. The foregoing obligation will not apply to any information which is: (a) already known by the receiving party prior to disclosure; (b) publicly available through no fault of the receiving party; (c) rightfully received without a duty of confidentiality; (d) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (e) independently developed by the receiving party; (f) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order; or (g) disclosed by the receiving party with the disclosing party's prior written approval. Notwithstanding anything to the contrary herein, any Member will be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "residuals" means that Confidential Information in nontangible form, which may be retained in the unaided memories of individuals who have not intentionally memorized such Confidential Information and have had rightful access to such Confidential Information under this provision of these Bylaws. It is understood that receipt of Confidential Information under these Bylaws will not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Member within Member's organization. However, this Section 16.2 will not be deemed to grant to any party a license under another party's copyrights or patents.

Nothing contained herein will preclude the Corporation from entering into Nondisclosure Agreements with third party non-Members.

## **SECTION 16.3 CORPORATION INFORMATION**

All public disclosures regarding the existence, Members, and activities of the Corporation must be approved by the Board of Directors; provided, however, that the Corporation and each Member may disclose a listing of Members' names. Public disclosure of any version or revision of a Draft Specification will be subject to the approval by the Board of Directors pursuant to a vote as set forth in these Bylaws. However, the Corporation's general policy will be to disclose fully, at the agreed-upon time, all approved Final Specifications, as well as all information relating to the Corporation and its activities, as approved by the Board of Directors. If a Member will be required to disclose any Confidential Information relating to the Corporation pursuant to a valid order of a court or other government body or any political subdivision thereof, the Member will first give notice to the Board of Directors and make a reasonable effort to obtain a protective

order requiring that any such Confidential Information so disclosed be used only for the purposes for which the order was issued.

#### **SECTION 16.4 SURVIVAL OF CONFIDENTIALITY OBLIGATIONS**

After withdrawal, termination, or nonrenewal as a Member, for any reason, a former Member has a continuing duty under this Article 16.

### **ARTICLE 17. DISPUTES AND DISPUTE RESOLUTION**

#### **SECTION 17.1 APPLICATION**

The following provisions apply in the event of dispute between a Member and the Corporation. For purposes of Section 17, a Member and the Corporation are each sometimes referred to individually as a “party” and collectively as the “parties.” Notwithstanding anything else herein, this Article 17 will only apply to disputes between the Corporation and its Members and will not apply to any disputes between Members or between the Members and third parties.

#### **SECTION 17.2 WAIVER OF WARRANTIES**

ALL DRAFT SPECIFICATIONS AND FINAL SPECIFICATIONS OF THE CORPORATION AND ANY INTELLECTUAL PROPERTY OF THE CORPORATION THEREIN AND ANY CONTRIBUTIONS TO FINAL SPECIFICATIONS MADE BY MEMBERS ARE PROVIDED “AS IS,” AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

#### **SECTION 17.3 LIMITATION OF LIABILITY**

IN NO EVENT WILL THE CORPORATION BE LIABLE TO THE MEMBERS, OR ITS MEMBERS LIABLE TO THE CORPORATION, IN CONNECTION WITH THE CONTRACTUAL NATURE OF THESE BYLAWS OR ANY INTELLECTUAL PROPERTY RIGHTS AGREEMENTS OF THE CORPORATION, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY RELEASES THE OTHER PARTY AND ALL OF THE OTHER PARTY’S AFFILIATES, EMPLOYEES, AND AGENTS FROM ANY SUCH DAMAGES.

#### **SECTION 17.4 MEDIATION**

Any controversy or claim between any Member and the Corporation arising out of or relating to these Bylaws, or the breach thereof, will be first submitted to nonbinding mediation in New York City, NY, by a mediator to be selected by the parties from a panel selected by the International Chamber of Commerce (“ICC”) ADR Dispute Resolutions Services. The parties agree to mediate in good faith over a minimum period of thirty days.

#### **SECTION 17.5 ARBITRATION**

Any controversy or claim between any Member and the Corporation arising out of or related to these Bylaws not resolved by mediation will be settled by binding arbitration in accordance with

the Arbitration Rules (the “**Rules**”) of the ICC, and the procedures set forth below. In the event any inconsistency between the Rules of ICC and the procedures set forth below, the procedures set forth below will control. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction thereof.

(a) *Location.* The location of the mediation and arbitration will be in New York City, NY, U.S.A., or a location where the parties mutually agree.

(b) *Selection of Arbitrators.* The arbitration will be conducted by a panel of three ICC arbitrators who are independent and disinterested with respect to the Corporation. If the parties are unable to agree to arbitrators, the arbitrators will be appointed by ICC from among their panelists with relevant expertise.

(c) *Case Management.* Prompt resolution of any dispute between any Member and Corporation is important to all parties and the parties agree that the arbitration of any such dispute will be conducted expeditiously. The arbitrators will be instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, prehearing discovery and activities), in order to complete the arbitration as expeditiously as possible.

(d) *Remedies.* The arbitrators may grant such legal or equitable remedy or relief (including injunctive relief) that the arbitrators deem just and equitable, to the same extent that such remedy or relief could be granted by a State or U.S. Federal court; provided, however, that such remedy or relief is consistent with the remedies and limitations set forth in these Bylaws.

(e) *Expenses.* The expenses of the arbitration, including the arbitrators’ fees, will be shared equally among the parties. Each party will be responsible for its own attorneys’ fees, including expert witnesses.

(f) *Confidentiality.* Except as set forth below, the parties will keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, experts, investors, insurers, legal counsel, and when required to disclose by applicable securities laws.

(g) *Intellectual Property.* There will be no arbitration of issues of the validity, infringement or enforceability of patents or copyrights. Further, this Section does not apply to any intellectual property rights of a Member with respect to other Members or third parties.

## **SECTION 17.6 SURVIVAL**

This Article 17 will survive any termination of participation pursuant to Section 12.8 or termination of participation for any other reason.

**[Certificate page follows]**

the Arbitration Rules (the “**Rules**”) of the ICC, and the procedures set forth below. In the event any inconsistency between the Rules of ICC and the procedures set forth below, the procedures set forth below will control. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction thereof.

(a) *Location.* The location of the mediation and arbitration will be in New York City, NY, U.S.A., or a location where the parties mutually agree.

(b) *Selection of Arbitrators.* The arbitration will be conducted by a panel of three ICC arbitrators who are independent and disinterested with respect to the Corporation. If the parties are unable to agree to arbitrators, the arbitrators will be appointed by ICC from among their panelists with relevant expertise.

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(d) *Remedies.* The arbitrators may grant such legal or equitable remedy or relief (including injunctive relief) that the arbitrators deem just and equitable, to the same extent that such remedy or relief could be granted by a State or U.S. Federal court; provided, however, that such remedy or relief is consistent with the remedies and limitations set forth in these Bylaws.

(e) *Expenses.* The expenses of the arbitration, including the arbitrators’ fees, will be shared equally among the parties. Each party will be responsible for its own attorneys’ fees, including expert witnesses.

(f) *Confidentiality.* Except as set forth below, the parties will keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, experts, investors, insurers, legal counsel, and when required to disclose by applicable securities laws.

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## **SECTION 17.6 SURVIVAL**

This Article 17 will survive any termination of participation pursuant to Section 12.8 or termination of participation for any other reason.

**[Certificate page follows]**

**CERTIFICATE OF SECRETARY**

I hereby certify:

That I am the duly appointed Secretary of the OPEN Alliance, Inc., a Delaware nonstock corporation; and

The foregoing Bylaws comprising 30 pages, including this page, constitute the Bylaws of the Corporation as duly adopted by the Board of Directors of said Corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name this 2nd day of February, 2021.

Kishore Racherla

\_\_\_\_\_  
Name



\_\_\_\_\_  
Signature

**Exhibit A**  
**OPEN Alliance**  
**Antitrust Guidelines**

**BACKGROUND**

The OPEN Alliance (“**Alliance**”) intends to conduct its affairs in compliance with the antitrust laws of the United States and, as applicable, the antitrust laws of the states within the United States and the antitrust/competition laws of other countries (generally, “**Antitrust Laws**”). The Antitrust Laws are intended to preserve and promote free, fair, and open competition. This competition benefits consumers and companies that are innovative and efficient.

Certain types of activities conducted by industry Members may be subject to scrutiny under antitrust laws as being anti-competitive and a violation of the Antitrust Laws can have serious consequences for the Alliance and for participating companies. In order to minimize exposure of the Alliance and its Members to antitrust liability, the Alliance and each Promoter, Adopter, or other participant (for purposes of this Antitrust Guideline, a “**Member**”) agree to abide by the following guidelines when participating in connection with activities of the Alliance.

Prior to any and all meetings of the Alliance, or subgroups thereof, the Members and any other attendees in that meeting should be reminded of their obligation to comply with these guidelines.

**GUIDELINES**

1. Neither the Alliance nor its committees and activities will be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to their prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms or marketing practices.
2. In connection with participation in the Alliance, there will be no discussion, communication, agreement or disclosure among Members that are actual or potential competitors, regarding their prices, discounts or terms or conditions of sale or licensing of products or services, pricing methods, profits, profit margins or cost data, production plans, market shares, sales territories or markets, allocation of territories or customers, or any limitation on the timing, cost or volume of their research, production or sales.
3. The Alliance and Members, in connection with their participation in the Alliance, will not attempt to prevent any person from gaining access to any market or customer for goods and services, or attempt to prevent any person from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market. (This paragraph is not intended to preclude the Alliance, a Member from disclosing and asserting its intellectual property rights.)
4. The qualifications for participation in the Alliance are set forth in the corporate documents of the Alliance. No applicant for participation, who otherwise meets the qualifications set forth therein, will be rejected for any anti-competitive purpose or for the purpose of denying such applicant the benefits of participation.



5. Each Member in the Alliance is obligated and expected to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete.
6. To the extent that the Alliance develops, administers or approves specifications, test procedures, or certification programs, a Member's decision to accept or comply to or participate therein will be voluntary on the part of Members, and will in no way be compelled or coerced by the Alliance. Adherence to Final Specifications will be voluntary on the part of the Members of the Alliance. This guideline will not, however, prevent the Alliance from adopting testing and certification programs and/or mandatory product compliance and robustness regimes for companies choosing to implement the specifications as well as logo and trademark usage requirements tied to adherence with the Alliance's specifications, test procedures or certifications programs.
7. Final Specifications which may be developed, administered, approved, or adopted by the Alliance, will be based upon appropriate technical, business and consumer considerations, and will not be based upon any effort or purpose to reduce or eliminate competition in the sale, supply and furnishing of products and services.
8. The Alliance may condition use of its trademark(s), and other intellectual property, on compliance with terms and conditions developed to regulate the use of and to protect such mark, and otherwise to maintain and enforce a compliance certification program in accordance with agreed terms and conditions and in conformity with the antitrust laws. Such terms and conditions may include a requirement of adherence with the Alliance's Final Specifications, test procedures or certifications programs. The Alliance also reserves the right to take appropriate action against any person or entity which engages in false or misleading advertising regarding the use of or compliance with Final Specifications, or test procedures of the Alliance or with the Alliance's certification program.
9. During the course of the activities of or sponsored by the Alliance, Members should refrain from disclosing information to any other Member that is not reasonably related the legitimate purposes of such activities.
10. The Alliance and its Members, in connection with their participation in the Alliance, will not enter into any agreement or understanding among themselves to refrain, or to encourage others to refrain, from purchasing any raw materials, product, equipment, services or other supplies from any supplier or vendor or from dealing with any supplier or vendor.
11. Nothing in the Alliance's Bylaws, IPR Policy, or other document or policy will be construed as restricting the right of any Member of the Alliance to independently design, develop, acquire, manufacture, market, service or otherwise deal in, directly or indirectly, competitive products or services independent of any items developed or delivered by Members or the Alliance.
12. To the extent that it furthers the purposes of the Alliance, as set forth in its corporate documents, joint research and development by two or more of its Members and/or representatives thereof will be permissible, provided that such joint research and development for the Alliance will be organized and conducted in a manner consistent

with antitrust and other legal requirements, and in particular will exclude the following activities:

**a.** the exchange of information among competitors relating to costs, sales, profitability, prices, marketing or distribution of any product, process, or service that is not reasonably required to conduct the research and development;

**b.** any agreement or any other conduct restricting, requiring, or otherwise involving the production or marketing by any Member of the Alliance of any product, process or service, other than the production or marketing of proprietary information developed through such joint research and development, such as patents and trade secrets; and

**c.** any agreement or any other conduct restricting or requiring the sale, licensing or sharing of inventions or developments not developed through such joint research and development, or restricting or requiring participation by any Member of the Alliance in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any Member of the Alliance, or representative thereof, or of the results of such joint research and development.

- 13.** The Alliance and each Member, in connection with the activities of the Alliance, will use their best reasonable efforts to comply in all respects with the Antitrust Laws.
- 14.** These Guidelines are conservative and intended to promote compliance with the Antitrust Laws, not to create duties or obligations beyond what the Antitrust Laws actually require. In the event of inconsistency between these Guidelines and the Antitrust Laws, the Antitrust Laws will control.
- 15.** These Guidelines will be promulgated to all Members in the Alliance. All Members will abide by these Guidelines.

Duly adopted by the Board of Directors of the OPEN Alliance on November 10th, 2020.