

# OPEN INDUSTRY 4.0 ALLIANCE

## INTELLECTUAL PROPERTY RIGHTS POLICY

V 1.1 (Oct. 08, 2020)

This Open Industry 4.0 Alliance Intellectual Property Rights (IPR) Policy governs the treatment of intellectual property in the production of deliverables by the Open Industry 4.0 Alliance (“OI.4A”). This Policy applies to all members of OI.4A.

### **1. Copyright license to Contributions.**

- a. *Contributors and Contributions.* OI.4A coordinates the development of various deliverables, such as technical specifications, data models, semantic definitions, system architectures, software code, engineering notes, reference designs, reports, presentations, marketing collateral, and other related material. Any work of authorship intentionally provided to OI.4A for potential inclusion in a draft or final OI.4A deliverable will be deemed a “Contribution.” The entity or individual making the Contribution is the “Contributor.”
- b. *Copyright license to Contributions.* Each Contributor grants OI.4A a worldwide, irrevocable, non-exclusive, royalty-free, fully-sublicensable license to reproduce, distribute, display, perform, and create derivative works of the Contributions.
- c. *OI.4A copyrights.* Subject to the Contributor’s continued copyright ownership in their Contributions, OI.4A will own the copyright in any collective works, compilations, joint works or derivative works created in connection with OI.4A activities, and will own the copyright in any such collective works, compilation, joint works or derivative works created by OI.4A employees or agents.
- d. *Attribution; moral rights.* Each Contributor, and each individual making a Contribution, waives any moral rights (or similar rights) to the maximum extent permitted by applicable law. OI.4A deliverables will be attributed to OI.4A. However, OI.4A will honor reasonable requests related to individual attribution when feasible.

### **2. Patent license obligations for Specifications.**

- a. *Specifications.* One type of deliverable that OI.4A produces are technical specifications that define requirements necessary to facilitate interoperability between third party products or services, including through the use of existing non-OI.4A standards. Once approved as final by the OI.4A Board of Directors, these are “Specifications.” Every

member of OI.4A is obligated to license certain patent claims in connection with Specifications, as described in this Section 2.

- b. *License obligation.* Each member agrees that if a patent claim that is owned, controlled or licensable (without additional consideration other than to employees or Affiliates) by that member or an Affiliate of the member becomes a Necessary Claim , then the member hereby grants a royalty free license to all members subject to the definitions and exceptions described below.
- i. An “Affiliate” is any entity that, directly or indirectly, owns, is owned by, or is under common ownership with, the member, as indicated by ownership of more than 50% of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body of the relevant entity.
  - ii. A “Necessary Claim” is any claim in a patent in any jurisdiction that would necessarily be infringed by an implementation of the relevant Specification. A claim is necessarily infringed only when it is impossible to avoid infringing it, because there is no commercially reasonable non-infringing alternative for implementing the Specification. All other claims, even if contained in the same patent as Necessary Claims, are not Necessary Claims. Necessary Claims, however, do not include claims that would read solely on a non-OI.4A Standard referenced in the Specification.
  - iii. The royalty free license granted on reasonable and non-discriminatory terms herein is a worldwide, non-exclusive license, limited to Necessary Claims, to make, have made, use, import, offer to sell, lease, sell, promote and otherwise distribute the portions of the member’s products and services that implement the Specification.
- Should a member terminate its membership it will become an “Ex-Member.” Ex-Members will retain any licenses granted herein to the Ex-Member for “Legacy Products and Services,” which are products or services that were sold or otherwise made available by the Ex-Member during its term of membership.
- c. *Reciprocity; defensive suspension.* Except as otherwise expressly agreed between particular parties, a licensor may suspend any license granted pursuant to this Policy to any licensee if that licensee or its Affiliate initiates litigation (against the licensor or any other party) that alleges infringement of a Necessary Claim in connection with any OI.4A Specification. A party will not be deemed to have initiated litigation if that party files a suit which is defensive by virtue of it being made in response to patent infringement claim or suit by another party.

- d. *Opt out; review period.* The Board will provide notice and a substantially complete draft version of each Specification to all members for review no less than [60] days prior to formal approval of the Specification. A member may opt out a claim by specifically identifying a particular claim and the applicable portion of the relevant draft specification in writing to the Board prior to the end of the review period. The member must make such opt-out notification promptly upon becoming aware that the claim potentially may be a Necessary Claim and deciding that they are unwilling to license it, even if such awareness arises prior to the initiation of a review period. Members acknowledge that opt-outs made late in the specification development process are highly disruptive to the process and potentially costly to OI.4A and other OI.4A members; accordingly, members agree to use the opt-out option only in the strictest good faith. Members may not, however, opt out claims that read directly on Contributions made by the member that are embodied in a Specification. If a member provides an opt out in accordance with this provision, the license obligation described in Section 2(b) will not apply to patent claims that the member opts out.
  - e. *Effect of withdrawal from OI.4A.* Even after the date a member formally withdraws from OI.4A (the “Withdrawal Date”), a member will be obligated to grant licenses as described in this Section 2 to those claims that became Necessary Claims prior to the Withdrawal Date, as well as to Necessary Claims that read on future versions of a Specification, limited to those portions of the future version that are substantially the same as in the Specification as it was approved prior to the Withdrawal Date. Otherwise, no new obligations attach post Withdrawal Date.
- 4. Trademarks.** OI.4A will be permitted to use the name and corporate logo (or similar mark) of members on the OI.4A website and in connection with communications about OI.4A membership, subject to reasonable use limitations communicated by the member to OI.4A. OI.4A members may use the OI.4A name and corporate logo solely to communicate their membership in OI.4A, subject to a reasonable trademark use policy to be published by the Board. The OI.4A name and trademarks may not be used to communicate compliance or conformance with any OI.4A specifications or technology, and may not otherwise be used in connection with any member product or service, except as permitted by an applicable written OI.4A license agreement or Board-approved policy.
- 5. Confidentiality.** Information disclosed by members is non-confidential. OI.4A information not released publicly is OI.4A confidential Information and may not be shared with any third parties who are not members of OI.4A or who have not executed a confidentiality agreement with OI.4A. All non-public drafts of the OI.4A deliverables will be deemed the Confidential Information of OI.4A and be subject to the non-disclosure duty. The Board will determine the timing and nature of any public release of deliverables. Materials released publicly are non-confidential.
- 6. Scope; amendments; authority.**

- a. *Sole agreement for OI.4A activities.* This IPR Policy is the definitive and exclusive statement of intellectual property-related rights and obligations provided herein, subject to the Board's authority to define OI.4A trademark and software license terms.
- b. *Assent to terms.* Participation in OI.4A as a member indicates assent to the terms of the Policy. Any party that desires to not be bound by the terms of this IPR Policy must abstain from joining and must not engage in OI.4A activities.
- c. *Amendments.* The OI.4A Board of Directors may amend this Policy at any time in its sole discretion. No amendment to this Policy will be effective in no less than 60 calendar days from the date that written notice of such amendment is sent to members.
- d. *Authority.* By joining the OI.4A members are agreeing to be bound to the terms herein.