

OPEN Alliance Intellectual Property Rights Policy

Version 5.0 (the amended and restated 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 - b) the submitting OPEN Alliance Member has not withdrawn its submission in writing as soon as practicable and in any event, no later than forty-five (45) days after receipt of such written minutes.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 Normative 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 owned or licensable by a Member or its Affiliates 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 Alternative (as defined below) and commercially reasonable non-infringing alternative for implementing the applicable Compliant Portion of the **OPEN Specification**. The term “Technically Feasible Alternative” means there is technically reasonable alternative way (which is also commercially reasonable) to implement the applicable Compliant Portion without resulting in an infringement of the applicable claim.

Notwithstanding the immediately preceding sentence, Essential Claims do not include any claims: (a) other than those claims set forth above even if contained in the same patent or patent application as the Essential Claims; (b) that read solely on any implementations or any or all portions of the Final Specification that are not within the bounds of the Scope; or (c) that would require consent from or a payment of royalties by the licensor to unaffiliated third parties.

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** that has satisfied all the necessary requirements to access and implement an OPEN Specification including the requirements set forth in this definition.

(a) The universe of **Interested Parties** for an OPEN Specification published as “Members Only” is limited to Members of OPEN Alliance.

(b) The universe of **Interested Parties** for OPEN Specifications published as Public Specifications includes: (i) Members of OPEN Alliance; and (ii) only those non-Member third party implementers who have first agreed to, and have remained in compliance with, the Public Specification EULA.

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 “**BroadR-Reach Ethernet Specification**”.

Normative Requirement

Portions of the Final Specification, including but not limited to text, design features, and tables, that are expressly identified as required for compliance with the Final Specification including portions of the Final Specification that are identified as required for compliance with an optional or alternative portion. For clarity, those portions of a Final Specification, including any portions of an optional or alternative portion thereof that are designated by the terms “must”, “shall”, “mandatory”, “normative” or “required” are expressly identified as being required for compliance under this Section.

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.

Participation Agreement

Either the OPEN Alliance Promoter Participation Agreement or OPEN Alliance Adopter Participation Agreement adopted by the Board of Directors.

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).

Public Specification, **Public Specification EULA**, and **Public** have the meanings set forth in Section 3.1 of this IPR Policy.

Recipient Organization

An appropriate standards body or consortium as determined by the Board of Directors to which Specifications or portions thereof may be contributed or provided under terms to be determined by the Board of Directors.

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

Board of Directors shall have the meaning as set forth in the OPEN Alliance Bylaws.

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 Board of Directors. 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 notify the Working Group of any patents of which they are actually and 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. The obligations pursuant to this Section 2.1 do not imply any obligation on a Member or its Affiliate to conduct patent searches.

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 such *Essential Claims* on at least RAND terms has been obtained from all Member. The Board of Directors may adopt additional policies related to *Essential Claims* held by non-Members including a policy to consider any *Essential Claims* of non-Members that have been presented to the Board of the Directors during the *Review Period*, and any associated licensing commitments of such non-Members, prior to ratifying an *Interim Specification*.

If *Essential Claims* are identified that are owned or licensable by a third party that is not a *Member* 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 Member 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 or if it is known at the time of release that an OPEN Specification contains Essential Claims of a third party non-Member that may require a license, 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 which the Board of Directors elects to publish as “Public” may be provided to any Non-Member third party wishing to implement the ***OPEN Specification***, subject, however, to each such third party first agreeing to, and remaining in compliance with, the Public Specification EULA approved by the Board of Directors (hereinafter, a **“Public Specification”**).

For purposes of this Policy, the term **“Public Specification EULA”** means any end user license agreement or any other agreement which the Board of Directors decides will govern the implementation and any other uses by non-Member third parties of any Public Specification which the Board of Directors has elected to make “PUBLIC” to non-Members. The Public Specification EULAs foster an open, transparent and non-discriminatory approach to licensing and publication of specifications to non-members.

Upon approval by the ***Board of Directors***, an ***OPEN Specification*** may be contributed to a Recipient Organization to be published by that Recipient Organization.

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 OPEN Alliance.

4. Effective Date

This IPR Policy shall become effective upon an affirmative 2/3 Quorum vote of the **Board of Directors** pursuant to the Bylaws. 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 may 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 or termination as a Member of OPEN Alliance 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 or termination from OPEN Alliance, withdrawal from its **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 any subsequent OPEN Specification contains the same text or substantially similar text from a prior OPEN Specification and implicates such Essential Claims in the prior OPEN Specification.

9. Other Terms

9.1. No other Rights

Excluding the copyright licenses to a Member's Contributions, 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 or trademark rights).

11.1. Copyright Licensing Terms

Subject to Section 11.2: Distribution of the OPEN Specification, each **Contributing Member** shall retain ownership of all worldwide copyrights in and to any **Contribution** it makes to the OPEN Alliance pursuant to this Section 11. Each **Contributing Member** hereby grants to each other **Contributing Member** and to the OPEN Alliance, a royalty-free, non-exclusive, worldwide, non-sublicensable, and non-assignable (except to a purchaser or transferee of substantially all of the latter **Contributing Member's** outstanding stock or assets), irrevocable license to, copy, and create derivative works of, but not to display, publish, or perform, the Contributing Member's **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 (A) including the **Contribution**, with or without other **Contributions** by the **Contributing Member** or by other **Contributing Members**, into one or more **Interim Specifications** or **Draft OPEN Specifications**, and **OPEN Specifications**, or **Other Work Product** as appropriate in the **Board of Directors'** or applicable Working Group's discretion; and/or (B) modifying or creating derivative works of the **Contribution** and then including the modified **Contribution** or derivative work into one or more **Interim Specifications** or **Draft OPEN Specifications**, and **OPEN Specifications**, or **Other Work Product** as appropriate in the **Board of Directors'** or applicable Working Group's discretion, and publishing and distributing such derivative works to (1) OPEN Alliance Members, (2) non-Members for any Public Specification that the Board of Directors has elected to make Public, and (3) Recipient Organizations; and;
- (iii) submitting a **Contribution**, solely as incorporated into an **OPEN Specification** that is approved pursuant to Section 2: 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, to an approved Recipient Organization under terms agreed to by the **Board of Directors**

Subject to the Member's copyright ownership in their Specification Contributions, the OPEN Alliance shall own all worldwide rights, titles, and interests in and to the compilation of

Specification Contributions forming the Draft OPEN, Interim, and OPEN Specifications, and Other Work Product.

Upon the Release of an OPEN Specification or Other Work Product, the OPEN Alliance hereby grants to each Member and its Affiliates a worldwide, non-exclusive, non-sublicensable (except to a Member's or its Affiliates' third party manufacturers, distributors, wholesalers, and retailers who are using the OPEN Specification or Other Work Product solely on such Member's or its Affiliates' behalf and solely for their benefit), non-transferable (except as set forth in the Bylaws), royalty-free copyright license to reproduce, distribute and display such OPEN Specifications and Other Work Product as reasonably necessary to implement such OPEN Specification and Other Work Product.

Nothing in this Section 11 shall require that OPEN Alliance or any of its Members use the Contributions of a Member.

Each provision and/or subsection of this Section 11 shall survive any termination of participation in the OPEN Alliance of any Member that grants any rights hereunder.

11.2. 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.

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:
Interim Specification to which this Disclosure Relates:
List the patent or application(s) believed to contain Essential 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): ___ Member will grant licenses to the aforementioned Essential Claims on reasonable and non-discriminatory (RAND) terms; ___ Member reserves the right to withhold licenses to the aforementioned Essential 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 of Patent Disclosure (“Submitter”):
Name of Person Completing This Form on Behalf of Submitter (Representative):
Mailing Address of Representative:
Email Address of Representative:
Specification to which this Patent Disclosure Relates:
List the patent or application(s) believed to contain <u>Essential Claims</u> :
Please select one of the options below reflecting the Submitter’s licensing terms for the above-identified <u>Essential Claims</u> . If you do not select one of the options below, the Submitter shall be deemed to have selected the first option:
<p>Y 1. Submitter will grant licenses to the aforementioned <u>Essential Claims</u> to OPEN Alliance Members for all OPEN Alliance Specifications whether published to Members or to the Public), 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:</p> <p><input type="checkbox"/> <i>Mark here if the Submitter’s willingness to license is conditioned on <u>Reciprocity and/or Defensive Suspension</u> for the above Specification.</i></p> <p><input type="checkbox"/> <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 Essential Claims on reasonable terms and conditions (but not zero royalty).</i></p>
<p>Y 2. Submitter will grant licenses to the aforementioned <u>Essential Claims</u> to Members (for all OPEN Alliance Specifications whether published to Members or to the Public), 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:</p> <p><input type="checkbox"/> <i>Mark here if the Submitter’s willingness to license is conditioned on <u>Reciprocity and/or Defensive Suspension</u> for the above Specification.</i></p>

Y 3. Member reserves the right to withhold licenses to the aforementioned Essential Claims.
If either option 2 or 3 is selected, please identify the specific part(s) of the Specification covered by the Submitter's <u>Essential Claims</u> .

Essential Claims:

Claims owned or licensable by a Member or its Affiliates 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 Alternative (as defined below) and commercially reasonable non-infringing alternative for implementing the applicable Compliant Portion of the *OPEN Specification*. The term "Technically Feasible Alternative" means there is no technically reasonable alternative way (which is also commercially reasonable) to implement the applicable Compliant Portion without resulting in an infringement of the applicable claim.

Notwithstanding the immediately preceding sentence, Essential Claims do not include any claims:

- (a) other than those claims set forth above even if contained in the same patent or patent application as the Essential Claims; (b) that read solely on any implementations or any or all portions of the Final Specification that are not within the bounds of the Scope; or (c) that are licensable by a Member or its Affiliate and would require consent from or a payment of royalties by the licensor to unaffiliated third parties.

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 Essential 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 Essential 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 Essential 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 Essential 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 an Essential 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 Essential 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]