

BYLAWS OF  
**OPENC-API CONSORTIUM**

ARTICLE I

NAME, PURPOSE AND OFFICES

Section 1.1     Name

The name of the corporation is the “OpenC-API Consortium” and the corporation is referred to in these Bylaws as “OpenC-API.”

Section 1.2     Principal Office

The principal office of OpenC-API will be located at 445 Hoes Lane, Piscataway, NJ 08854.

Section 1.3     Change of Address

The location of OpenC-API’s principal office may be changed from time to time by the Board Members for OpenC-API, which change of address shall be effective upon written notice to all Members. The Board Members of OpenC-API (the “Board”) are hereby granted full power and authority to change its principal office from one location to another.

Section 1.4     Other Offices

OpenC-API may also have offices at such other places as its business and activities may require, and as the Board may, from time to time, designate.

Section 1.5     Purpose

The primary purpose of OpenC-API is to create an open coherent high performance bus interface based on a new bus standard called Open Coherent Accelerator Processor Interface (OpenC-API) and grow the ecosystem that utilizes this interface (“Purpose”). This initiative is being driven by the emerging accelerated computing and advanced memory/storage solutions that have introduced significant system bottlenecks in today’s current open bus protocols and requires a technical solution that is openly available. The parties will collaborate and define an open bus protocol standard that starts from the microprocessor interface on up to any accelerators, memory/storage solutions, bridge chips that enable further interaction with additional protocols, and potentially others. Once defined and agreed upon, the parties plan to make the new open bus protocol standard(s) (Final Specifications as approved by the Board) available publicly.

In support of such Purpose, OpenC-API may engage in some or all the following activities: (a) create an ecosystem for advancing OpenC-API standard(s), (b) host collaboration development Work Groups, (c) create and own distinctive trademarks, service marks and/or certification marks, (d) create various printed and/or electronic materials for distribution, (e) administer or subcontract a branding program, (f) maintain its own website, (g) coordinate the promotion of OpenC-API ecosystem among members and non-members, as well as create basic marketing promotional collateral including tangible materials and web pages, (h) undertake those other activities as the Board may from time to time approve consistent with and in furtherance of the Purpose and the terms of these Bylaws.

### Section 1.6     Intellectual Property Rights Policy

The Intellectual Property Rights Policy of OpenCAPI is adopted and incorporated herein. Some terms that are capitalized and not defined in the Bylaws shall have the meaning specified in the Intellectual Property Rights Policy. The Intellectual Property Rights Policy may be amended in accordance with the terms of these Bylaws.

### Section 1.7     Duration

The duration of OpenCAPI shall be perpetual, but may be dissolved at any time upon a unanimous vote of the Board.

### Section 1.8     Nonprofit Status

(a) OpenCAPI is organized and shall be operated as a non-stock, not for profit membership corporation organized under the General Corporation Law of the State of Delaware.

(b) The Board may, in its sole discretion, elect to seek exemption from Federal taxation for OpenCAPI pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Code"). In the event that such exemption is sought and until such time, if ever, as such exemption is denied or lost, OpenCAPI shall not knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

## ARTICLE II

### MEMBERS

#### Section 2.1     Classes of Membership

OpenCAPI shall initially have four classes of Membership: Board Member, Contributor Member, Observing Member, Associate and Academic Member. Additional classes of voting and non-voting members may be created in the future, and the rights of existing classes of members may be amended, in each case pursuant to these Bylaws. Board Members and any future classes of members that are entitled to voting rights shall be collectively referred to as "Voting Members." All voting and non-voting Memberships in OpenCAPI are collectively referred to in these Bylaws as "Memberships", and a person or entity holding Membership is referred in these Bylaws as a "Member".

#### Section 2.2     Conditions of Membership

Any association, partnership, organization, governmental agency, company, corporation, academic entity, or non-profit entity (with exception of Associate and Academic Members which shall exclude for-profit corporations) shall be admitted to Membership upon: (a) acceptance of its written application on such form as may be from time to time required by OpenCAPI (which acceptance shall be administered in a non-discriminatory fashion), (b) satisfaction of such other conditions, including without limitation requirements for in-kind contributions (e.g. assignment of dedicated developers and maintainers to projects), as may from time to time be established by the Board for such class of Membership, if any, and (c) unless otherwise

provided by the Board, payment of such application fees, assessments, initiation fees, annual dues or other fees for such class of Membership as may from time to time be established by the Board, if any (collectively, "Fees"). A Member shall remain in good standing as a Member provided such Member is in compliance with the terms and conditions of OpenCAPI's Bylaws, Membership Application, Intellectual Rights Policy and such rules and policies (and the terms of any agreements required thereby) as the Board and/or any committees thereof (each a "Board Committee") may from time to time adopt, and is current in its fulfillment of all in-kind commitments and payment of all Fees and penalties for late payment as may be required or determined by the Board (such Fees and penalties are collectively referred to in the Bylaws as "Financial Obligations", and all of the foregoing good standing requirements are collectively referred to in these Bylaws as "Membership Obligations").

At any time, any Member or Membership applicant may nominate itself to be a Board Member pursuant to a process to be established by the Board. The nominee must execute the Member Agreement and submit it to the Secretary. The Board shall consider the application of the Board Member nominee at its next meeting. If the Board approves the admission with a Super Majority vote, the entity shall become a Board Member as provided in Section 2.3.

### Section 2.3     Privileges of Board Membership

Each Board Member, while in good standing, shall be entitled to:

- (a) nominate and vote on new Board Members
- (b) submit proposals and/or vote on OpenCAPI governing related matters including new and/or changing bylaws, Intellectual Rights Policy, Membership Obligations including Financial Obligations, etc.;
- (c) submit proposals and/or review and comment on new draft specifications, and vote on final specifications;
- (d) nominate, and/or run for election as an officer of OpenCAPI;
- (e) highest priority access to any technical assistance and/or certification services that may from time to time be offered by OpenCAPI;
- (f) receive OpenCAPI's specifications and other related necessary information and materials;
- (g) consistent with the Intellectual Property Rights Policy of OpenCAPI, FPGA development enablement and license to use for product development;
- (h) prominent listing of company Member and logo in all appropriate OpenCAPI marketing materials;
- (i) participate and vote within workgroups;
- (j) appoint one representative on the Technical Steering Committee (as defined in Section 5.2) if and only if such Board Member is otherwise un-represented on the Technical Steering Committee. This right may be eliminated by Super Majority Vote (as defined in Section 4.10) of the Board when the Board believes it is no longer necessary; and

(k) in addition to the rights enumerated in these Bylaws, to all other rights enumerated or referred to in these Bylaws, and such other rights as may be amended or created by the Board pursuant to its authority under these Bylaws below or under the General Corporation Law of Delaware.

#### Section 2.4 Privileges of Contributor Membership

Each Contributor Member, while in good standing, shall be entitled to:

- (a) submit proposals on OpenCAPI governing related matters including new and/or changing Bylaws, Intellectual Property Rights Policy, Membership Obligations, including Financial Obligations, etc.;
- (b) submit proposals on new draft specifications;
- (c) access to any technical assistance and/or certification services that may from time to time be offered by OpenCAPI;
- (d) receive the OpenCAPI specifications and other related necessary information and materials;
- (e) consistent with the Intellectual Property Rights Policy of OpenCAPI, FPGA development enablement and license to use for product development;
- (f) listing of Member and logo in all appropriate OpenCAPI marketing materials;
- (g) participate and vote within workgroups;
- (h) appoint one representative on the Technical Steering Committee if and only if such Contributor Member is otherwise un-represented on the Technical Steering Committee and is a Work Group Lead. This right may be eliminated by Super Majority Vote of the Board when the Board believes it is no longer necessary; and
- (i) in addition to the rights enumerated in these Bylaws to all other rights enumerated or referred to in these Bylaws or under the General Corporation Law of Delaware.

#### Section 2.5 Privileges of Observing Membership

Each Observing Member, while in good standing, shall be entitled to:

- (a) right to OpenCAPI's Final Specifications and other related necessary information and materials; and
- (b) such other benefits, rights and privileges applicable to such Member's Membership class as the Board may designate from time to time by vote pursuant to these Bylaws below or under the General Corporation Law of Delaware.

#### Section 2.6 Privileges of Associate and Academic Membership

Each Associate and Academic Member, while in good standing, shall be entitled to:

- (a) receive OpenCAPI's Final Specifications and other related necessary information and materials;

- (b) right to participate and vote within workgroups;
- (c) participate in development activities of OpenCAPI as determined by the Technical Steering Committee; and
- (d) such other benefits, rights, and privileges as the Board may designate or the Voting Members may from time to time institute by vote pursuant to these Bylaws or under the General Corporation Law of Delaware.

### Section 2.7     Participation

Participation by Members in Work Groups (as defined in the Intellectual Property Rights Policy), and Member Groups (as defined in Section 5.5(a) below) sponsored by OpenCAPI will be subject to the Intellectual Property Rights Policy, such operating procedures and terms of participation, and other rules as may from time to time be approved by the Board. No Member will be obligated to contribute its intellectual property as a condition of joining OpenCAPI. No Member will be obligated to participate in an OpenCAPI Work Group or to provide feedback to an OpenCAPI Work Group.

### Section 2.8     Subsidiaries, Etc.

- (a) Only the legal entity that has been accepted as a Member of OpenCAPI and its Affiliates (as defined below) shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member and its Affiliates shall be treated together as a single Member. The term “Affiliate” shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.
- (b) A Board Member and its Affiliates shall be entitled to have only one Board Member at one time.
- (c) If a Member is itself a foundation, consortium, membership organization, user group or other entity that has members or sponsors, then the rights and privileges granted to such Member shall extend only to the employee-representatives of such Member, and not to its members or sponsors, unless otherwise approved by the Board in a specific case from time to time.
- (d) Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its Membership for the then current year to a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that the transferee agrees to be bound by these Bylaws, the Certificate of Incorporation and such policies and procedures as the Board may from time to time adopt, including, but not limited to the Intellectual Property Rights Policy.

### Section 2.9     Additional Classes of Members

The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one or more additional classes of Membership may be created, and the conditions, voting rights (if any), powers and privileges of each such class may be prescribed, by amendment to these Bylaws in accordance with Article XIV.

### Section 2.10 Termination or Suspension of Membership

Any Member may be suspended from Membership or have its Membership terminated by the Board for failure to satisfy its Membership Obligations or for engaging in any conduct, either within or without OpenCAPI, that is contrary to the Purposes of OpenCAPI. Financial Obligations already paid shall not be refundable upon any such termination or suspension, and all Financial Obligations of such Member which may be accrued and unpaid as of the date of such termination shall remain due and payable. Terminations or suspensions of Membership for failure to satisfy Financial Obligations within ninety (90) calendar days of invoice may be imposed with notice and without right of formal appeal under such procedures as the Board may from time to time approve. Except as provided in the last paragraph of this Section 2.10, no termination or suspension of Membership for any other purpose shall be effective unless:

- (a) The Member is given notice of the proposed termination or suspension of Membership and of the reasons therefor;
- (b) Such notice is delivered personally or by certified mail, return receipt requested, or by a national or international overnight courier service, sent to the last address of the Member shown on OpenCAPI's records;
- (c) Such notice is given at least thirty (30) calendar days prior to the effective date of the proposed termination or suspension of Membership; and
- (d) Such notice sets forth a procedure determined by the Board (or other body authorized by the Board) to decide whether or not the proposed termination or suspension shall take place, whereby the Member is given the opportunity to be heard by such body, either orally (and represented by counsel if the Member so desires, at its sole cost and expense) or in writing, not less than five (5) calendar days before the effective date of the proposed termination or suspension.

Notwithstanding the foregoing, in the event that the Board believes in good faith that a Member is engaging in willful misconduct or otherwise acting to the material detriment of the best interests of OpenCAPI and its Members, the Board, acting by Super Majority Vote, may suspend such Member's Membership immediately, provided that such Member is otherwise afforded the protections provided for in these Bylaws.

### Section 2.11 Resignation by Member

A Member may resign as a Member at any time by providing thirty (30) calendar days' prior written notice to the Board. Any Financial Obligations already paid by such Member shall not be refundable in such event, and all such Financial Obligations of such Member which may be accrued and unpaid as of such date shall remain due and payable. If a Board Member does not give written notice of renewal or resigns as a Member, or is terminated, OpenCAPI shall promptly give notice of such event to all Members.

### Section 2.12 Intellectual Property Obligations Upon Member Termination, Suspension, or Resignation

The Intellectual Property Rights Policy will set forth a Member's obligations upon termination, suspension or resignation from OpenCAPI.

### Section 2.13 Levy of Dues, Assessments or Fees

OpenCAPI may levy dues, assessments or fees upon its Members in such amounts as may be approved from time to time by the Board, but a Member upon learning of any increase in dues, or of any levy of any

assessments or fees, may avoid liability therefor by resigning from Membership prior to the date such dues, assessments or fees are due and payable, except where the Member is, by contract with OpenCAPI or otherwise, independently and explicitly liable for such dues, assessments or fees. No provision of the Bylaws of OpenCAPI authorizing such dues, assessments or fees shall, of itself, create such liability. In no event shall the failure of a Member to pay any dues or assessments give rise to any claim in favor of OpenCAPI for indirect or consequential damages. Payments shall be due on the date referenced on the invoice, or ninety (90) calendar days after receipt of invoice, whichever is later.

#### Section 2.14 Use of Names

Unless otherwise provided herein, neither OpenCAPI nor any Member shall use the name, logo, trademark, service mark or other distinctive mark of the another Member in any form of publicity without the written permission of the other member, provided that OpenCAPI and any Member may each disclose and publicize such Member's Membership in OpenCAPI.

### ARTICLE III

#### ACTIONS OF MEMBERS

#### Section 3.1 Action Without Meeting

Any action required or permitted to be taken by the Members, or any class of Members under the General Corporation Law of Delaware, or at any meeting of a Member Committee, Working Group thereof or other group of Members or subset of Members, may be taken without prior notice and without an in-person vote, if a consent in writing, setting forth the action to be taken, shall be signed by Members (or all members of a class of Members, as the case may be), making up not less than that percentage of all Members as would be necessary to authorize or take such action at a meeting at which all Members (or class of Members, as the case may be) entitled to vote thereon were present and voted, in accordance with Section 2.15(c) of the General Corporation Law of Delaware. Pursuant to such written consent, the Voting Members shall elect a Board in accordance with these Bylaws on an annual basis. Prompt notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those otherwise entitled to vote thereon who have not consented in writing. An electronic transmission consenting to an action to be taken and transmitted by a Member or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section, provided that any such electronic transmission sets forth or is delivered with information from which OpenCAPI can determine (a) that the electronic transmission was transmitted by the Member or by a person or persons authorized to act for the Member and (b) the date on which such Member or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Consents given by electronic transmission (i) may be delivered by electronic transmission to the principal place of business of OpenCAPI or to an Officer or agent of OpenCAPI having custody of the book in which actions of Members without a meeting are recorded, need not be reproduced in paper form, and may be maintained in electronic form as long as they are capable of being readily reproduced in paper form, and (ii) may be otherwise delivered to the principal place of business of OpenCAPI or to an Officer or agent of OpenCAPI having custody of the book in which actions of Members without a meeting are recorded if, to the extent and in the manner

provided by resolution of the Board Members.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

### Section 3.2      Nomination and Election Procedures

Subject to the provisions of these Bylaws, the Board Members shall establish reasonable nomination and election procedures given the nature, size, and operations of OpenCAPI, including a reasonable means for Board Members and Contributing Members to nominate a person for election as a Board Member, a reasonable opportunity for a nominee to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy (if requested by such nominee), a reasonable opportunity for all nominees to solicit votes (if requested by any such nominee), and a reasonable opportunity for all Members entitled to vote thereon to choose among the nominees.

## ARTICLE IV

### Board Members

#### Section 4.1      Powers; Voting

The business and affairs of OpenCAPI shall be managed by its Board Members. The Board Members may exercise all powers of OpenCAPI and do all such lawful acts and things as are not by statute or by these Bylaws directed or required to be exercised or done by the Members.

#### Section 4.2      Number of Board Members

The term of the Board Member will be three (3) years except for the initial founding Members who shall serve indefinitely until the Member has resigned from the Board, been terminated from OpenCAPI or been removed as Board Member per the terms of these Bylaws or elects to no longer serve as a Board Member. The maximum number of Board Members shall be nine (9). Once the maximum number of Board Members has been reached, the Board Member class will no longer accept new applicants unless the Board elects to increase the number of Board Members. As openings become available, public notice shall be given and Board Member applications will be accepted for sixty (60) calendar days; this period may be extended, if required.

#### Section 4.3      Nomination, Election and Term of Board Members

(a) Each Founding Board Member (while remaining in good standing) shall be entitled to nominate a new Board Member in the event that the number of Board Members is less than its defined maximum, but in no event shall a company have more than one Board Member position. Each Board Member shall serve their term until his or her successor shall be duly appointed or until his or her earlier resignation or removal. The pool of candidates for Chairman of the Board will be nominated by the Board Members and Contributing Members.

(b) If a current Board Member resigns or is removed, the company that is represented by that Board Member has the right to backfill the vacancy until the next Board meeting where the Board votes to accept that appointment; and



(c) Contributing Members can nominate a Board Member if the maximum of Board Members is not met. The Board will review the submitted nomination and take action on voting in the next Board Meeting thirty (30) calendar days after the submission is received.

(d) The Board may approve from time to time such reasonable attendance and other requirements as it shall deem to be advisable to ensure that seats on the Board are held by active, contributing individuals. Such rules may provide that any Member which has appointed or nominated a Board Member, as the case may be, may lose its ability to appoint and/or nominate a representative to the Board in the event that such requirements have not been met, and/or that a Board Member who fails to meet such requirements shall automatically be deemed to have resigned from the Board, but no such rule may be imposed retroactively.

#### Section 4.4      Enlargement or Reduction

Subject to these Bylaws, the number of Board Members, the persons eligible to become Board Members and the classes of Members eligible to appoint, elect and/or nominate Board Members may be amended at any time by a Super Majority Vote as defined in these Bylaws.

#### Section 4.5      Resignation and Removal

Any Board Member may resign at any time upon notice to OpenCAPI in writing or by electronic transmission at the principal place of business of OpenCAPI or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any or all of the Board Members who were elected by a class of Members voting as a class or by the Board Members may be removed by a majority vote of such class of Members or the Board Members, respectively. Unless otherwise specified by law, any Board Member may be removed by a majority of the other Board Members then in office for engaging in any conduct, either within or without OpenCAPI, that is contrary to the interests of OpenCAPI or to the advancement of OpenCAPI's business or industry goals; provided, however, that the Member or class of Members that appointed and elected or nominated and elected (as the case may be) such removed Board Member shall be entitled to appoint and elect or nominate and elect (as the case may be) a replacement for such removed Board member to serve for the balance of such removed Board Member's term.

#### Section 4.6      Vacancies

(a) Vacancies on the Board occurring as a result of the death, resignation, removal or termination of employment of a Board Member may be filled by such Member or class of Members, as applicable. All other vacancies shall be filled by the vote of a majority of Board Members then in office, whether or not less than a quorum, or by a sole remaining Board Member. The term of a Board Member elected shall be the unexpired portion of the term of the Board Member, if any, whom the Board Member so appointed or elected is replacing.

(b) In the event of a vacancy in the Board, the remaining Board Members, except as otherwise provided by law or these Bylaws, may exercise the powers of the full Board Members until the vacancy is filled.

#### Section 4.7      Place of Meetings

The Board may hold meetings, both regular and special, either within or without the State of Delaware.

#### Section 4.8      Regular Meetings

Regular meetings of the Board may be held as shall from time to time be determined by the Board. Thirty business days' notice to each Board Member, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or thirty (30) business days' notice by written notice deposited in the mail, shall be given to each Board Member by the Secretary, by the Officer, or one of the Board Members calling the meeting. A notice, waiver of notice, or any waiver by electronic transmission of a meeting of the Board need not specify the purpose(s) of the meeting.

#### Section 4.9 Special Meetings

Special meetings of the Board may be called by the President, Secretary, or on the written request of two or more Board Members, or by one Board Member in the event that there is only one Board Member in office. Ten business days' notice to each Board Member, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or ten business days' notice by written notice deposited in the mail, shall be given to each Board Member by the Secretary or by the Officer or one of the Board Members calling the meeting. A notice or waiver of notice or any waiver by electronic transmission of a meeting of the Board need not specify the purposes of the meeting.

#### Section 4.10 Quorum, Action at Meeting, Adjournments

(a) At all meetings of the Board Members a simple majority shall constitute a quorum for the transaction of business and the act of a majority of such Board Members present at any meeting at which there is a quorum shall be the act of the Board Members, except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws.

Robert's Rules of Order shall be the preferred method for conducting Board meetings and rendering decisions among voting Board Members.

(b) In order to pass a "Super Majority Vote", a resolution must be taken at a meeting of the Board at which a quorum is present and in support of which two-thirds of the Board Members (whether in person, by proxy or electronically) have voted affirmatively, or by an equivalent number of Board Members acting by written consent in the manner described in Section 4.11 below. A Super Majority Vote of the Board shall be required with respect to the following matters:

- (i) Adopting or recommending to the Members an agreement of merger or consolidation;
- (ii) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of OpenCAPI's property and assets;
- (iii) Approving or recommending to the Members the dissolution, liquidation or winding up of OpenCAPI or a revocation of any such dissolution, liquidation, or winding up;
- (iv) Enlarging or reducing the size of the Board Members;
- (v) Amending or modifying the eligibility requirements for Membership on the Board or the classes of Members eligible to appoint and/or elect Board Members;

- (vi) Termination or suspension of a Member's Membership, pursuant to Section 2.11 above;
- (vii) Amending or modifying the Intellectual Property Rights Policy and Bylaws and Membership Agreement
- (viii) Chartering Work Groups, consistent with the Intellectual Property Rights Policy, which will include establishing voting and/or veto rights for each Work Group, scope of work, and confidentiality policy; and
- (ix) Approving Technical Steering Committee rules of process.

(c) No Board Member whose attendance and voting rights have been suspended shall be counted for purposes of determining quorum, the number of Board Members then in office or the number of Board Members required for voting purposes, unless otherwise required by law or these Bylaws. If a quorum shall not be present at any meeting of the Board, a majority of the Board Members present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. In the event that one or more of the Board Members shall be disqualified from voting at any meeting upon any matter, then the number of Board Members counted for purposes of determining quorum as it relates to the consideration of such matter shall be reduced by one for each such Board Member so disqualified.

#### Section 4.11 Action by Consent

(a) Unless otherwise restricted by these Bylaws, any action required or permitted to be taken by the Board may be taken without a meeting and without prior notice if a majority of Board Members then in office (or such greater number of Board Members as may be required by law or the Bylaws of OpenCAPI for the taking of any such action at a meeting) consent thereto in writing or by electronic transmission, and the writing or writings, or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board, provided that:

- (i) such written consent or electronic transmission shall have been sent simultaneously to all Board Members then in office for their consideration;
- (ii) prompt written notice of any action so taken (which notice may be given by electronic transmission) is given to those Board Members who have not consented in writing or by electronic transmission; and
- (iii) no Board Member objects to the taking of any such action by written notice delivered to the Chairperson and President of the Board within fifteen (15) business days following the date that written notice of the Board Members' proposed action is received by such Board Member.

Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(b) Unless otherwise restricted by these Bylaws, any action required or permitted to be taken at any meeting of any Board Committee may be taken in the manner set forth in the preceding clauses 4.11(a).

#### Section 4.12 Telephonic Meetings

Unless otherwise restricted by these Bylaws, members of the Board or of any Board Committee may participate in a meeting by means of conference telephone, video conference equipment, or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

#### Section 4.13 Inspection Rights

Every Board Member shall have the absolute right at any time to inspect, copy and make extracts of, in person or by agent or attorney, all books, records and documents of every kind, and to inspect the physical properties of OpenCAPI.

#### Section 4.14 Fees and Compensation

Board Members shall not receive any stated salary or reimbursements for their services as Board Members; provided that, by resolution of a majority of the Board, OpenCAPI may reimburse Board Members for expenses incurred while acting on behalf of OpenCAPI and/or expenses incurred in attending meetings of the Board, in such amounts as the Board may determine to be appropriate. Nothing herein contained shall be construed to preclude any Board Member from serving OpenCAPI in any other capacity as an Officer, agent, employee or otherwise, and receiving compensation therefor. The Board may also approve reimbursement of expenses for members of the Board Committees in connection with their service on such Board Members Committees.

### ARTICLE V

#### EXECUTIVE COMMITTEE AND OTHER COMMITTEES

##### Section 5.1 Executive Committee

The Board may (but shall not be required), by resolution adopted by a majority of the Board Members then in office (provided a quorum is present), create an Executive Committee, consisting of one or more Board Members. The Board may designate one or more Board Members as alternate members of such Executive Committee, who may replace any absent member at any meeting of such Executive Committee. The Executive Committee, subject to any limitations imposed by these Bylaws, statute and/or resolution adopted by the Board, shall have and may exercise all of the powers of the Board which are delegated to the Executive Committee from time to time by the Board; provided, however, that the Executive Committee shall have no authority with respect to:

- (a) Approving any action which requires approval of the Voting Members;
- (b) Filling vacancies on the Board;

- (c) Fixing compensation of the Board Members, Executive Director , and other employees for serving on the Board or on any Board Committee;
- (d) Amending or repealing the Bylaws or adopting new Bylaws;
- (e) Amending or repealing any policy adopted by the Board, including, but not limited to, the Intellectual Rights Policy;
- (f) Amending or repealing any resolution of the Board which by its express terms is not so amendable or repealable;
- (g) Adopting an agreement of merger or consolidation;
- (h) Recommending to the Members the sale, lease or exchange of all or substantially all of OpenCAPI's property and assets;
- (i) Recommending to the Members a dissolution of OpenCAPI or a revocation of a dissolution; and
- (j) Taking any other action for which a vote of more than a simple majority of the Board Members is required by these Bylaws or by law.

#### Section 5.2 Other Board Committees

The Board may, by resolution adopted by a majority of the Board Members then in office (provided a quorum is present), create such nominating, audit, compensation and other Board Committees, each consisting of one or more Board Members, as the Board Members may from time to time deem advisable, to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board, subject to the limitations imposed by these Bylaws. No Board Committee shall have the power or authority to take any action prohibited by Section 5.1 above to be taken by the Executive Committee. The Board may designate one or more Board Members as alternate members of any Board Committees, who may replace any absent Board Member at any meeting of such Board Committees. Any such Board Committee(s) shall have such powers, duties and name or names as may be determined from time to time by resolution adopted by the Board. Each Board Committee shall keep regular minutes of its meetings and make such reports to the larger Board as the Board Members may request.

#### Section 5.3 Meetings of Board Committees

Except as otherwise provided in these Bylaws or by resolution of the Board, each Board Committee may adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and shall meet as provided by such rules, but unless otherwise provided by resolution of the Board or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the conduct of the business of the Board.

#### Section 5.4 Term of Office of Members of Board Committees

Each member of a Board Committee shall serve for such term as shall be established at the time of his or her election.

#### Section 5.5 Committees of the Members

(a) From time to time, the Board may establish Member Committees in addition to the Technical Steering Committee (as described in paragraph (b) below). Membership attendance and voting rights in all Member Committees shall be as specified in Article II. Unless otherwise specified in these Bylaws or by the Board, each Member Committee may have such sub-committees, working groups and special interest groups as from time to time may be approved by such Member Committee, within the strategic direction established by the Board (each a “Member Group”).

(b) A Technical Steering Committee of OpenCAPI shall be established consisting of (i) the chair of each Work Group, and (ii) if not otherwise represented, for such period as may be established by the Board and to the extent a Board Member or Contributing Member is not otherwise represented on the Technical Steering Committee, a representative designated by each, subject to Section 2.3(g). Each member of the Technical Steering Committee will serve for a two (2) year term. The operation of the Technical Steering Committee shall be governed by the rules of process of such Technical Steering Committee as from time to time approved by the Board. The Technical Steering Committee shall be under the leadership of a Technical Steering Committee Chair elected by the Technical Steering Committee, with the advice and consent of the Board, who shall serve at the pleasure of the Technical Steering Committee and the Board. The Technical Steering Committee Chair may attend meetings of the Board, but may not vote at such meetings. The Technical Steering Committee Chair shall be elected for a two (2) year term and may serve consecutive terms.

The responsibilities of the Technical Steering Committee will be delegated by the Board and will include:

- (i) Recommending the charter of new Work Groups to the Board including scope of work and Confidentiality Obligation level;
- (ii) Resolving technical conflicts within and between Work Groups;
- (iii) Evaluating requests for inter-project collaboration and recommending the chartering of new Work Groups to facilitate such collaboration;
- (iv) Monitoring the technical progress of Work Groups;
- (v) Recommending the OpenCAPI Standards Final Deliverables to the Board for Board approval;
- (vi) Establishing OpenCAPI Standards Final Deliverable quality standards, technical best practices and release dates;
- (vii) Approving changes by Work Groups to OSS Communities and OSS Licenses in the Work Group’s charter, and under section 3.5 of the Intellectual Property Rights Policy; and
- (viii) Regularly reporting on progress of Work Groups to the Board.

## ARTICLE VI

### OFFICERS

#### Section 6.1     Officers

The Officers of OpenCAPI shall be a Chairperson, President, a Treasurer and a Secretary, each of whom shall also be a Board Member. At its discretion, the OpenCAPI Board may decide to add other officers. OpenCAPI may also have, at the discretion of the Board Members, an Executive Director , one or more Vice-Presidents, one or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers

with such titles, terms of office and duties as may be elected in accordance with the provisions of these Bylaws. The Chairperson shall be nominated by the Board Members, and shall preside over meetings of the Board. No two offices may be held by the same person and no two Officers may be employed by the same Membership, unless there are fewer than four Board Members at such time.

#### Section 6.2     Vacancies

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular elections to such office and may be filled by the Board, at its discretion.

#### Section 6.3     Election

The Board at its annual meeting each year shall choose a Chairperson, a President, a Secretary and a Treasurer. Other Officers may be elected by the Board at any such meeting, and any or all Officers may be replaced, at any other meeting of, or by written consent of, the Board.

#### Section 6.4     Tenure

Each Officer of OpenCAPI shall hold office until his or her successor is chosen and qualifies, unless a different term is specified in the vote choosing or electing him, or until his or her earlier death, resignation or removal. Any Officer elected by the Board Members may be removed at any time by the Board or a Board Members Committee duly authorized to do so. Any Officer may resign by delivering his or her written resignation to OpenCAPI at its principal place of business or to the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

#### Section 6.5     Chairperson

The Chairperson shall have all of the powers normally associated with the role of chief executive officer and preside at all meetings of the Board and the Members. The Chairperson shall govern all Board calls and meetings and shall work with support staff on meeting dates, agendas, meeting minutes and see that all orders and resolutions of the Board are carried into effect. Under the oversight of the Chairperson, the President will be assigned duties by the Chairperson as needed.

#### Section 6.6     President and Executive Director

In the absence of the Chairperson or in the event of his or her inability or refusal to act, the President shall perform the duties of the Chairperson, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairperson. The President shall oversee the management of the operations and business of OpenCAPI under the direction of the Chairperson and/or the Board and perform other duties as assigned by the Chairperson. Without limiting the foregoing, the President shall:

- (i) Execute bonds, mortgages, and other contracts requiring a seal, under the seal of OpenCAPI, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board Members to some other Officer or agent of OpenCAPI; and
- (ii) Oversee the Executive Director (if any).

The Executive Director (if any) shall preside over the day-to-day affairs of OpenCAPI under the direction

of the Board and the President and perform such other duties and have such other powers as the Board or the President may from time to time prescribe.

#### Section 6.7     Secretary

The Secretary shall have such powers and perform such duties as are incident to the office of Secretary under the General Corporation Law of Delaware, including without limitation a recording all the proceedings of the meetings of OpenCAPI and of the Board. The Secretary, and each Assistant Secretary, shall have authority to affix the Corporate seal to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board may give general authority to any other Officer to affix the seal of OpenCAPI and to attest the affixing by such Officer's signature.

#### Section 6.8     Assistant Secretaries

Any Assistant Secretary shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary. In the absence of the Secretary or any Assistant Secretary at any meeting of the Board, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

#### Section 6.9     Treasurer

The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board or the President. Unless otherwise determined by the Board, the Treasurer shall chair the Audit and Finance Committees of OpenCAPI. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to OpenCAPI and shall deposit all moneys and other valuable effects in the name and to the credit of OpenCAPI in such depositories as may be designated by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, when the President or Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of OpenCAPI.

#### Section 6.10    Compensation

The compensation, if any, of the Officers shall be fixed from time to time by the Board, and no Officer shall be prevented from receiving such compensation by reason of the fact that the Officer is also a Board Member of OpenCAPI.

### ARTICLE VII

#### NOTICES

#### Section 7.1     Delivery

- (a) Whenever, under the provisions of law, or these Bylaws, written notice is required to be given to any Board Member or Member, such notice may be given by mail, addressed to such Board Member or Member, at his, her or its address as it appears on the records of OpenCAPI, with postage thereon prepaid. Unless written notice by mail is required by law or another provision of these Bylaws, and subject to the provisions below relating to notice by electronic transmission to



Members, written notice may also be given by electronic mail, telecopy, commercial delivery service, or similar means, addressed to such Board Member or Member at his, her or its address as it appears on the records of OpenCAPI. Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by OpenCAPI under any provision of law, the Certificate of Incorporation, or the Bylaws, unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these Bylaws, shall be effective if given by a form of electronic transmission consented to by the Member to whom the notice is given.

(b) Notice given pursuant to this wSection shall be deemed given: (i) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Board Member, when directed to the number for such Board Member as it appears on the records of OpenCAPI; (ii) if by electronic mail to (A) a Member, when directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Board Member when directed to the electronic mail address for such Board Member as it appears on the records of OpenCAPI; (iii) if by a posting on an electronic network together with separate notice to the Member or Board Member of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (iv) if by any other form of electronic transmission, when directed to the Member or Board Member; (v) if by in-hand delivery or oral notice, at the time it is actually given; (vi) if by overnight mail, at the time when the same shall be deposited in the United States mail; and (vii) if by commercial delivery carrier or similar means sent overnight, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by OpenCAPI or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of OpenCAPI that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(d) Without limiting the foregoing, OpenCAPI adopts electronic mail as its principal source of communication with its Members. Each Member acknowledges and agrees that OpenCAPI shall not be under any obligation (except as required by law or these Bylaws) to send any notice to any Member by any means other than electronic mail, and it is therefore the responsibility of each Member to avail itself of and make such arrangements as may be necessary to receive notice in such fashion.

## Section 7.2     Waiver of Notice

Whenever any notice is required to be given under the provisions of law or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent thereto.

## ARTICLE VIII

### INDEMNIFICATION

### Section 8.1      Actions other than by or in the Right of OpenCAPI

Subject to confirmation of the appropriateness of such action by the Board Members as provided in Section 8.4 below, OpenCAPI shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of OpenCAPI) by reason of the fact that he or she is or was a Board Member, Officer, employee or agent of OpenCAPI, or is or was serving at the request of OpenCAPI as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of OpenCAPI, 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, shall 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 OpenCAPI, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

### Section 8.2      Actions by or in the Right of OpenCAPI

Subject to confirmation of the appropriateness of such action by the Board Members as provided in Section 8.4 below, OpenCAPI shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of OpenCAPI to procure a judgment in its favor by reason of the fact that he or she is or was a Board Member, Officer, employee or agent of OpenCAPI, or is or was serving at the request of OpenCAPI as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of OpenCAPI; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

### Section 8.3      Success on the Merits

To the extent that any person described in Section 8.1 or 8.2 of this Article VIII has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

### Section 8.4      Specific Authorization

Any indemnification under Section 8.1 or 8.2 of this Article VIII (unless ordered by a court) shall be made by OpenCAPI only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (a) by a majority vote of such Board Members who were not parties to such action, suit or proceeding, even though less than a quorum or (b) by the Members of OpenCAPI.

Section 8.5     Advance Payment

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by OpenCAPI in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by OpenCAPI as authorized in this Article VIII.

Section 8.6     Non-Exclusivity

The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VIII shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any By-law, agreement, vote of disinterested Board Members or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 8.7     Jurisdiction of Delaware Court of Chancery

The Delaware Court of Chancery is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification. The Delaware Court of Chancery may summarily determine OpenCAPI's obligation to advance expenses (including attorney's fees).

Section 8.8     Insurance

The Board Members may authorize OpenCAPI to purchase additional alliance insurance beyond that coverage provided through the IEEE-ISTO blanket insurance policy.

Section 8.9     Continuation of Indemnification and Advancement of Expenses

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall continue as to a person who has ceased to be a Board Member, Officer, employee or agent of OpenCAPI and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.10    Severability

If any word, clause or provision of this Article VIII or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 8.11    Intent of Article

The intent of this Article VIII is to provide for indemnification and advancement of expenses to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article VIII shall be amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by law.

ARTICLE IXBOOKS AND RECORDS

Section 9.1 Books and Records

OpenCAPI shall keep adequate and correct books and records of account, minutes of the proceedings of the Members, the Board Members and Board Members Committees, and a record of the Members giving their names and addresses and the class of Membership held by each.

Section 9.2 Form of Records

Minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 9.3 Reports to Board Members, Members and Others

The Board Members shall cause such reports to be prepared, filed and/or distributed as may be required.

Section 9.4 Record Date

In order that OpenCAPI may determine the Members entitled to express consent to corporate action in writing without a meeting, or the Members entitled to receive payment of any distribution, if any, permitted by law and OpenCAPI's then current federal and state tax status, or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Membership or for the purpose of any other lawful action, the Board Members may fix, in advance, a record date, which shall not be (i) more than sixty (60) days prior to the adoption of the resolution by the Board Members and (in the case of consent to corporate action in writing without a meeting) the date upon which such written consent is delivered to the Members, nor (ii) later than the date upon which the Board Members adopts the resolution proposing the taking of such action. In the absence of such a determination, the record date shall be at the close of business on the day on which the Board Members adopts the resolution proposing the taking of such action.

Section 9.5 Registered Members

OpenCAPI shall be entitled to recognize the exclusive right of a person registered on its books as a Member or a representative of a Member to receive distributions, if any, and to vote, if such records indicate that such person is a Voting Member or a representative of a Voting Member, and to hold liable for Financial Obligations each Member registered on its books, and shall not be bound to recognize any equitable or other claim to or interest in Membership on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware General Corporation Law.

ARTICLE XCERTAIN TRANSACTIONSSection 10.1 Transactions with Interested Parties

No contract or transaction between OpenCAPI and one or more of its Board Members or Officers, or between OpenCAPI and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such Board Member or Officer (or other Board Member or officer) is present at or participates in the meeting of the Board Members or Board Members Committee

which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

- (a) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board Members or such Board Members Committee, and the Board Members or such Board Members Committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Board Members, even though the disinterested Board Members be less than a quorum; or
- (b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Voting Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Voting Members; or
- (c) The contract or transaction is fair as to OpenCAPI as of the time it is authorized, approved or ratified, by the Board Members, a Board Members Committee, or the Voting Members.

Common or interested Board Members may be counted in determining the presence of a quorum at a meeting of the Board Members or Board Members Committee that authorizes the contract or transaction.

## ARTICLE XI

### GRANTS, CONTRACTS, LOANS, ETC.

#### Section 11.1    Grants

The making of grants and contributions, and otherwise rendering financial assistance for the Purposes of OpenCAPI, may be authorized by the Board Members. The Board Members may authorize any Officer or Officers, agent or agents, in the name of and on behalf of OpenCAPI to make any such grants, contributions or assistance.

#### Section 11.2    Execution of Contracts

The Board Members may authorize any Officer, employee or agent of OpenCAPI, in the name and on behalf of OpenCAPI, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board Members to the contrary, the President shall be authorized to execute such contracts and instruments on behalf of OpenCAPI, but must inform the Board Members of any such actions.

#### Section 11.3    Checks, Drafts, Etc.

All checks, drafts and other orders for the payment of money out of the funds of OpenCAPI, and all notes or other evidences of indebtedness of OpenCAPI, shall be signed on behalf of OpenCAPI in such manner as shall from time to time be determined by resolution of the Board Members.

#### Section 11.4    Deposits

The funds of OpenCAPI not otherwise employed shall be deposited from time to time to the order of OpenCAPI in such banks, trust companies, or other depositories, or shall be otherwise invested, as the

Board Members may select or direct, or as may be selected or directed by an Officer, employee or agent of OpenCAPI to whom such power may from time to time be specifically delegated by the Board Members.

## ARTICLE XII

### GENERAL PROVISIONS

#### Section 12.1    Fiscal Year

The fiscal year of OpenCAPI shall be determined, and may be changed, by resolution of the Board Members.

#### Section 12.2    Reserves

The Board Members may set apart out of any funds of OpenCAPI a reserve or reserves for any proper purpose and may abolish any such reserve exclusive of a three (3) month reserve available for any wind down activities associated with the termination of OpenCAPI.

#### Section 12.3    Seal

The Board Members may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of OpenCAPI, the year of its organization and the word “Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board Members.

#### Section 12.4    Proprietary Rights

(a) Except as specifically provided to the contrary in such policies and procedures as may from time to time be approved by the Board Members, including the Intellectual Property Rights Policy, all information disclosed by any participant during any official meeting or activity of OpenCAPI, including but not limited to Member meetings, Member Committee Meetings, OpenCAPI meetings, electronic mail or the like, shall not waive any rights represented by valid patents, patent applications, and Federal and international statutory copyrights.

The Board Members will require and authorize the scope and shall specify the Confidentiality Mode (See Intellectual Property Rights Policy section 4.0) of specific Work Groups, committees, and projects at their formation. Meetings of the Board Members of Board Members shall be deemed confidential and subject to a non-disclosure agreement.

(b) No express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other intellectual property right of any Member is or shall be deemed to be granted to OpenCAPI or to any other Member by reason of its membership in or participation in the activities of OpenCAPI, except as may be provided in the Intellectual Property Rights Policy or a separate written agreement.

(c) No Member shall at any time be required to exchange proprietary information with any other Member solely by reason of its being a Member of OpenCAPI.

## ARTICLE XIII

### COMPLIANCE

Section 13.1    General

OpenCAPI will conduct all of its activities in conformance with all international, U.S. federal and state antitrust laws and competition laws, including but not limited to the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and the EU Competition Regulations. OpenCAPI will conduct all of its activities in compliance with all other applicable laws and regulations, including those concerning export/import. The Board Members and the Chairperson shall consult legal counsel and seek legal review whenever necessary to insure that the activities of OpenCAPI are conducted in conformance with such laws.

Each Member shall assume 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 OpenCAPI, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise and to ensure conformance with applicable laws and regulations.

Section 13.2    No Obligation to Endorse

No Member shall, by reason of its membership or participation in OpenCAPI or otherwise, be obligated to license from OpenCAPI, use or endorse any intellectual property developed or endorsed by OpenCAPI, or to conform any of its products to any platform developed or adopted by OpenCAPI, nor shall any such Member be precluded from independently licensing, using or endorsing similar intellectual property, platform, software, specifications or documentation developed by it or by others. No provision of these Bylaws or the Membership Agreement shall be interpreted to prevent any Member from using a processor architecture other than the OpenCAPI technology, or from engaging in other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any Member.

ARTICLE XIVAMENDMENTS

Except where such power is expressly limited by law, the Certificate of Incorporation or these Bylaws as to any specific action, these Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, in each case by an affirmative vote of a two-thirds super-majority of all then serving members of the Board Members.

ARTICLE XVDISCLOSURE OF INFORMATION AND CONFIDENTIALITYSection 15.1 Limitation on the Scope of Disclosed Information

The Members acknowledge that they will not disclose or exchange information as part of OpenCAPI activities among themselves unless such disclosure is in furtherance of the Purpose of OpenCAPI. All information disclosed as a part of OpenCAPI's activities shall be governed by the terms of these Bylaws and Appendix C of the Intellectual Property Rights Policy. Any other information disclosed between the

Members shall be deemed non-confidential unless the affected Members execute a confidentiality agreement amongst themselves.

#### Section 15.2 Confidential Information

By disclosing Confidential Information, a Member agrees that should any such Confidential Information be necessarily or inferentially disclosed by a Specification or design guide adopted by OpenCAPI, such Member shall allow publication of such comment or recommendation. All information disclosed by Members prior to the date of this Agreement directly for the Purpose shall be governed by the provisions of these Bylaws and Appendix C of the Intellectual Property Rights Policy. All information developed by OpenCAPI shall be deemed the Confidential Information of OpenCAPI until made publicly available. All works in progress, minutes of Board Members of Board Members' meetings, minutes of Work Groups and Special Committees and attorney work product shall in all cases be deemed Confidential Information of OpenCAPI.

#### Section 15.3 OpenCAPI Confidential Information

All original public disclosures regarding OpenCAPI must be approved by the Board Members, provided however that each Member may disclose the fact of its membership. Public disclosure of any Confidential Information shall be subject to the approval by the Board Members pursuant to terms hereof. However, OpenCAPI's general policy shall be to disclose fully, at the agreed-upon time, all information relating to OpenCAPI and its activities. If a Member shall be required to disclose any Confidential Information relating to OpenCAPI pursuant to a valid order of a court or other government body or any political subdivision thereof, the Member shall first give notice to the Board Members 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.

### ARTICLE XVI ANTI-TRUST GUIDELINES

#### Section 16.1 Compliance with Antitrust Laws

OpenCAPI is not intended to become involved, and will not become involved, in the competitive business decisions of its Members, nor will it take any action which would tend to restrain competition among and between such Members in violation of the antitrust laws. The Executive Committee and the Working Group chairs shall be responsible to ensure the anti-trust guidelines are known and adhered to in the course of the activities under OpenCAPI.

Each of the Members of OpenCAPI is committed to fostering competition in the development of new products and services, and the activities of OpenCAPI are intended to promote such competition. Each Member acknowledges that it may compete with other Members in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable state, federal or international antitrust laws or regulations. Without limiting the generality of the foregoing, Members that are competitors shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers, or any topic that would be prohibited by applicable antitrust laws.



Any violation of this Article shall make the violator subject to remediation by the Board up to and including termination of Membership and immediate removal from any office held by an official representative violating such rules or this Article.

## Register of Amendments to the Bylaws

<u>Date</u>	<u>Version</u>	<u>Section Affected</u>	<u>Change</u>
September 2016	1.0	NA	NA
December 2016 Membership		2.2	Removal of Individuals from Assoc/Academic Level
January 2017 7 to 9	1.0	4.2	Revision of Board Seats from