

# OPEN Alliance Intellectual Property Rights Policy

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*Version 4.0 (the first IPR Policy of OPEN Alliance Inc.)*

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# 1. Definitions

In case of conflict between the definitions in this section and in the OPEN Alliance Bylaws the definitions in the OPEN Alliance Bylaws shall prevail.

## ***Affiliates***

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 (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote without restriction for the election of directors or similar managing authority of the subject entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity; provided, however, that in each case such entity shall be deemed to be an Affiliate only so long as such ownership or control exists and is more than fifty percent (50%).

## ***Automotive Applications***

Applications related to engine powered vehicles for primary transportation purposes, including but not limited to commercial and utility vehicles, for rail, nautical and aerospace applications.

## ***BroadR-Reach Ethernet Specification***

All versions of the specification designated as “BroadR-Reach™ Physical Layer Transceiver Specification for Automotive Applications” and ***Minor Updates*** thereto.

## ***Contribution***

A submission by or on behalf of an OPEN Alliance Member to the ***Board of Directors***, or a Working Group, proposing an addition to or modification of an existing ***OPEN Specification*** or a ***Draft OPEN*** or ***Interim Specification*** or portion thereof, or a submission proposing changes or modifications to reference design documents provided in each case that the submission is either

- (i) submitted in writing (including a writing in electronic medium) or
- (ii) stated orally, memorialized with specificity in the written minutes of a meeting, and attributed in the meeting minutes to the submitting OPEN Alliance Member, provided that
  - a) the minutes are promptly provided to the individual representing the submitting OPEN Alliance Member, and
  - b) the submitting OPEN Alliance Member has not withdrawn its submission in writing as soon as practicable and in any event, no later than forty-five (45) days after receipt of such written minutes. An OPEN Alliance Member failing to

provide such notice shall be conclusively deemed to have made a **Contribution** as memorialized in the minutes.

### ***Contributing Member, Contributor***

An OPEN Alliance Member who has made a **Contribution**.

### ***Compliant Portion***

Only those specific portions of products (hardware, software or combinations thereof) that:

- (i) implement and are compliant with all requirements of an **OPEN Specification**, and
- (ii) are within the bounds of the **Scope**.

### ***Draft OPEN Specification***

The preliminary drafts of an **OPEN Specification** during any stage of a Working Group's development of that **OPEN Specification** will be known as a **Draft OPEN Specification**. Once a Working Group has voted on a **Draft OPEN Specification** and submitted it to the **Board of Directors** for review and approval, it becomes an **Interim Specification**.

### ***Editorial Changes***

Non-technical changes to **Interim Specification** or **OPEN Specification** that do not alter or add technical provisions, such as corrections to spelling, grammar, formatting, and broken links. Changing a complete sentence, e.g. for simplification, shall be decided on case by case basis. In case of doubt they are judged as **Technical Changes**.

### ***Effective Date***

The date on which this IPR Policy is voted into effect by the **Board of Directors**. Any future versions of this IPR Policy that may be adopted by the **Board of Directors** shall become effective 60 days after an affirmative vote.

### ***Essential Claims (Essential Patents)***

Claims of an issued patent or pending patent application, called **Essential Patent**, throughout the world that

- (i) read on implementations of an OPEN Specification that are within the bounds of the Scope; and
- (ii) would be necessarily infringed by implementing **Compliant Portions** within **Automotive Applications**, wherein a patent claim is necessarily infringed when there

is no technically feasible and commercially reasonable non-infringing alternative for implementing the applicable portion of the **OPEN Specification**.

### **Excluded Claims**

- (i) **Essential Claims** owned or licensable by a **Member** or its Affiliates during the **Review Period** and for which the **Member** has submitted an **Exclusion Notice** notifying the **Board of Directors** that it will not grant Licenses under Section 5: Licensing of Intellectual Property Rights and that it will license on reasonable and non-discriminatory (RAND) terms, or will withhold licenses; or
- (ii) **Essential Claims** owned or licensable by a non-Member or third party who has been contacted by the **Board of Directors** and are subject to a **Patent Statement and Licensing Declaration Form** indicating that after being contacted by the **Board of Directors**, Licenses to the Essential Claims will not be granted on at least as favorable a basis as the commitment of Section 5: Licensing of Intellectual Property Rights and that the third party instead reserves the right to license on reasonable and non-discriminatory (RAND) terms, or to withhold licenses.

### **Exclusion Notice**

Form used by **Members** to exclude applicable **Essential Claims** from the commitment to grant Licenses under Section 5: Licensing of Intellectual Property Rights. (Attached as Exhibit A).

### **Interim Specification**

Once a Working Group adopts a **Draft OPEN Specification** and sends it to the **Board of Directors** for review, adoption, and release, it becomes an "**Interim Specification**".

### **Interested Party**

An implementer of an **OPEN Specification**. The universe of **Interested Parties** for a specification published as "Members Only" is limited to Members of OPEN Alliance. The universe of **Interested Parties** for specifications published as Public Specifications includes all third party implementers.

### **Minor Update**

Error corrections and/or minor modifications that do not materially alter or augment the functionality, capabilities or capacities of features and requirements listed in the "**BroadReach Ethernet Specification**".

## ***OPEN Specification***

A document defining technical requirements, conditions, and protocols which enable products with ***Compliant Portions*** to interoperate, interconnect or communicate as defined within the document and adopted and approved for release by the ***Board of Directors*** under the procedure of Section 2: Specification Notice, Review and New OPEN Alliance Members as an ***OPEN Specification*** after adoption of these IPR Policy, and any updates or revisions adopted and approved for release by the ***Board of Directors***. ***OPEN Specifications*** do not include the BroadR-Reach Ethernet Specification or any Minor Updates thereto.

## ***Patent Statement and Licensing Declaration Form***

Form sent to non-Members and third parties believed to own or control ***Essential Claims***. (Attached as Exhibit B).

## ***Review Period***

A fifty-six (56) day period during which ***Members*** may review the ***Interim Specification*** and submit ***Exclusion Notices*** identifying any ***Excluded Claims***. The ***Review Period*** begins on the date the ***Interim Specification*** is sent to ***Members*** for review.

## ***Scope***

Those protocols, electrical signaling characteristics, register models, communication and network interface protocols, hardware operating system interfaces, application program interfaces, service provider interfaces, physical dimensions and characteristics, and/or data structures solely to the extent disclosed with particularity in the ***OPEN Specification*** where the primary purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within the ***OPEN Specification***.

Notwithstanding the foregoing, the ***Scope*** shall not include:

- (i) any enabling technology that may be necessary to develop, design, manufacture, sell or use any product or portion thereof that complies with the ***OPEN Specification*** but is not expressly set forth in the ***OPEN Specification*** (examples of such technologies include without limitation semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology); or
- (ii) the implementation or use of other specifications published or made available elsewhere and not developed by the OPEN Alliance under this IPR policy, and referred to in the body of the ***OPEN Specification*** (such as IEEE 802.1 or 802.3 standards, or the ***BroadR-Reach Ethernet Specification***); or
- (iii) any portion of any product or any combination of products (or portions of products) that is not required for compliance with the ***OPEN Specification***.

## ***Specification Vote***

The Working Group vote on whether to adopt a **Draft OPEN Specification** as an **Interim Specification**. Once adopted via a **Specification Vote**, an **Interim Specification** is submitted to the **Board of Directors** for review.

### **Board of Directors**

A group of representatives of Promoters as defined in Section 2 of the Promoter Agreement. The handling and activities of the **Board of Directors** are described in the OPEN Alliance Governance document.

### **Target Audience**

A group of companies to which the development, selling and delivering of **Compliant Portions** is expected to be of primary interest. The **Target Audience** is identified by the **Board of Directors** for information purposes.

### **Technical Changes**

Revisions that alter or add technical provisions of **Interim Specification** or **OPEN Specification**.

## **2. Specification Notice, Review and New OPEN Alliance Members**

### **2.1. Specification Development and Review Process**

**Working Groups** shall be established by a vote of the majority of the Promoters. The **Working Groups** shall have the responsibility for drafting and developing **OPEN Specifications**.

When the **Board of Directors** authorizes development of an **OPEN Specification** that may require **Essential Claims**, it shall define the following parameters for that **OPEN Specification**:

- (i) objectives of the **OPEN Specification**
- (ii) Working Group to be chartered or, if already existing, designated to develop that **OPEN Specification**
- (iii) expected **Target Audience** of that **OPEN Specification**
- (iv) publication grade according to the regulations set forth in the Section 3: Publication Process
- (v) expected timeline for development and publication of that **OPEN Specification**
- (vi) inclusion of technology that may require licensing on a RAND basis.

Once the **Board of Directors** has concluded these definitions, the specification work can commence in the Working Group. Only **Members** may participate in Working Groups, contribute to, vote on, review or comment on any specifications.

### Disclosure of **Excluded Claims**

Early disclosure of **Excluded Claims** is encouraged. During the development of an **OPEN Specification**, all participating representatives of OPEN Alliance Members shall promptly notify the Working Group of any patents of which they are personally aware and reasonably believe include **Excluded Claims**. OPEN Alliance Members are also encouraged to notify the Working Group of any **Essential Claims** they believe are owned or licensable by non-Members or third parties. In any event, the latest opportunity for a **Member** to identify **Excluded Claims** is during the final specification **Review Period**. After the final Review Period has passed, any **Essential Claims** owned or licensable by a **Member** or its Affiliates that have not been Excluded will be irrevocably subject to the licensing commitment in Section 5: Licensing of Intellectual Property Rights.

### Review of **Interim Specification**

At such time as a Working Group agrees on an **Interim Specification** by a **Specification Vote**, the **Interim Specification** shall be sent to the **Board of Directors** who shall send the complete copies of the **Interim Specification** to all **Members**. The fifty-six (56) day **Review Period** begins on the day the Interim Specification is sent out for review.

The **Board of Directors** may, in its sole discretion, elect to conduct an editorial review of the **Interim Specification** during the same **Review Period**.

The **Board of Directors** may, in its sole discretion, elect to conduct a patent review of the **Interim Specification** during the same **Review Period**.

If only **Editorial Changes** are made as a result of the review during the **Review Period**, then the Chair and Secretary shall review the changes. If the Chair and Secretary agree that only **Editorial Changes** were made, the document shall be released for formal approval to the **Board of Directors** without another Review Period.

### Handling of **Excluded Claims**

If **Excluded Claims** of **Members** are identified during the Review Period, the **Board of Directors** will return the **Interim Specification** to the Working Group to consider any needed modifications to the **Interim Specification**. This consideration should be concluded within a reasonable time (to be set by the **Board of Directors**). The **Board of Directors** may not ratify an **Interim Specification** containing **Essential Claims** unless a commitment to license on at least RAND terms has been obtained.

If **Essential Claims** are identified that are owned or licensable by a Member who is not a **Member**, or by a third party, the **Board of Directors** shall send such party a **Patent Disclosure and Licensing Statement Form** and request that the patent owner give an assurance within thirty days that it will license its **Essential Claims** on terms at least as favorable as those provided in Section 5: Licensing of Intellectual Property Rights. If such party refuses to do so, and instead reserves the right to withhold licenses or license on RAND terms, the **Board of Directors** will similarly return the **Interim Specification** to the Working Group to make any needed modifications to the **Interim Specification**.

If the **Board of Directors** determines that it requires advice, or that no modifications are advisable, it may approve the retention of a legal advisor who is not affiliated with any Promoter

and who is knowledgeable regarding patent law to advise them regarding the proposed **Excluded Claims** and any proposed modifications to the **Interim Specification**.

#### Review of a revised **Interim Specification**

A revised **Interim Specification** triggers another Review Period during which **Members** may re-affirm previously-identified **Excluded Claims** but may not identify new **Excluded Claims** other than those covering the revisions to the **Interim Specification**.

#### Final review

After completion of the last **Review Period**, (i.e., when the **Board of Directors** has resolved any issues arising from the identification of Excluded Claims), the **Board of Directors** shall announce a final review of twenty eight (28) days, during which all **Members** may make editorial comments for improving the **Interim Specification** that shall be reviewed for consideration by the Working Group. If the **Board of Directors** performed an editorial review of the **Interim Specification** during the **Review Period**, and the **Interim Specification** is not revised, a final twenty eight (28) day editorial review is not required. After the thus completed **Interim Specification** is approved by the **Board of Directors** via an affirmative vote the **Interim Specification** shall become an **OPEN Specification** of the OPEN Alliance.

The **Board of Directors** may only ratify an **Interim Specification** if commitments have been obtained that all known **Essential Claims** will be licensed on at least a RAND basis. The **Board of Directors** may not ratify an **Interim Specification** containing known **Essential Claims** for which it is known that a commitment to license on at least RAND terms has not been obtained.

#### Disclaimer

If it is known at the time of release that an **OPEN Specification** includes technology that may require a license to claims on a RAND basis, the **OPEN Specification** shall bear a disclaimer indicating this. If the source of the claims triggering a RAND license is a reference to another published specification, the disclaimer shall identify such published specifications.

#### Revisions to **OPEN Specification**

**Technical Changes** of an **OPEN Specification** are subject to a **Review Period**. If approved, the amended **OPEN Specification** will be published with a new version number. The new version number will change at the first or second digit depending on the amount of technical changes. As an example, in the version number 1.1, the 1 to the right of 1 indicates the first amendment to the **OPEN Specification**.

**Editorial Changes** to an **OPEN Specification** are not subject to a **Review Period**. The Chair and Secretary will review the **Editorial Changes** before submitting the **Editorial Changes** to the **Board of Directors** for approval. The new version number will include a third digit indicating the revision number. As an example, in the version number 1.0.1, the 1 to the right of 1.0 indicates the first amendment to the OPEN Specification.

## 2.2. New OPEN Alliance Members

At the time of joining, a potential OPEN Alliance Member will receive a comprehensive list of **OPEN Specifications** and **Interim Specifications** (and their publication grades) for which the **Review Period** has already passed.

## 3. Publication Process

### 3.1. Publication Grades

During the existence of the OPEN Alliance, **OPEN Specifications** will be published by the Alliance subject to one of two publication grades:

#### Members Only:

Specifications published as Members Only are subject to the non-disclosure obligations of the OPEN Alliance Promoter and Adopter Agreements. Only OPEN Alliance Members are third party beneficiaries of the licensing commitments specified in Section 5: Licensing of Intellectual Property Rights and affirmed in the **Patent Disclosure and Licensing Statement Form** with respect to Members Only Specifications.

#### Public:

Specifications published as “Public” may be provided to any third parties wishing to implement the **OPEN Specification**. Any such third party is a third party beneficiary of the licensing commitments specified in Section 5: Licensing of Intellectual Property Rights and affirmed in the **Patent Disclosure and Licensing Statement Form** with respect to Public Specifications.

After the termination of the OPEN Alliance, an **OPEN Specification** may either become Public (as defined above), or may be contributed to a Recipient Organization to be published by that Recipient Organization.

The preference is to contribute OPEN Specifications to Recipient Organizations whose IPR Policies provide for licensing on a reasonable, non-discriminatory and free-of-charge (“RAND-Z” basis), and would enable the maintenance of the already-existing licensing commitments applicable to that OPEN Specification. This preference notwithstanding, the **Contributing Members** of an OPEN Specification may agree to contribute an OPEN Specification to a Recipient Organization that does not provide for RAND-Z licensing if it requires licensing of all **Essential Claims** on at least a RAND basis.

### 3.2. Voting on Publication Grade

The publication grade of an **OPEN Specification** is determined by a  $\frac{3}{4}$  majority vote by the **Members** of the **Board of Directors**, pursuant to the process described in Section 2: Specification Notice, Review and New OPEN Alliance Members. The vote should address publication grade both during the existence of OPEN Alliance, as well as the planned grade in the event of termination of the Alliance.

## 4. Effective Date

This IPR Policy shall become effective upon an affirmative 2/3 of Quorum vote of the **Board of Directors**. Should a future version of the IPR Policy be adopted by the **Board of Directors**, it shall become effective sixty days after an affirmative vote.

## 5. Licensing of Intellectual Property Rights

### 5.1. Licenses to Essential Claims

Each **Member** irrevocably agrees that it will, upon request but subject to the rights arising from any exclusions in any Patent Declaration and Licensing Statements, and subject to reciprocity and defensive suspension rights in Section 5.3: Reciprocity and Defensive Suspension, offer to grant to any **Interested Party** under reasonable and non-discriminatory terms, a nonexclusive, nontransferable and non-sublicensable, worldwide free-of-charge license under the **Essential Claims owned or otherwise licensable by the Member or its Affiliates** to allow such **Interested Parties** to use, make, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute products containing **Compliant Portions** of all **OPEN Specifications**. Such agreement to license shall not extend to any part or function of a product in which a **Compliant Portion** is incorporated that is not itself part of the **Compliant Portion** or anything that is not included in the **Scope**.

### 5.2. Excluding Claims

While there is no requirement for an OPEN Alliance Member to review its patent portfolio for **Essential Claims**, **Members** who wish to exclude claims from the licensing provisions of Section 5.1: Licenses to Essential Claims may do so at any time during the specification development process, and at the latest during the applicable **Review Periods**. In addition, an OPEN Alliance Member can only exclude **Essential Claims** from a Draft and **Interim Specification** if the proposed **Excluded Claim** is not required to implement the Open Alliance Member's own **Contribution** to the **Interim Specification**. An **Exclusion Notice** seeking to exclude claims will identify the patent or patent application containing the **Excluded Claims**, specifically point out the claims the OPEN Alliance Member considers necessary and the specific part of the **Interim Specification** covered by those **Excluded Claims**. Any **Exclusion Notice** not providing this information will be considered as not received by the **Board of Directors**.

### 5.3. Reciprocity and Defensive Suspension

A licensor of **Essential Claims** may include in its license non-assertion (as permitted by applicable laws), reciprocity, and/or defensive suspension provisions, provided these are not more restrictive upon the licensees than the following:

- (i) A reciprocity provision, e.g. the license may be conditioned on the agreement of the licensee to grant reciprocal licenses or non-asserts to the licensee's own **Essential Claims** on terms no less favorable than the terms offered by the licensor to the licensee for Compliant implementations of the same **OPEN Specification**.
- (ii) A term providing that the license may be suspended with respect to the licensee, if the licensee sues the OPEN Alliance Member or its downstream customers for

infringement of any of the licensee's **Essential Claims** by **Compliant Portions** essential to the same **OPEN Specification**.

A licensor may not include in its license clauses with the following content:

- (i) A requirement to grant by the licensee to the OPEN Alliance Member a License for claims that are not essential to the same **OPEN Specification**, e.g. by licensing or otherwise committing to not assert or bring suit to enforce such claims.
- (ii) A requirement that the licensee purchase a Member's own implementation of an **OPEN Specification**.
- (iii) A restriction to the market in which the licensee uses, makes, has made, markets, imports, offers to sell, and sells, and to otherwise directly or indirectly distributes **Compliant Portions**, despite the fact that **OPEN Specifications** have been developed for **Automotive Applications** only and that they have not been developed or tested for non-**Automotive Applications**.
- (iv) A restriction that prohibits the licensee from purchasing developments of third parties of **Compliant Portions** of the **OPEN Specification** to be integrated in their product.

#### 5.4. Applicability to the BroadR-Reach Ethernet Specification

The **BroadR-Reach Ethernet Specification** is owned by Broadcom Corporation, including **Minor Updates** as defined in the Promoter and Adopter Agreements thereto, and is not subject to this IPR Policy. Broadcom Corporation will make licenses available for implementing the **BroadR-Reach Ethernet Specification** pursuant to the terms of the OPEN Alliance Bylaws. This includes instances in which **OPEN Specifications** require the implementation of the **BroadR-Reach Ethernet Specification**.

## 6. Transfer of Essential Claims

Each **Member** agrees that neither it nor its Affiliates will transfer, and have not transferred, patents or patent applications having **Essential Claims** for the purpose of circumventing such OPEN Alliance Member's obligations under this IPR policy.

Any agreement to transfer an **Essential Claim** must provide that the obligations of the OPEN Alliance Member to grant Licenses pursuant to Section 5: Licensing of Intellectual Property Rights shall bind all successors-in-interest. A **Member or its Affiliate** who transfers ownership of **Essential Claims** shall include appropriate provisions in the relevant transfer documents to ensure that the undertaking is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest. The obligations created by this Section 6: Transfer of Essential Claims survive a Member's withdrawal and survive the termination of the OPEN Alliance.

## 7. OPEN Alliance Member Withdrawal

### 7.1. Survival of Licenses After Withdrawal

The obligation of any **Member** and its Affiliate to grant licenses to **Essential Claims** pursuant to Section 5: Licensing of Intellectual Property Rights (and subject to any applicable Patent Disclosure and Licensing Statements) shall survive a **Member's** withdrawal from OPEN Alliance, withdrawal from its **Technical Participation Agreement**, non-renewal of membership, or the dissolution of the OPEN Alliance (collectively, "withdrawal"), provided that the obligation shall only survive with respect to:

- (a) **OPEN Specifications** that were approved pursuant to Section 2: Specification Notice, Review and New OPEN Alliance Members and **Interim Specifications** that have entered the Final Review Period prior to the effective date of the **Member's** withdrawal;
- (b) **OPEN Specifications** approved following the effective date of the **Member's** withdrawal, but only as provided for in Section 8: Licenses to Subsequent OPEN Specifications; and
- (c) **OPEN Specifications** released within 60 days after the effective date of the **Member's** withdrawal.

## 8. Licenses to Subsequent OPEN Specifications

The obligation to license **Essential Claims** as provided in Section 5: Licensing of Intellectual Property Rights includes the obligation to license claims that are **Essential Claims** as to any subsequent **OPEN Specification** validly approved pursuant to Section 2: Specification Notice, Review and New OPEN Alliance Members of this Policy, but only to the extent the license of **Essential Claims** is necessary for the future **OPEN Specification** to be backwards compatible with the prior **OPEN Specifications**.

## 9. Other Terms

### 9.1. No other Rights

No patent license, immunity or other right is granted under this IPR Policy by any OPEN Alliance Member or its Affiliates to any other OPEN Alliance Member or its Affiliates or to the OPEN Alliance, either directly or by implication, estoppel, or otherwise, other than the agreements to grant licenses expressly set forth in Section 5: Licensing of Intellectual Property Rights.

### 9.2. Obligation of Good Faith

The obligations of this IPR Policy are subject to the obligation between **Members** (and, as to Section 7: OPEN Alliance Member Withdrawal, between a withdrawing **Member** and other **Members**) to deal fairly and in good faith. This obligation to deal fairly and in good faith supplements each of the licensing obligations set out in Section 5: Licensing of Intellectual Property Rights and survives withdrawal.

### 9.3. Injunctive Relief

No OPEN Alliance Member shall enforce its **Essential Claims** to enjoin (e.g. through injunctive relief, exclusion order, customs seizure or otherwise) an **Interested Party** from using, making, having made, marketing, importing, offering to sell, selling or otherwise directly or indirectly distributing products containing **Compliant Portions**. The preceding sentence shall not apply if:

- (i) the **Essential Claims** cover a specification that is “Members only” and the applicable **Interested Party** is not an OPEN Alliance Member;
- (ii) the applicable **Interested Party** seeks to enforce its **Essential Claims** to enjoin (i) the OPEN Alliance Member, or (ii) the OPEN Alliance Member’s customers based on using, making, having made, marketing, importing, offering to sell, selling or otherwise directly or indirectly distributing products containing Compliant Portions; or
- (iii) the **Essential Claims** are subject to a timely submitted **Exclusion Notice or Patent Disclosure and Licensing Statement Form** and, the Open Alliance Member has reserved the right not to offer licenses.

This Section 9.3 applies even when an **Interested Party** challenges the essentiality, infringement, validity, or enforceability of any **Essential Claims**.

Nothing in this Section 9.3 Injunctive Relief shall be construed as limiting the remedies available against an OPEN Alliance Member in breach of this IPR policy or to preclude an OPEN Alliance Member from seeking legal or equitable remedies against an OPEN Alliance Member in breach of this IPR Policy.

### 9.4. Governing Law

Disputes arising under this Policy will be governed by and construed in accordance with the laws of the State of New York, excluding that body of New York law concerning conflicts of law.

## 10. Compliance and Antitrust

The OPEN Alliance is committed to fostering open competition in the development of products and services based on **OPEN Specifications**.

OPEN Alliance Members understand that in certain lines of business they may be direct competitors and that it is imperative that OPEN Alliance activities, they and their representatives act in a manner which does not violate any state, federal or international anti-bribery, anti-corruption, or antitrust laws and regulations.

Without limiting the generality of the foregoing, OPEN Alliance Members will refrain from any agreement or discussions directed at entering into any agreement on costs or prices (except for voluntary disclosure of a **Member’s** proposed licensing terms and conditions), quantity or quality of production levels, methods or channels of distribution, markets, customers, exclusion of competitors, or any other topic that may be construed as a violation of antitrust or competition laws. Accordingly, each OPEN Alliance Member will counsel its representatives on the importance of limiting the scope of their discussions to the topics, which relate to the

purposes of OPEN Alliance, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

## 11. Copyright

This Section describes the copyright policy of OPEN Alliance. All references in this Section to rights, title, ownership, licenses or any other interest of any kind are limited to copyright interests in the documents referred to (including **Draft OPEN**, **Interim** and **OPEN Specifications** and **Contributions**) and all other documents or text that may be collaboratively produced in whole or in part by OPEN Alliance (all such documents and text being referred to as "**Other Work Product**") and do not include any other intellectual property rights (including, without limitation, any patent rights).

### 11.1. Copyright Licensing Terms

Subject to Section 11.2: Distribution of the OPEN Specification, each **Contributing Member** shall retain ownership of, including ownership of all copyrights in, any **Contribution** it makes to the OPEN Alliance pursuant to this Section. Each **Contributing Member** grants to each other **Contributing Member** a royalty-free, non-exclusive, worldwide, nontransferable, and non-assignable (except to a purchaser or transferee of substantially all of the latter **Contributing Member's** outstanding stock or assets) license to, copy, and to create derivative works of, but not to display or perform, its **Contributions**, solely for the purposes of:

- (i) evaluating whether to include the **Contributions** in one or more **Interim Specifications** or **Draft OPEN Specifications**, or **OPEN Specifications**, or **Other Work Product** as appropriate;
- (ii) creating a derivative work of the **Contribution** by including the **Contribution**, together with other **Contributions**, into one or more **Interim Specifications** or **Draft OPEN Specifications**, and **OPEN Specifications**, or **Other Work Product** as appropriate; and

submitting a **Contribution**, solely as incorporated into an **OPEN Specification** that is approved pursuant to Section 0:

- (iii) Specification Notice, Review and New OPEN Alliance Members or **Other Work Product**, or an **Interim**, **Draft** or **OPEN Specification**, or **Other Work Product** as appropriate that is submitted to an approved Recipient Organization as permitted by the Promoter and Adopter Agreements.

### 11.2. Distribution of the OPEN Specification

The **OPEN Specification** will be a joint work in the sense of 17 USC § 101 and **Contributing Members** shall jointly own, and each **Contributing Member** shall have an undivided interest in, the copyright to the **OPEN Specification**. The **Contributing Members** grant collectively to the **Board of Directors** the right to use or license their copyright in the **OPEN Specification** in any manner suitable for the objectives of the OPEN Alliance. No **Contributing Member** may assign its interest, or display, perform, sublicense, or redistribute the **OPEN Specification** without the approval of the **Board of Directors** (by a 2/3 vote of the Quorum). Further all **Contributing Members** will jointly submit the **OPEN Specification** to the Recipient

Organization if the **Board of Directors's** votes such a submission by a 2/3 vote of the Quorum).

### **11.3. OPEN Alliance Member Withdrawal**

The licenses granted by a withdrawing **Contributing Member** to copyright in its **Contributions** under Section 11.1: Copyright Licensing Terms shall survive the withdrawing **Contributing Member's** withdrawal. A withdrawing **Contributing Member**, upon the effective date of its withdrawal, surrenders to the remaining **Contributing Member**, without compensation or any right of accounting, its undivided ownership interest in the **OPEN Specification**.

### **11.4. Enabling Copyright Allocation**

Each **Contributing Member** will render all customary and reasonable assistance to each other **Contributing Member**, including without limitation execution and delivery of all additional documents reasonably requested by a **Contributing Member**, at the expense of such **Contributing Member**, as such **Contributing Member** may request in good faith in order for such **Contributing Member** to perfect and register the allocation of copyright interest in Section 11.2: Distribution of the OPEN Specification in any and all countries. If such **Contributing Member** is unable for any reason whatsoever to secure the assigning **Contributing Member's** signature to any such document, the assigning **Contributing Member** hereby irrevocably designates and appoints such **Contributing Member** and its duly authorized officers and agents as the assigning **Contributing Member's** agents and attorneys in fact to act for and on behalf and instead of the assigning **Contributing Member**, to execute and file any documents and to do all other lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the assigning **Contributing Member** (it being acknowledged that such appointment is irrevocable and a power coupled with an interest).

Exhibit A

OPEN Alliance **Exclusion Notice**

Member:
Name of Person Completing This Form on Behalf of Member (Representative):
Mailing Address of Representative:
Email Address of Representative:
<b>Interim Specification</b> to which this Disclosure Relates:
List the patent or application(s) believed to contain Necessary Claims, and the specific part of the Interim Specification covered by any claims to be Excluded from the licensing commitment under Section 5: Licensing of OPEN Alliance Member Intellectual Property Rights:
If you do not select one of the options below, you shall be deemed to have selected the first option (RAND terms):  <input type="checkbox"/> Member will grant licenses to the aforementioned Necessary Claims on reasonable and non-discriminatory (RAND) terms;  <input type="checkbox"/> Member reserves the right to withhold licenses to the aforementioned Necessary Claims

This submission has been made on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

[Name of Member]

\_\_\_\_\_

By [Signature of Representative]

Exhibit B

OPEN Alliance **Patent Disclosure and Licensing Statement (for use by third parties)**

Submitter:
Name of Person Completing This Form on Behalf of Submitter (Representative):
Mailing Address of Representative:
Email Address of Representative:
Specification to which this Disclosure Relates:
List the patent or application(s) believed to contain <u>Necessary Claims</u> :
Please select one of the options below reflecting the Submitter's licensing terms for the above-identified <u>Necessary Claims</u> . If you do not select one of the options below, the Submitter shall be deemed to have selected the first option:
<input type="checkbox"/> 1. Submitter will grant licenses to the aforementioned <u>Necessary Claims</u> to Members (for Members Only specifications), or to an unrestricted number of applicants on a worldwide, non-discriminatory, and zero royalty basis, and under other reasonable terms and conditions to make, use, and sell compliant implementations of the above-identified Specification:  ___ <i>Mark here if the Submitter's willingness to license is conditioned on <u>Reciprocity</u> and/or <u>Defensive Suspension</u> for the above Specification.</i>  ___ <i>Mark here if the Submitter reserves the right to license on reasonable terms and conditions (but not a zero royalty basis) to applicants who are only willing to license their Necessary Claims on reasonable terms and conditions (but not zero royalty).</i>
<input type="checkbox"/> 2. Submitter will grant licenses to the aforementioned <u>Necessary Claims</u> to Members (for Members Only specifications), or to an unrestricted number of applicants on a worldwide, non-discriminatory basis, and under other reasonable terms and conditions to make, use, and sell compliant implementations of the above-identified Specification:  ___ <i>Mark here if the Submitter's willingness to license is conditioned on <u>Reciprocity</u> and/or <u>Defensive Suspension</u> for the above Specification.</i>

3. Member reserves the right to withhold licenses to the aforementioned Necessary Claims.

If either option 2 or 3 is selected, please identify the specific part(s) of the Specification covered by the Submitter's Necessary Claims.

Necessary Claims: Claims of an issued patent or pending patent application, throughout the world that

- (i) are within the bounds of the Scope; and
- (ii) would be necessarily infringed by implementing the Compliant Portions of the OPEN Specification within Automotive Applications, wherein a patent claim is necessarily infringed when there is no technically feasible non-infringing alternative for implementing any portion of the OPEN Specification.

Scope:

Those protocols, electrical signaling characteristics, register models, communication and network interface protocols, hardware operating system interfaces, application program interfaces, service provider interfaces, physical dimensions and characteristics, and/or data structures solely to the extent disclosed with particularity in the OPEN Specification where the primary purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within the OPEN Specification.

Notwithstanding the foregoing, the Scope shall not include:

- (i) any enabling technology that may be necessary to develop, design, manufacture, sell or use any product or portion thereof that complies with the OPEN Specification but is not expressly set forth in the OPEN Specification (examples of such technologies include without limitation semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology); or
- (ii) the implementation or use of published specifications published elsewhere and/or not covered by this IPR policy, and referred to in the body of the OPEN Specification (such as IEEE 802.1 or 802.3 standards, or the BroadR Reach Specification); or
- (iii) any portion of any product or any combination of products (or portions of products) that is not required for compliance with the OPEN Specification.

Reciprocity: owner of Necessary Claims shall only be required to grant a license to a licensee if the licensee grants reciprocal licenses or non-asserts to the licensee's own Necessary Claims for the same Specification on terms no less favorable than the terms offered by the licensor.

Defensive Suspension: term providing that the license may be suspended with respect to the licensee, if the licensee sues the licensor or its downstream customers for infringement of any of the licensee’s Necessary Claims essential to the same OPEN Specification.

Additionally, it is the policy of OPEN Alliance that reasonable and non-discriminatory terms do not include any of the following:

- (ii) A requirement to grant by the licensee to the OPEN Alliance Member a License for claims that are not essential to the same OPEN Specification, e.g. by licensing or otherwise committing to not assert or bring suit to enforce such claims.
- (iii) A requirement that the licensee purchase a Licensor’s own implementation of an OPEN Alliance Specification.
- (iv) A restriction to the market in which the licensee uses, makes, has made, markets, imports, offers to sell, and sells, and to otherwise directly or indirectly distributes Compliant Portions, despite the fact that OPEN Specifications have been developed for Automotive Applications only and that they have not been developed or tested for non-Automotive Applications.
- (v) A restriction that prohibits the licensee from purchasing developments of third parties of Compliant Portions of the OPEN Specification to be integrated in their product.

This submission has been made on \_\_\_\_\_, 20\_\_.

Signature:

By signing below, the Submitter agrees not to sell or otherwise transfer any rights in patents containing the above-identified Necessary Claims that they hold, control, or have the ability to license, with the intent of circumventing or negating any of the representations and commitments made herein.

The Submitter agrees that any agreement to transfer a patent containing a Necessary Claim will provide that the obligations under this Patent Disclosure and Licensing Statement shall bind all successors-in-interest. A Submitter who transfers patents containing Necessary Claims shall include appropriate provisions in the relevant transfer documents to ensure that this Patent Disclosure and Licensing Statement is binding on the transferee and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest.

\_\_\_\_\_  
[Name of Submitter]

\_\_\_\_\_  
By [Signature of Representative]