

# Summary of Comments on Promoters Agreement.pdf

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T, together with its Affiliates.



## BYLAWS OF UNIFIED EFI FORUM, INC. (A Washington Non-Profit Corporation)

### 1. DEFINITIONS

- 1.1 "Adopter" means any entity that has executed a copy of the Adopters Agreement and delivered an original of same to the Secretary.
- 1.2 "Adopters Agreement" means an agreement entered into between the Forum and an Adopter, as that agreement may be amended from time to time.
- 1.3 "Adoption Meeting" shall have the meaning assigned in Section 6.4(b).
- 1.4 "Affiliate" means any entity, now or hereafter, that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes of this definition, "control" means direct or indirect ownership of or the right to exercise either (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) in the event that there are no voting shares or securities, greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity. In the event such control ceases to exist, such Affiliate will be deemed to have withdrawn pursuant to the terms set forth in the Withdrawal provisions of the Promoters Agreement or the Contributors Agreement.
- 1.5 "Board of Directors" or "Board" means the group of Directors appointed by the Promoters to manage the affairs of the Forum in accordance with the powers and duties enumerated in Article 8.
- 1.6 "Contribution" means any ideas, suggestions, comments or other feedback submitted either in written or in verbal form (provided that any such verbal contributions are confirmed in writing by such Member within twenty (20) days of being made verbally) by a Member for the purpose of proposing additions to or modifications of a Draft Specification or Test Suite. For the avoidance of doubt, any Draft Specification or Draft Test Suite submitted by a Member shall be deemed a Contribution, including but not limited to EFI Complete Specification 1.10 (and any corresponding Test Suite) and shall be subject to the licensing terms outlined herein.
- 1.7 "Contributor" means (a) a Promoter who makes a Contribution, or (b) any other party that has executed a copy of the Contributors Agreement and delivered an original of same to the Secretary.
- 1.8 "Contributors Agreement" means an agreement entered into between the Forum and a Contributor who is not a Promoter, as that agreement may be amended from time to time.
- 1.9 "Director" means an employee, agent or consultant appointed by a Promoter to serve on the Board of Directors until death, resignation or removal.
- 1.10 "Draft Specification" means any specification documents that have been designated by the Secretary as Draft Specifications. Each Draft Specification shall bear a title including the term "UEFI," a differentiating designation specifying the subject matter of the specification, and

version tracking information, such as "1.x Specification," or any other title chosen by the submitting Member(s) for purposes of identifying the specification and any portion thereof. Subsequent Draft Specifications and a Published Specification, if any, will have a like title but for the version tracking information, which shall separately identify each sequential version.

1.11 "Draft Test Suite" means any set of tests proposed by Members for the purpose of permitting Promoters and Adopters to self-test the compliance of an implementation to a Published Specification.

1.12 "Errata Correction" means any correction to a Published Specification created for the sole purpose of correcting errors in, or making clarifications to, a Published Specification with respect to features or functionality already in existence in a Published Specification (i.e., not for the purpose of creating additional features or functionality) that are required because of an error or lack of clarity in a Published Specification. Errata Corrections shall not include any modifications to a Published Specification that materially alter or augment the functionality, capabilities or capacities of products or portions thereof that qualify as Compliant Portions.

1.13 "Final Draft" shall have the meaning assigned in Section 6.4(a).

1.14 "Forum" means the Unified EFI Forum, Inc., a Washington non-profit Corporation.

1.15 "Initial Draft Specification" means Complete EFI Specification 1.10.

1.16 "Majority Vote" means the affirmative vote of at least two-thirds of the then-current Members of the pertinent voting body that cast a vote on the issue in question. If such a Member either (a) fails to cast a vote or (b) casts a vote characterized as an abstention, such action shall be treated as if that Member had not voted. A Majority Vote shall be required for any formal vote for which these Bylaws do not specify a greater number of votes required for passage.

1.17 "Meeting" means a face-to-face meeting or a telephone or video conference.

1.18 "Member" means a Promoter, a Contributor or any Affiliate of a Promoter or Contributor.

1.19 "Notice" or "Notify" means the act of notifying in accordance with Section 7.4.

1.20 "Officer" means a Board member appointed by the Board of Directors to serve as the Forum's President, Vice President, Secretary or Treasurer, or any other position deemed necessary by the Board under Article 9.

1.21 "Potential Claim" means a claim in any patent issued and/or granted under the laws of any country, as well as a claim in any pending published patent application filed under the laws of any country, that is owned by a Member and is, in the good faith judgment of the Member, a Necessary Claim upon the implementation of a Contribution made either by the Member or by another Member of which the Member has become aware.

1.22 "Promoter" means an entity that has executed the Promoters Agreement and its Affiliates.

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1.23 "Promoters Agreement" means that certain agreement entered into among the Promoters as of February 2005, as that agreement may be amended from time to time.

1.24 "Published Specification" means a Draft Specification that has been adopted by the Promoters pursuant to Section 6.4(e).

1.25 "Quorum" means two-thirds of the then-current Members of the pertinent voting body.

1.26 "Repository" shall have the meaning assigned in Section 9.4(c).

1.27 "Representative" means a person employed or retained by a Member who is authorized by such Member to represent such Member in connection with the work of the Forum.

1.28 "Review Period" shall have the meaning assigned in Section 6.

1.29 "Secretary" means the Board Member that is appointed as set forth in Section 9.1 to undertake certain duties specified in Section 9.4(c) and throughout these Bylaws.

1.30 "Specification" means any Draft Specification or Published Specification.

1.31 "Super Majority Vote" means the affirmative vote of all but two of the then-current Members of the pertinent voting body that cast a vote on the issue in question. If such a Member either (a) fails to cast a vote or (b) casts a vote characterized as an abstention, such action shall be treated as if that Member had not voted.

1.32 "Test Suite" means any set of tests developed and adopted by the Promoters for the purpose of permitting Promoters and Adopters to self-test the compliance of an implementation to a Published Specification.

1.33 "UEFI" means the Unified Extensible Firmware Interface.

1.34 "Working Group" means a group created pursuant to Section 6 of these Bylaws.

1.35 Other capitalized terms used but not expressly defined herein have the meanings assigned to such terms by the Promoters Agreement.

## 2. OFFICES

2.1 Principal Office. The principal office of the Forum is []. The Board may change the location of the principal office at any time.

2.2 Other Offices. Branch or subordinate offices may at any time be established by the Board at any place or places where the Forum is qualified to do business.

2.3 Registered Agent and Address. The address of the Forum's registered office in the State of Washington is []. The name of the Forum's registered agent is [].

**3. PURPOSES**

3.1 Nonprofit Status. The Forum shall be a nonprofit corporation and is not empowered to engage directly or indirectly in any activity, including distribution of its assets upon dissolution, that would invalidate its status as an organization exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), by virtue of being an organization described in section 501(c)(6) of the Code. The Officers of the Forum shall have broad discretion to curtail activities of Members which conflict with the tax exempt purpose of the Forum; and the Board may expel a Member if necessary to protect the integrity of the Forum's tax status.

3.2 Purposes. The Forum's purpose is the development of Specifications and their worldwide adoption and promotion. The Specifications of the Forum will enable the Members and other implementers to use these Specifications to bring the UEFI into a variety of computing platforms and operating systems. The Forum will also develop a compliance test program, which will address UEFI issues related to platform enablement, and any other measures related to UEFI as to which the Board may agree.

3.3 Reasonable and Nondiscriminatory Terms. The Forum intends to pursue this purpose through an open collaboration and to make any Specifications produced by this effort available to all interested parties pursuant to an appropriate license on reasonable and nondiscriminatory terms.

**4. MEMBERSHIP**

4.1 Admission of Members. Applicants for membership shall be admitted to membership upon affirmation of the Articles of Incorporation and these Bylaws; the execution of a Promoters Agreement or a Contributors Agreement; and payment of any annual dues established by the Board.

4.2 Rights and Obligations of All Members. The Forum shall have two classes of membership: Promoters and Contributors. Every Member shall be entitled to (a) have access to the Specifications adopted by the Promoters to the extent permitted by these Bylaws, by the Promoters Agreement and Contributors Agreement, and by the policies and procedures adopted by the Board in accordance with these Bylaws; and (b) have any other rights afforded Members of a nonprofit corporation as stated in the Washington Nonprofit Corporation Act and as set forth in and consistent with these Bylaws.

4.3 Additional Rights and Obligations. Every Promoter shall be entitled (a) to appoint a Representative to the Board, (b) to have voting rights in the Forum, and (c) to the rights and obligations specified in the Promoters Agreement, as it may be amended from time to time. Every Contributor shall have the rights and obligations specified in the Contributors Agreement, as it may be amended from time to time, and shall have voting rights as members of any Working Group of which the Contributor is a member. The number of Contributors may be limited as the Board sees fit.

4.4 Withdrawal. A Member may withdraw from the Forum at any time. A Member who wishes to withdraw must provide timely written notice to the Secretary of this decision, and no

withdrawal will be effective until written notice is received by the Secretary. As soon as reasonably practicable, the Secretary will remove the withdrawing Member's name and all contact or identifying information of such withdrawing Member from any Forum websites, mailing lists, listservs and distribution lists. The Secretary also will promptly send out copies of the withdrawing Member's notice to the remaining Members. The withdrawal of a Promoter shall be in accord with Section 6 of the Promoters Agreement, and the timing of a Promoter's withdrawal will determine the effect thereof on the Promoter's rights and licensing obligations. The withdrawal of a Contributor shall be in accord with Section 3 of the Contributors Agreement, and the timing of a Contributor's withdrawal will determine the effect thereof on the Contributor's rights and licensing obligations.

4.5 **Nonliability of Members.** No Member of the Forum shall be personally liable for the debts, liabilities, or obligations of this Forum. IN NO EVENT WILL MEMBERS BE LIABLE TO EACH OTHER OR ANY THIRD PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

4.6 **Assignment, Mergers and Acquisitions.** A Member may not transfer or assign, in whole or in part, its rights and obligations under these Bylaws and the Promoters Agreement or Contributors Agreement, as the case may be, except in connection with a transfer in ownership, by merger, consolidation, or acquisition of stock or assets, of the business units or entities engaged in the business of the Member relating to the work of the Forum, or except as authorized by a Majority Vote of the Board. Any Member acquiring or merging with another Member shall be entitled to only one vote after the consummation of such acquisition or merger.

## 5. ADMINISTRATION OF PUBLISHED SPECIFICATIONS AND TEST SUITES

5.1 **Copyright and Ownership.** The Forum shall own the copyright in Published Specifications and Published Test Suites, subject to the underlying copyright rights of the Promoters, Contributors and any other copyright holders. Any publication of a Published Specification or Published Test Suite will contain an appropriate copyright notice in the name of the Forum.

### 5.2 Trademark and Trade Name Licensing and Use.

(a) **Creation.** The Board may create or adopt one or more trademarks or trade names for use in connection with Draft Specifications or a Published Specification. No such trademark shall be confusingly similar with a trademark or trade name owned or used by a Member. In addition, the Board may change the name of the Draft Specifications being developed, or a Published Specification that has been adopted, in either case, that are subsequent versions of the same Specification; in which event, all references in this Agreement to the name of such Draft or Published Specification will be deemed to refer to the name created or adopted by the Board as the new name of the Draft Specifications and Published Specification. A Super Majority vote of

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the Board is required for the adoption of a trademark or trade name for use in connection with a Published Specification or Test Suite.

(b) **No Obligation or Confusing Marks.** No Member will be obligated to use any trademark or trade name created or adopted by the Board on any product, advertising or on any other material in any manner. No Member will use or adopt any trademarks or trade names for any product, service or other specification likely to cause confusion with any trademark or trade name or specification name created or adopted by the Board under this Section.

(c) **Use of Marks.** In the event that the Board creates or adopts a trademark or trade name, the Forum will retain ownership of such trademark or trade name but will grant each of the Promoters and Adopters a royalty-free worldwide license to use such trademark or trade name for the limited purpose of promoting the Published Specification and for labeling and promoting products that (a) include all of the features and functions reasonably capable of complying with a Published Specification and (b) a Promoter or Adopter has self-tested and represented to the Secretary as having passed any required Test Suite. Under no circumstance, however, shall a Promoter or Adopter rely on being granted the right to use a trademark or trade name as any certification, warranty or representation by the Forum or any Promoter that a product or service complies with the Published Specification or that the product or service is fit for any particular purpose. No Promoter will rely on being granted the right to use a trademark or trade name in any representation to any third party concerning the quality or fitness of any product or service.

5.3 **Availability.** Consistent with the copyright provisions in Sections 5.1, Published Specification(s) and Test Suites shall be made available upon adoption to all Promoters, Contributors and Adopters in both object code and source code form. The source code for a Published Test Suite may be used for inspection purposes only.

5.4 **Adopters Agreement.** The Forum may, after a Published Specification has been adopted, enter into an Adopters Agreement with any third party who wishes to be an Adopter. An Adopters Agreement will become effective only (a) if executed by the Secretary (or another authorized representative of the Forum) and the third party; and (b) when the Secretary receives a fully executed original of such agreement. The Forum and each Promoter shall have the right to enforce compliance with the terms of such agreement upon notice to the other Promoters. Upon receipt of such notice, the Forum or any Promoter may, at its option, bring suit against an Adopter to enforce such agreement. The other Promoters shall provide reasonable assistance to the Promoter(s) prosecuting such suit, which may include allowing, upon reasonable request, their names to be added to such suit if required by the law of the forum in which such action is brought. Each party shall bear its own costs in any such enforcement action, and no Promoter shall be required to share in the cost of litigation in which it did not elect to participate. No Promoter that did not share in the cost of litigation shall have the right to share in the cost of any recovery in such litigation.

5.5 **Publication of Published Specifications.** The Board shall exercise all due diligence to publish a Published Specification as soon as possible following adoption but in any case no later than 90 days after adoption. The Board shall also publish a corresponding Test Suite for such Published Specification as soon as possible following publication of the Published Specification. Any Published Specification and Test Suite so published will not be subject to trade secret or

confidential treatment. Any publication of a Published Specification and Test Suite will include the following disclaimer language:

The material contained herein is not a license, either expressly or impliedly, to any intellectual property owned or controlled by any of the authors or developers of this material or to any contribution thereto. The material contained herein is provided on an "AS IS" basis and, to the maximum extent permitted by applicable law, this information is provided *AS IS AND WITH ALL FAULTS*, and the authors and developers of this material hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses and of lack of negligence, all with regard to this material and any contribution thereto. Designers must not rely on the absence or characteristics of any features or instructions marked "reserved" or "undefined." The Unified EFI Forum, Inc. reserves any features or instructions so marked for future definition and shall have no responsibility whatsoever for conflicts or incompatibilities arising from future changes to them. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SPECIFICATION AND ANY CONTRIBUTION THERETO.

IN NO EVENT WILL ANY AUTHOR OR DEVELOPER OF THIS MATERIAL OR ANY CONTRIBUTION THERETO BE LIABLE TO ANY OTHER PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, OR SPECIAL DAMAGES WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER AGREEMENT RELATING TO THIS DOCUMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

## 6. WORKING GROUPS

6.1 In General. The work of the Forum may be accomplished and assisted through Working Groups, the formation and business of which shall be governed by this section.

6.2 Formation. The Board may create Working Groups to assist in the work of the Forum. The decision to create Working Groups, membership criteria for such groups, procedures for meetings, and other essential issues necessary for the composition of such Working Groups shall be determined by a Super Majority Vote of the Board. Working Groups may be authorized to create specifications, test suites and materials in addition to those explicitly authorized by the Promoter's Agreement. All votes taken by any Working Group to recommend specifications, test suites or other deliverables to the Forum shall require a Majority Vote of the Working Group.

(a) **UEFI Specification Working Group.** The Board will create a Working Group to develop the UEFI Specification and will, by Majority Vote, appoint a chair for the Working Group. Upon appointment, the Working Group chair will promptly send a notice to all Promoters inquiring as to whether they desire to participate in the Working Group. The initial members of the Working Group will consist of those Promoters that indicate a desire to participate in this Working Group. No Promoter shall be denied the right to be a Working Group member. The members of the Working Group may invite Contributors to participate in the work of the Working Group. Any Contributor may request to participate in a Working Group, which request will be considered in light of the membership criteria set for such Working Group. Each Working Group member shall appoint one person to act as its Representative in the Working Group and will so advise the Working Group chair, and each Representative will have only one vote within the Working Group. The chair of the Working Group may create one or more sub-Working Groups to make recommendations to the Working Group.

(b) **Initial Draft Specification.** The Initial Draft Specification on which the Forum will begin work will be the specification entitled "Complete EFI Specification 1.10," which will be contributed to the Forum by Microsoft and Intel as of the Effective Date of the Promoters Agreement. This contribution shall not in any way affect the prior rights granted to promoters, adopters or users of Complete EFI Specification 1.10.

(c) **Voting Procedures and Restrictions.** A Quorum of Working Group members must be present at any Meeting at which a vote is called. For any vote that is called for at a Meeting, each voting Member must cast its vote at or prior to such Meeting, either directly, by e-mail, or by proxy. For any vote that is called for outside the context of a Meeting (e.g., a request for vote via e-mail response), such request for a vote shall contain the required deadline for submission of a response, which deadline shall not be less than 5 business days from the time of the issuance of the request for the vote. The Working Group Chair shall record all votes on all issues and promptly inform all Working Group members whether a particular issue or action was approved or denied, based on the applicable voting threshold as specified in these Bylaws or the Promoters Agreement. The Working Group Chair will keep records of all issues voted upon and the respective votes of each Working Group member. If a Working Group member either (a) fails to cast a vote or (b) casts a vote characterized as an abstention, such action shall be treated as if the Working Group member had not voted.

(d) **Development Meetings.** The Working Group Chair will schedule development Meetings and provide adequate written Notice (at least ten (10) business days, or in the case of face-to-face meetings, thirty (30) calendar days) of all development Meetings to each of the Working Group Members. No Working Group member will be intentionally excluded from Meetings or denied the opportunity to participate in the process of developing Draft Specifications; however, although the Working Group Chair will attempt in good faith to schedule Meetings when all of the Working Group members can participate, development Meetings need not be delayed or rescheduled if one or more of the Working Group members cannot attend or participate. If a Draft Specification will be voted on as a "Final Draft" (as defined in Section 6.4(a)), such Notice will so state and identify the then current version of the subject Draft Specification.

(e) **Making Contributions.** Each Working Group member shall identify its Contributions by either (1) providing a written copy of the Contribution to the Working Group Chair along with a completed Contribution transmittal in such form as the Working Group Chair may prescribe, or

(2) depositing such Contribution (or, if such Contribution is verbal, a summary of such Contribution) into the repository maintained by the Working Group Chair. The failure of any party to identify its Contribution as provided in this Agreement will not relieve it of any obligation under this Agreement to grant licenses with respect to its Contribution.

(f) **Development Expenses.** Each Working Group member will bear its own costs and expenses in connection with its performance of this Agreement, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Working Group member's participation in any Meetings and conferences called to discuss or to develop Draft Specifications or Test Suites.

(g) **Computer Software Code in Specifications.** No computer software code will be included in any Draft Specification or Published Specification, except for computer software code that is used solely for illustrative purposes (e.g., reference implementations) and that is not a required portion of such specification.

### 6.3 Intellectual Property in Contributions.

(a) **Disclosure.** A Working Group member shall disclose to the Working Group Chair in writing the existence of any Potential Claim of which a Representative of such Working Group member has actual personal knowledge. No Representative or Working Group member shall be required to conduct a patent search with respect to any Contribution, and knowledge of Potential Claims of a Working Group member shall not be imputed to any Representative of that Working Group member.

(b) **Time of Disclosure.** A disclosure required by subsection (a) shall be made within sixty (60) business days after the submission by any Working Group member (including the Working Group member making the disclosure) or Contributor of a Contribution containing a Potential Claim.

(c) **Form of Disclosure.** A disclosure required by subsection (a) should include (i) the name of the submitting party; (ii) sufficient identifying information about the Contribution to permit it to be identified, including its date; and (iii) the patent number, or published patent application number, if available, of the patent in which the Potential Claim is contained. The Secretary may prescribe a form on which such disclosures shall be made.

6.4 **Adoption.** A Draft Specification will become a Published Specification only if first approved by the UEFI Working Group and then adopted by the Board pursuant to the following conditions and procedures:

(a) **Final Draft.** At any point, subject to adequate prior Notice having been provided to all Working Group members under Section 6.2(d), the Working Group members may agree, by Majority Vote, that a Draft Specification is a Final Draft, and submit Draft Specification to the Board for approval as a Final Draft. The Board may agree by Majority vote that a Draft Specification is a Final Draft, and subject such Final Draft to the Review Period and Published Specification Approval process described below.

(b) **Notice of Review Period and Adoption Meeting.** No later than five (5) business days after the Board has agreed on a Final Draft under Section 6.4(a), the Secretary will send out to all Promoters, using secure e-mail, a Notice indicating (1) the commencement of a period to review the Final Draft, as described in Section 6.4(c) (the Secretary's Notice will specify the beginning and end dates for such Review Period); and (2) the date scheduled for the Meeting at which the Board will vote on whether to adopt the Final Draft as a Published Specification ("Adoption Meeting") as described in Section 6.4(e). The Secretary will provide the Final Draft as an attachment to such e-mail Notice. At substantially the same time as such Notice is sent to Promoters, the Secretary shall send a notice to then-current Contributors indicating the commencement of the Review Period and specifying the deadline for responses pursuant to Section 6.2(d). The length of the Review Period may be specified by the Secretary, but in no event may be less than thirty (30) days. Moreover, in no event will the date for the Adoption Meeting be set for more than forty-five (45) days after the mailing date of the Secretary's Notice, unless the Board agrees to a later date by a Majority Vote. The Secretary will send an e-mail Notice to the Promoters no later than thirty (30) days before the Adoption Meeting identifying the time and place for the Adoption Meeting.

(c) **Review Period.** During the Review Period specified in Section 6.4(b), each Member will review the Final Draft and will notify all other Members of any concerns or objections it may have. Prior to the end of such Review Period, each Member shall make disclosures required by Section 6.3(a) to the Secretary, in the form specified by Section 6.3(c). No Member, however, will be under any duty to perform any patent search. Any Member raising a concern or objection must identify with particularity any portions of the Final Draft that is the basis of the concern or objection, and provide a reasonable explanation for any such concern or objection. For example, a Member may identify a portion of the Final Draft that contains technology that reads on such Member's patent claims but which such Member did not itself include as a Contribution to the Final Draft and which such Member does not wish to license to all adopters of a Published Specification. The Members shall work in good faith to resolve promptly any such intellectual property objections, or any other concerns or objections, and any Member may propose changes to the Final Draft, as provided in Section 6.4(d), to resolve such concerns or objections.

(d) **Modifying a Final Draft.** Proposed changes to the Final Draft must be circulated by a proposing Member to all other Promoters and Working Group members no later than seven (7) days prior to the date of the Adoption Meeting. No proposed changes which are sent after that time will be considered. Prior to the Adoption Meeting, the Board will agree, by Majority Vote, as to which, if any, of such proposed changes to the Final Draft, which were submitted under and in compliance with this Section 6.4(d), will be included in a modified Final Draft that will be voted on at the Adoption Meeting. Each such proposed change will be the subject of a separate vote.

(e) **Adoption Meeting/Published Specification Approval.** A Final Draft will be deemed adopted as a Published Specification when such Final Draft is approved by a Majority Vote of the Board at an Adoption Meeting.

(f) **Notice of Adoption of Published Specification.** Within one (1) week following the date of adoption of a Published Specification, the Secretary will send written Notice of such adoption, including a copy of such Published Specification, to all Promoters and Contributors.

(g) Restarting the Adoption Process. If, for any reason, a Final Draft is not adopted as a Published Specification at the Adoption Meeting, the adoption process specified in this Section must be restarted before another Final Draft may be voted on for adoption as a Published Specification.

6.5 Errata Corrections to a Published Specification. Once a Published Specification has been adopted, Errata Corrections to a Published Specification may be proposed by a Member by circulating to the Secretary a statement that clearly identifies the error to be corrected and provides a reasonable explanation for the Errata Correction proposed. The Secretary will send proposed Errata Corrections to the Working Group Chair for Working Group approval. The Working Group may approve proposed Errata Corrections for submission to the Board for adoption by Majority vote. The Errata Corrections will be deemed adopted when approved by a Majority Vote of the Board.

6.6 Modifications to a Published Specification. Once a Published Specification has been adopted, any updates or alterations to a Published Specification other than Errata Corrections will be treated as a proposal to develop a new specification.

6.7 Third Party Contractors. A Working Group may obtain the services of third-party contractors to assist in their work under written agreements providing that their work shall be deemed a "work for hire" under the copyright laws vesting ownership in any resulting works in the Promoters and the Forum. All other intellectual property issues relating to Working Groups shall be governed by the intellectual property terms of the Promoter's Agreement.

#### 6.8 Test Suite Development

(a) Initial Draft Test Suite. The Initial Draft Test Suite for Complete EFI Specification 1.10, which will be the Initial Draft Specification, will be contributed by Intel as of the Effective Date of the Promoters Agreement. This Initial Draft Test Suite shall be used as a starting point for development of a Test Suite for Specifications to be developed by the Forum.

(b) Working Group. The Promoters will create a Test Suite Working Group, which will develop a Test Suite and will, by Majority Vote, appoint a chair for such Working Group. Upon appointment, the Working Group chair will promptly send a notice to all Promoters inquiring as to whether they desire to participate in this Working Group. The initial members of this Working Group will consist of those Promoters that indicate a desire to participate in this Working Group. No Promoter shall be denied the right to be a Working Group member. Each Working Group member shall appoint one person to act as its Representative in the Working Group and will so advise the Working Group chair, and each Representative will have only one vote within the Working Group. The members of the Working Group may invite Contributors to participate in the work of the Working Group. The chair of the Working Group may create one or more sub-Working Groups to make recommendations to the Working Group.

(c) Working Group Meetings. The Working Group chair will schedule Working Group meetings and provide prior written notice of at least ten (10) days (or in the case of face-to-face meetings, thirty (30) calendar days) of all such meetings to each of the Working Group members. No Working Group member will be intentionally excluded from Meetings or denied the opportunity to participate in the process of developing Test Suites; however, Meetings need not

be delayed or rescheduled if one or more of the Working Group members cannot participate. The Working Group may obtain the services of third-party contractors to assist in the development of Test Suites under written agreements providing that their work shall be deemed a "work for hire" under the copyright laws vesting ownership in any resulting works in the Promoters and the Forum.

6.9 Adoption. A Draft Test Suite will become a Published Test Suite only if first approved by the Test Suite Working Group and then adopted by the Board pursuant to the following conditions and procedures:

(a) Submission for Approval. A Draft Test Suite may be submitted for approval as a Published Test Suite if a majority of the Test Suite Working Group members agree that such Draft Test Suite is in final form. Such a Draft Test Suite must be circulated by the Test Suite Working Group chair at least thirty (30) days prior to the date for the Test Suite Working Group Approval Meeting. Prior to the end of such Review Period, each Test Suite Working Group member shall make disclosures required under Section 6.3(a) to the Secretary, in the form specified by Section 6.3(c). No Test Suite Working Group member, however, will be under any duty to perform any patent search. Any Test Suite Working Group member may raise an issue regarding the Draft Test Suite by identifying with particularity any portions of the Draft Test Suite it finds objectionable, including a reasonable explanation for its objection, and a proposal for a reasonable alternative that would resolve its objections, if available. The Test Suite Working Group members shall work in good faith to resolve any issues that Test Suite Working Group members may raise as part of their review of the Draft Test Suite, and any such member may propose changes to resolve any objections raised. The Test Suite Working Group chair may delay the vote on approving the Draft Test Suite as reasonably necessary to resolve any issues raised.

(b) Working Group Approval. A Draft Test Suite will be deemed approved by the Test Suite Working Group when it is approved by a Majority Vote of the Test Suite Working Group members. Any changes made after initial circulation shall be clearly identified. Within one (1) week following the date of approval of a Draft Test Suite by the Test Suite Working Group, the Test Suite Working Group chair shall send written notice of such approval, including a copy of the Draft Test Suite, to the Secretary for distribution to the Promoters.

(c) Adoption by Board. The approved Draft Test Suite shall be circulated by the Secretary, with Notice that review is to commence, within two (2) weeks of receiving the Draft Test Suite from the Test Suite Working Group chair. This Notice shall specify the date for a Meeting to vote on the Draft Test Suite, which shall be at least thirty (30) days from the date of the Notice. The review procedures specified in Section 6.4(b) and (c) shall apply to this review period. Proposed changes to the Draft Test Suite shall be circulated by a proposing Member to all Members no later than one (1) week prior to the date of the Meeting. Prior to the Meeting, the Board will agree, by Majority Vote, as to which, if any, of such proposed changes will be included in a modified Draft Test Suite to be voted on at the Meeting. Each proposed change will be the subject of a separate vote. A Draft Test Suite will be deemed adopted as a Published Test Suite when it is approved by a Majority Vote of the Board at the Meeting.

(d) Notice of Adoption. Within one (1) week following the date of adoption of a Published Test Suite, the Secretary will send written Notice of such adoption, including a copy of such Published Test Suite, to all Promoters and Contributors.

6.10 Errata Corrections to a Published Test Suite. Errata Corrections to a Published Test Suite may be proposed by a Member by circulating to the Secretary a statement that clearly identifies the error to be corrected and provides a reasonable explanation for the Errata Correction proposed. The Errata Corrections will be deemed adopted when approved by a Majority Vote of the Test Suite Working Group.

6.11 Modifications to a Published Test Suite. Any updates or alterations to a Published Test Suite other than Errata Corrections will be treated as a proposal to develop a new Test Suite and adoption of the new Test Suite will be governed by Section 6.9.

6.12 Maintenance and Appeal Procedure. The Test Suite Working Group shall, by Majority Vote, establish procedures for (a) maintaining Test Suites over the life of a Published Specification, (b) receiving ongoing comments and errata corrections during the period when such Test Suites are in use by potential implementers of a Published Specification, and (c) addressing appeals from potential implementers of unsuccessful tests. Any such appeal procedures shall require objections to be stated with particularity and supported by evidence and may require the payment of a fee to offset the reasonable expenses of the Test Suite Working Group.

## 7. MEMBERSHIP MEETINGS

7.1 Place of Meetings. All meetings of the Members shall be held at such place and at such times as may be fixed from time to time by the Board.

7.2 Annual Meetings. Annual meetings of the Members may be held on such date and at such time as shall be designated by the Board from time to time and stated in the Notice of the meeting.

7.3 Other Meetings. Special meetings of the Members may be called at any time by the President or the Board.

### 7.4 Notice of Meetings.

(a) Timing of Notice. Members shall receive Notice from the Secretary not less than ten (10) days (but in the event of a face-to-face meeting, not less than thirty (30) calendar days) before the date of the annual meeting. Notice of regular Meetings during the upcoming year shall be given to each Member after the annual meeting occurs and ten (10) days (but in the event of a face-to-face meeting, not less than thirty (30) calendar days) prior to the next regular Meeting. Notice for additional meetings may be specified in particular sections of these By-Laws or in the Promoters Agreement.

(b) Form of Notices. All Notices hereunder will be electronic or written and sent to the parties at the addresses indicated on the signature page of their Promoters Agreement or Contributors Agreement, or at such other address as a Member may later specify by written

notice to the Secretary. Notices from the Secretary can include notice by written mail, electronic mail or by facsimile.

(c) Service of Notices. Such Notices will be deemed served when sent. Any party may give written notice of a change of address and, after notice of such change has been received, any Notice or request will thereafter be given to such party at such changed address.

7.5 Waiver of Notice. Whenever any Notice of a Meeting is required to be given to any Member under provisions of the Articles of Incorporation, these Bylaws or by statute, a waiver of Notice in writing signed by the Member, whether before or after the time of the meeting, shall be equivalent to the giving of such Notice. Each such waiver of Notice shall be filed with the minutes of such meeting.

7.6 Voting. A Quorum of Members must be present at any Meeting at which a vote is called. For any vote that is called for at a Meeting, each voting Member must cast its vote at or prior to such Meeting, either directly, by e-mail, or by proxy. For any vote that is called for outside the context of a Meeting (e.g., a request for vote via e-mail response), such request for a vote shall contain the required deadline for submission of a response, which deadline shall not be less than five (5) business days from the time of the issuance of the request for the vote. The Secretary shall record all votes on all issues and promptly inform all voting Members whether a particular issue or action was approved or denied, based on the applicable voting threshold as specified in these Bylaws. The Secretary will keep records of all issues voted upon and the respective votes of each Member. Unless otherwise specified in these Bylaws, a Majority Vote shall be required without regard for whether all Members eligible to vote are physically present at any Meeting. If a Member either (a) fails to cast a vote or (b) casts a vote characterized as an abstention, such action shall be treated as if the Member had not voted.

## 8. BOARD OF DIRECTORS

8.1 Authority, Number, Qualifications and Term of Office. The Board will manage the general affairs, property, and interest of the Forum, subject to Washington Corporation Law, the Articles of Incorporation, these Bylaws and applicable provisions of the Code. The Board shall consist of a number of Directors equal to the number of Promoters, with a single Director appointed by each of the Promoters. Each Promoter is responsible for ensuring that its Representative qualifies as a Director under these Bylaws. Each Director may designate an alternate to attend Board Meetings and act on his or her behalf. The Promoter that appointed a Director may remove him or her at any time, with or without cause. A Director shall hold office until death, resignation, or removal.

8.2 Powers. This Forum shall have powers to the full extent allowed by law. All powers and activities of the Forum shall be exercised and managed by the Board directly or, if delegated, under the ultimate direction of the Board.

8.3 Duties. The Board shall have the responsibility for the general management of the affairs, property and interest of the Forum, which shall include, in addition to the other duties set forth in these Bylaws, the following duties:

- (a) Manage the adoption and maintenance of the Published Specification and Test Suite;

- (b) Exercise responsibility for the Forum's annual budget and for such oversight as is necessary to maintain non-profit status;
  - (c) Perform any and all duties imposed on the Directors collectively or individually by law, by the Certificate of Incorporation or by these Bylaws;
  - (d) Supervise all officers, agents and employees of the Forum to assure that their duties are performed properly;
  - (e) Meet at such times and places as required by these Bylaws; and
  - (f) Register their addresses and those of their legal counsel with the Secretary so that Notices of meetings or other Notices under these Bylaws mailed or faxed to them at such address or facsimile numbers shall be valid Notices thereof.
- 8.4 Compensation. Directors shall serve without compensation by the Forum. A Director may be paid for serving as a Director by the Member who appointed such Director. In addition, if determined by the Board, the Forum may reimburse or advance Directors for their reasonable expenses incurred in the performance of their duties.
- 8.5 Board Meetings. The Board shall meet at least once each year, at such time and place as the Directors designate. The Board shall appoint or confirm each Officer of the Forum annually by a Majority Vote, and also may remove Officers by a Majority Vote.
- 8.6 Insurance. The Forum shall acquire directors' and officers' insurance for all Directors and Officers of the Forum in an amount determined by the Board.

## 9. OFFICERS

- 9.1 Appointment. The Board shall appoint a President, Vice President, Secretary and Treasurer from the Board members, and may appoint such other Officers as it deems necessary. Any two or more offices may be held by the same person except the offices of Vice President and Secretary. No instrument required to be signed by more than one Officer may be signed by one person in more than one capacity. The Officers of the Forum shall be appointed or confirmed by the Board annually and each Officer elected shall hold office for a term of two years and until his or her successor is elected and qualified, or until his or her earlier resignation or removal. All Officers of the Forum shall be elected or appointed by a Majority Vote of the Board.
- 9.2 Removal. Any Officer of the Forum may be removed, with or without cause, by a Majority Vote of the Board.
- 9.3 Vacancies. In the case of any vacancy in any office, a successor to fill the unexpired portion of a term may be elected by the Board.
- 9.4 Powers and Duties. The Officers shall have the powers and duties customarily associated with their respective offices except as the Board may otherwise determine.

(a) President. As appointed by the Board, the President shall preside, if present, at all meetings of the Board. The President shall possess the same power as the Vice President to sign all documents of the Forum, which the Vice President may be authorized to sign by these Bylaws or by the Board. The President shall see that all orders and resolutions of the Board are carried into effect and shall from time to time report to the Board all matters within his or her knowledge which the interests of the Forum may require to be brought to the Board's notice. The President shall also perform such other duties and he or she may exercise such other powers as from time to time may be prescribed by these Bylaws or by the Board. The President's vote is equivalent to any other Board member's vote.

(b) Vice President. The Vice President shall be the chief executive officer of the Forum and shall, subject to the control of the Board, supervise and control the affairs of the Forum and the activities of the appointed officers. Subject to the approval and control of the Board, the Vice President shall have the authority to: (i) employ, supervise and terminate employees of the Forum necessary for the management and operations of the Forum; and (ii) to engage outside services to assist the Vice President in the management and operations of the Forum. The Vice President shall also perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation or by these Bylaws or that may be prescribed from time to time by the Board. Except as otherwise expressly provided by law, by the Articles of Incorporation or by these Bylaws, the Vice President shall, in the name of the Forum, execute such deeds, mortgages bonds, contracts, checks or other instruments which may from time to time be authorized by the Board. The duties and rights of the Vice President may, if the Board so determines, be assigned to a corporate entity engaged for such purpose by the Board. The Vice President's vote is equivalent to any other Board member's vote.

(c) Secretary. The Board shall appoint a Secretary who will be responsible for maintaining, collecting and updating the records and files related to the administration of this Agreement, including (i) keeping a list of all Members and Adopters, and copies of the Promoters Agreement and all Adopters and Contributors Agreements; (ii) establishing a common repository for housing the "master copies" of Draft Specifications, Draft Test Suites, Published Specifications, approved Test Suites and Contributions, and disclosures under Section 6.3 (the "Repository"); which shall be made available to Members, and for managing version control; (iii) obtaining appropriate protection in the name of the Promoters for any trademarks or trade names adopted by the Members, upon Majority Vote of the Promoters requesting that the Secretary do so; (iv) maintaining a list of the Promoters and Adopters which have successfully passed the Test Suite and are entitled to use any trademarks or trade names established by the Members; and (v) carrying out the various other functions and responsibilities described throughout the Bylaws and the other agreements. The Members shall abide by the terms that the Secretary reasonably establishes concerning the Repository. Updated versions of Draft Specifications and Draft Test Suites may be exchanged by the Members and placed in the Repository by the Secretary. The Secretary will make lists and agreements relating to Adopters and Contributors available to the Members at any time upon request within ten (10) business days after receipt of such request. The Secretary may, at its discretion, also act as the primary interface/official address for all incoming notices and outgoing Notices and manage and edit the content of an official website. The Secretary may designate an agent to perform any or all of its record keeping duties.

(d) Treasurer. The Board may appoint a Treasurer of the Forum, who shall serve in such capacity until his successor has been duly elected and qualified. 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 the Forum and shall deposit all moneys and other valuable effects in the name and to the credit of the Forum in such depositories as may be designated by the Board. The Treasurer may be the same Officer as the Secretary.

9.5 Disclaimer of Liabilities. Each of the appointed Officers is acting solely as a facilitator at the request of the Board and for the convenience of the Members. An Officer will not be deemed to be an agent of the Board or of any of the Members except as expressly provided. No Officer will be liable to any of the Members for any action or omission on its part taken or made in good faith and that is not in breach of the Bylaws, the Promoters Agreement or a Contributors Agreement.

9.6 Indemnification. The Board may, in its sole discretion, allow the Forum to, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that such person or such person's testator or intestate was a Director, Officer, employee or agent of the Forum, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys fees.

9.7 Replacement of Officers. Should an Officer desire to cease acting as an Officer, or should its organization withdraw as a Member as of a given date, it will, at least ten (10) days prior to such date, so notify the Board. The Board will elect another Board member as the new Officer within one (1) week of the transmission of such Notice. If during such time the Board cannot reach agreement on a new Officer, by a Majority Vote, then the Board will meet and negotiate in good faith to elect a new Officer. The Board may also replace an Officer at any time by Majority Vote.

#### 10. EFFECTIVE DATE AND AMENDMENTS

10.1 Effective Date. These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective 30 days from Notice of their adoption unless the Board in adopting them provides that they are to become effective at a later date.

10.2 Amendments. These Bylaws and the Articles of Incorporation may be altered, amended or repealed, in whole or in part, or new Bylaws and/or Articles of Incorporation may be adopted, by a Super Majority Vote of the Board.

#### 11. DISSOLUTION

11.1 Dissolution of the Forum. The Forum may be dissolved at any time if a Super Majority of the Board votes to adopt a resolution to dissolve the Forum. The Board shall dissolve the Forum if the Promoters vote to terminate the Promoters Agreement in accordance therewith. Dissolution upon a vote of the Board will not be effective until a Notice of dissolution is sent to all of the Members. In addition, in order to dissolve this Forum at any time within thirty (30) days after the Secretary sends out the Notices of adoption of a Published Specification but prior to a vote on such Notice, the Board will conduct the vote at a formal dissolution Meeting. The

Secretary will send out a Notice of such dissolution Meeting to all of the Board Members at least five (5) days prior to such termination Meeting.

11.2 **Effect of Dissolution.** Once the Board adopts a resolution to dissolve, the Forum shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof. The Forum shall collect its assets and the Directors by Majority Vote shall adopt a plan for distributing the assets consistent with § 24.03.225 of the Washington Nonprofit Corporation Act. Dissolution of the Forum shall result in a termination of the Promoters' Agreements and Contributors Agreement entered by the Members and will have the effects specified in Sections 5.2 (Termination) and 5.3 (Survival) of the Promoters Agreement, respectively and Sections 4.1 (Termination) and 4.2 (Survival) of the Contributors Agreement.

## 12. ANITRUST GUIDELINES

The Forum is committed to fostering competition in the development of products and/or services based on the activities undertaken by the Forum. The Forum understands that in certain lines of business the Members are or may be direct competitors and that it is imperative that the Members and their representatives act in a manner that does not violate any applicable antitrust law or regulation. Each Member is responsible for counseling its representatives who participate in any activities of the Forum on the importance of limiting the scope of their communications to the topics that relate to the legal purposes of this Forum, whether or not such communications take place during formal meetings, informal gatherings, or otherwise.

## 13. CONSTRUCTION AND TERMS

13.1 **Construction.** If there is any conflict between the provisions of these Bylaws and the Forum's Articles of Incorporation, the provisions of the Articles of Incorporation shall govern. If there is any conflict between the provisions of these Bylaws and the Promoters Agreement, Contributors Agreement or Adopters Agreement, the provisions of these Bylaws shall govern.

13.2 **Compliance with Laws.** The obligations of the parties hereto will be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government. It is the intention of the Forum that these Bylaws and all referenced documents will comply with all applicable laws and regulations, including, but not limited to, any and all applicable antitrust laws and regulations.

13.3 **Severability.** If any provision of these Bylaws is determined by a court to be unenforceable, the parties will deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from these Bylaws, and the remainder of the Bylaws will continue in effect.

## 14. MISCELLANEOUS

14.1 **Records.** There shall be kept at the registered office of the Forum correct books of accounts and finances; minutes of proceedings; current Articles of Incorporation and Bylaws; a record of Members, including names, addresses and classes of membership; and a record of Officers' and Directors' names and addresses. The records shall be available at any reasonable

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time for inspection by any member of more than three months standing or a representative of more than five percent of the membership.

14.2 Corporation Seal. The Board may adopt, use and alter a corporate seal, which shall be kept at the principal office of the Forum. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

14.3 Fiscal Year. The fiscal year of the Forum shall end on the last day of December of each year.