

Open Applications Group, Inc Intellectual Property Rights (IPR) Agreement

This version of Open Applications Group, Inc (OAGi) Intellectual Property Rights agreement supersedes all prior versions of OAGi intellectual property policy/guidelines.

1.) IP Ownership

The Open Applications Group owns the copyright of any document written by OAGi. It is the goal of the OAGi to maintain the ability for OAGi members and non-members to use OAGi materials on a royalty free basis.

OAGi materials includes the OAGIS specification, the XML Schemas, OAMAS Downloads, presentations, white papers, or any other published document (“OAGi Materials”).

OAGi commits that, in the development of any standard or guideline, they will make every reasonable attempt to ensure that no patented, patentable, or copyrighted elements are included in OAGi materials. OAGi requires that Members, observers or any other interested parties exercise reasonable efforts in bringing to its attention any copyrights, patents or patent applications, or other proprietary rights which may cover technology that may be required to use or implement any proposed standard or guideline.

2.) Scope of Policy

This Policy applies to the intellectual property of a participant (including OAGi) in an OAGi Working Group which is necessary to preparing an OAGIS specification. Specification as used in the OAGi intellectual property policy refers to business methods, business processes and data format specifications and not product specifications.

For the purposes of this Policy, a participant in a particular specification development effort will be deemed to have contributed all intellectual property that it owns or controls which is necessary to implement the final, approved specification developed pursuant to such effort, subject to the following limitations and qualifications:

- A participant will have been deemed to “contribute” its intellectual property just by participating in the Working Group, if that intellectual property is necessary to implement the final, approved specification developed pursuant to such effort. No actual act of contribution is necessary; participation alone in the Working Group is sufficient enough to trigger these obligations.
- The participant must have formally joined the Working Group of a particular specification development effort according to the OAGi development process, and must have signed a copy of the current OAGi Membership Agreement and IPR Agreement. Only participants who formally

join a Working Group will be permitted to participate in Working Group meetings or other Working Group activities.

- Withdrawal from the Working Group by the participant will have no effect on the participant's obligations under this Policy; *except* that only material prepared by the Working Group prior to their withdrawal will be covered by this policy. If the final output of a Working Group's particular specification development effort differs substantially from the expected output that was documented at the time the Working Group commenced, then a participant that has withdrawn promptly from a Working Group prior to final approval of the applicable specification will have no obligations under this Policy in connection with such specification.
- In connection with patented or patent pending intellectual property, only business methods, business processes, data structures and data formats that enable such business processes or business methods will be deemed a contribution. That is, in no case will patented or patent pending intellectual property that addresses anything other than business methods, business processes, data structures or data formats that enable such business processes or business methods be deemed contributed, even if it otherwise appears to qualify as a contribution per this Policy.
- Only intellectual property under which the Working Group participant has a right to grant licenses without obligation of payment or other material consideration to an unrelated third party will be deemed covered by this policy. No participant will knowingly provide intellectual property that requires such third party consideration in order to avoid the licensing obligations in this Policy.
- No intellectual property owned or controlled by a participant will be deemed contributed except as described in this policy. Further, each participant in each Open Application Group Inc specification development effort will retain ownership of all intellectual property rights that the participant owned prior to participation and that may vest in the course of participation. Except as specifically set forth in this Policy, participants do not grant any licenses or otherwise limit their rights in or to their contributions or any other intellectual property.
- Individual participants will be deemed to be acting on behalf of the organizations they represent. For the purposes of this policy, "participant" or "contributor" means the legal entity on whose behalf individual participants act.

3) Use of Contributions.

In connection with each of the above defined contributions, the participant agrees as follows:

(a) Copyright. The participant grants Open Application Group Inc a non-exclusive, perpetual, irrevocable *royalty-free* license under the participant's copyright rights in the contribution to reproduce, distribute, perform, display and create derivative works of the contribution, solely for the purpose of creating,

implementing and promoting Open Application Group Inc.'s e-business process specifications. Open Application Group Inc may sublicense its rights as necessary to advance this purpose.

(b) Patents. If an above defined contribution is incorporated into a published final Open Application Group Inc specification, then the participant agrees that it will grant to any third party implementing such specification, on *royalty-free* and otherwise reasonable and non-discriminatory terms, a non-exclusive, non-transferable, world-wide license under any Necessary Claim that reads on such contribution to make, have made, import, sell and offer to sell those portions of specification-compliant products that implement the contribution. License terms may include but are not limited to:

(i) Conditioning the license on a grant of a reciprocal royalty free license to all Necessary Claims owned or controlled by the licensee;

(ii) Revocation of the license should a suit for patent infringement be brought by licensee against the licensor;

(iii) A requirement that an implementer manifests intent to accept the terms of the royalty-free license as offered by the licensor within a reasonable period of time.

“Necessary Claims” means claims of a patent or patent application that (a) are owned or controlled by the participant or its majority owned or controlled subsidiaries now or at any future time and (b) are necessarily infringed by implementing the contribution as disclosed with particularity in the specification because there is no non-infringing alternative for implementing the contribution and still complying with such specification.

Necessary Claims do not include any claims (i) that may be contained in the same patent as Necessary Claims but are not themselves Necessary Claims; (ii) that may read on any portions of any product and any combinations thereof that are not required for compliance with the specification; or (iii) that relate to any enabling technologies (e.g. computers, networks, connectivity protocols, application programs, integrated circuits or the like) even if expressly described in a specification.

(c) Trade secrets. Participants acknowledge that recipients of information disclosed in the context of a specification development effort will have no obligation to keep such information confidential.

(d) Trademarks. No trademark licenses are granted in connection with Open Application Group Inc participation or contribution.

(e) Warranties. Any and all contributions are furnished "AS IS" with respect to this policy. Contributors and participants do not make any warranties, express, implied or statutory, including without limitation any warranty of merchantability or fitness for a particular purpose with respect thereto.

4) Other IP Issues.

(a) Participant IP other than contributions.

If an individual participant in OAGi becomes aware that the member on whose behalf the individual participant is acting owns or controls intellectual property that would, in the opinion of the individual participant, necessarily be infringed in the course of implementing or using a OAGi published or draft specification (excluding intellectual property that has been contributed in accordance with this Policy) then the individual participant or the member must alert the OAGi CEO to this fact.

For the purposes of this Section, “awareness” means actual knowledge by an individual participant of the member who actively participates in representing the member’s interests at OAGi meetings of both (i) this disclosure obligation, and (ii) specific knowledge of the potential infringement of a particular published or draft specification. The OAGi CEO will notify the then-current OAGi board members of this claim. With respect to patents or patent applications, failure to comply with this disclosure obligation will result in an obligation by the member to grant licenses under Necessary Claims as defined in section 3(b) as if such infringing portions of the specification were “contributions” made by the member. However, such awareness by an individual of the member’s intellectual property does not impose any positive duty or obligation to search the member’s intellectual property portfolios for such intellectual property.

(b) Mechanism for accepting royalty-bearing IP in extraordinary circumstances.

If an OAGi member, which has not already formally joined a particular working group, believes that a potential contribution would significantly advance the efforts of that working group but is unwilling to contribute in accordance with this Policy, the member may invoke the following process.

The member can discuss a potential contribution with the working group without having the discussion be deemed a “contribution” for the purposes of this Policy, provided that the member clearly identifies the potential contribution as a “discussion document: not a contribution” in writing in advance of the discussion and has not yet become a documented participant in that working group.

If the working group decides that the potential contribution is so compelling as to warrant departure from the principle of royalty free contributions as set forth in this Policy, the working group can recommend this course of action to the applicable governing Board(s). Upon such recommendation, the applicable OAGi Board(s) will vote on the matter, and by majority vote can choose to accept the contribution if (i) the Board(s) believes that the offered contribution is unique, compelling and necessary, and (ii) the member offers the contribution to all OAGi users on reasonable and non-discriminatory (RAND) license terms. Any OAGi specification that includes such a royalty-bearing contribution will be clearly labeled accordingly, and a description of license terms will be included with the specification. However, such “potential contribution” identified as a “discussion document: not a contribution”, would not in any case, be deemed a royalty free contribution without the consent of the participant.

5) Copyright statements

The copyright statements on the documents published by the Open Applications Group, Inc are intended to protect the IP as discussed above.

Members and the general public can be licensed to use the OAGi Materials as long as they preserve the copyright statements and attribute the IP to the Open Applications Group as set forth in the licensing language set forth on the OAGi web site.

6) Patent Rights

Although the Open Applications Group, Inc has not yet filed any patents, they may do so in the future. At that time the organization will make a determination as to the intent of ownership.

This process is not defined at this time and would be determined at the appropriate point in time by the Open Applications Group Board of Directors, which is comprised of representatives from the member companies.

7) Non-Disclosure

The Open Applications Group, Inc as a normal course of business does not require execution of non-disclosure agreements and does not include confidential information from its member companies in published documents or in meetings sponsored by the Group.

This being said, it is the right and responsibility of every member of the Open Applications Group to be prudent when discussing products, services, or technology that may be confidential to their organization or to another organization.

If the conversation or topic begins to be in an area where the representative of their organization believes that any further conversation or disclosure may breach any level of confidentiality or trade secrets, then it is the option and the right of the member to simply defer or to not engage in that specific conversation.

Draft Specifications are not normally published for public access until the draft specification has been approved by the OAGi Board of Directors.

SIGNATURES

(Signed copy must be provided by each Party)

The signature below by a duly authorized representative of the Party signifies acceptance of and agree to the terms of this IPR Agreement for the Open Applications Group, Inc.

Signature: _____

Name of Party: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

Date: _____