

Enterprise Grid Alliance, Inc.

Intellectual Property Rights Policy

BACKGROUND

The Enterprise Grid Alliance (“EGA”) has been formed as a non-profit mutual benefit corporation to sponsor the development of open specifications for grid computing in the enterprise

This Intellectual Property Rights (IPR) Policy is intended to maximize the likelihood of widespread adoption of EGA Deliverables, by the industry in general, including businesses and national and international standards-setting organizations. The IPR Policy is designed to comply with applicable law, including all federal and state antitrust laws.

DEFINITIONS

“Affiliate” means any entity that has executed a copy of the EGA Contributor Agreement or EGA Associate Agreement or other similar agreement between EGA and the entity.

“Board of Directors (Board)” means the Board of Directors of the EGA Alliance as described in Section 5 of the Corporate Bylaws of the Alliance.

“Compliance Test(s)” means one or more programs and related documentation used to determine whether an implementation is Fully Compliant.

“Contribution” means any proposal submitted in writing by one or more Member pursuant to the procedure approved by the Board and in effect from time to time hereunder.

“Deliverable” means one or more Draft Deliverable(s) which the Board has approved. A Deliverable may incorporate EGA Intellectual Property and/or Single Member Intellectual Property and/or Multiple Member Intellectual Property.

“Draft Deliverable” means a draft Technical Specification, Reference Implementation, Compliance Test or other similar work product prepared by a Working Group. A Draft Deliverable may incorporate EGA Intellectual Property and/or Single Member Intellectual Property and/or Multiple Member Intellectual Property.

“EGA Intellectual Property” means Intellectual Property developed or created by any of EGA’s employees alone or by a contractor to EGA on a "works for hire" basis or otherwise assigned to or procured by EGA for or in the course of contributing to any Draft Deliverable.

“Essential Claims” means all patent claim(s), but only such claim(s), of all patents (other than Design Patents and Design Registrations) and pending applications, throughout the world which claims a Member or its Subsidiaries own or have the right to grant (without obligation of payment or other consideration to an unrelated third party) royalty-free licenses to and which claims are necessarily infringed by implementation or use of a Deliverable. Essential Claims shall not include any enabling technologies that may be necessary to implement or use a Deliverable (for example, underlying hardware or software technology

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including database technology, basic operating system technology, semiconductor manufacturing technology, compiler technology or object oriented technology). Essential Claims exclude claims that are infringed by implementation of technology developed elsewhere and merely referred to in a Deliverable.

“Essential Contributor Claims” means all patent claim(s), but only such claim(s), of all patents (other than Design Patents and Design Registrations) and pending applications, throughout the world which claims a Member or its Subsidiaries own or have the right to grant (without obligation of payment or other consideration to an unrelated third party) royalty-free licenses to and which claims are necessarily infringed by implementation or use of a Contribution made by the Member. Essential Contributor Claims shall not include any enabling technologies that may be necessary to implement or use a Contribution (for example, underlying hardware or software technology including database technology, basic operating system technology, semiconductor manufacturing technology, compiler technology or object oriented technology). Essential Contributor Claims exclude claims that are infringed by implementation of technology developed elsewhere and merely referred to in a Contribution.

“Fully Compliant” means: (a) an implementation of a Technical Specification which supports or implements all of the portions of that Technical Specification defined by that Technical Specification as being "Required", or (b) an implementation of all portions of a Technical Specification required for a specific type of product or component thereof.

“Intellectual Property” means all rights in trademarks, patents, patent applications, works of authorship, copyrights, trade secrets, protectable designs, mask works, and other similar rights in any country.

“Member” means a Sponsor Member or Affiliate of EGA as defined herein and/or by the EGA Alliance Bylaws, Sponsor Member Agreement, EGA Contributor Agreement, EGA Associate Agreement or other similar agreement between EGA and the Affiliate, as applicable.

“Multiple Member Intellectual Property” means Intellectual Property developed by employees or Subcontractors of two or more Member companies working jointly for or in the course of contributing to a Draft Deliverable.

“Parties” means the undersigned company and the existing Members collectively.

“Reference Implementation” shall mean a prototype implementation, created using a Technical Specification and meant to be used as a guide for developers when creating their own implementations based on a Technical Specification, and which is Fully Compliant.

“Residuals” means any information retained in the unaided memories of the receiving party’s employees or subcontractors who have had access to the disclosing party’s Confidential Information pursuant to the terms of this Policy. An employee or subcontractor’s memory is unaided if the employee or subcontractor has not intentionally memorized the Confidential Information, as defined in section 4, for the purpose of retaining and subsequently using or disclosing it.

“Single Member Intellectual Property” means Intellectual Property developed solely by one or more employees or Subcontractors of a single Member company for or in the

course of contributing to any Draft Deliverable “**Subcontractor**” means any third party performing Deliverable related work for a Member but not formally employed by that member.

“**Sponsor Member**” means any entity that has executed an EGA Sponsor Member Agreement that is substantially identical to the Sponsor Member Agreement that incorporates this Policy.

“**Subsidiary**” means a corporation, company or other entity (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a party hereto, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists; or (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a party hereto, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

“**Technical Specification**” means a document containing a set of technical criteria which describe certain interfaces and/or attributes pertaining to interoperability in an enterprise grid.

“**Working Group**” means a group comprised of Members and/or Affiliates operating in accordance with a charter defined for the purpose of developing one or more Draft Deliverables.

1. INTELLECTUAL PROPERTY OWNERSHIP

1.1 **Copyright Ownership of Deliverables**. EGA shall own the copyright in all Deliverables and Draft Deliverables, subject to the Members’ copyright interests in their respective Contributions.

1.2 **EGA Intellectual Property**. The Intellectual Property rights to EGA Intellectual Property shall be owned exclusively by EGA. EGA shall have the right to obtain in its own name patents, copyrights, registrations, and similar other protections.

- 1.3 **Single Member Intellectual Property**. The Intellectual Property rights to Single Member Intellectual Property shall be owned exclusively by the Member who developed the Intellectual Property. Such Member shall have the right to obtain in its own name patents, copyrights, registrations, and similar other protections.
- 1.4 **Multiple Member Intellectual Property**. The Intellectual Property rights to Multiple Member Intellectual Property shall be owned by the Members who developed the Intellectual Property in accordance with the relevant statutory or other legal provisions governing such ownership or any applicable agreements between such Members. Such Members shall have the right to obtain in their own names patents, copyrights, registrations, and similar other protection.
- 1.5 **Intellectual Property Rights of Third Parties**. No licenses to third party Intellectual Property rights in the Deliverables are granted herein and neither EGA nor any Member is responsible for obtaining such rights for or on behalf of EGA or any other Member.

2. INTELLECTUAL PROPERTY LICENSING

- 2.1 **Working Group Members' Patent Licensing Obligations**. No later than thirty (30) calendar days after a Draft Deliverable is submitted for approval as a Deliverable, each Member participating in the Working Group that submits the Draft Deliverable for approval shall disclose in writing to the chair of such Working Group any Essential Claims that the Member is not willing to license according to the EGA Royalty-Free Licensing Requirements of section 2.2. Such disclosure shall identify the relevant patent or publication number and the one or more claims regarded to be Essential Claims. For Essential Claims in unpublished applications, the disclosure must provide either 1) the text of the unpublished application or 2) identification of the specific part(s) of the Draft Deliverable whose implementation makes the unpublished claim essential, in which latter case the obligation-avoiding effect of the disclosure will be limited to the identified part(s) of the Draft Deliverable. If the Draft Deliverable is approved as a Deliverable, the Working Group Member agrees to license, according to the requirements of section 2.2, any Essential Claims that have not been disclosed by the above deadline.

2.2 **EGA Royalty-Free Licensing Requirements for Working Group Members**

2.2.1 Compliance Tests and Reference Implementations: With respect to a Deliverable that is either a Compliance Test or a Reference Implementation, an EGA Royalty-Free (RF) license shall mean a non-assignable, non-sublicensable, and perpetual patent license to use the Deliverable that:

- (a) shall be available to all parties, worldwide, whether or not they are Members;
- (b) shall extend to all Essential Claims with respect to the Compliance Test or Reference Implementation that are owned or controlled by the licensor;
- (c) may be conditioned on a grant of a reciprocal RF license to all Essential Claims with respect to the Deliverable that are owned or controlled by the licensee. A reciprocal license may be required to be available to all parties,

and a reciprocal license may itself be conditioned on a further reciprocal license from all parties.

- (d) may not be conditioned on payment of royalties, fees or other consideration;
- (e) may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement or use any Deliverable;
- (f) may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution provisions.

2.2.2 Technical Specifications: With respect to a Deliverable that is a Technical Specification, an EGA Royalty-Free license shall mean a non-assignable, non-sublicensable, and perpetual patent license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of implementations of the Technical Specification that:

- (a) shall be available to all parties, worldwide, whether or not they are Members;
- (b) shall extend to all Essential Claims with respect to the Technical Specification that are owned or controlled by the licensor;
- (c) may be limited to implementations of the Technical Specification and to what is required by the Technical Specification;
- (d) may be conditioned on a grant of a reciprocal RF license to all Essential Claims with respect to the Technical Specification that are owned or controlled by the licensee. A reciprocal license may be required to be available to all parties, and a reciprocal license may itself be conditioned on a further reciprocal license from all parties.
- (e) may not be conditioned on payment of royalties, fees or other consideration;
- (f) may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement or use any Deliverable;
- (g) may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution provisions.

2.3 **Copyright Licensing Obligations.** Each Member hereby grants to each other Member and Affiliate an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive, nonsublicensable license under its copyrights in its Contributions to

reproduce, modify, implement, and distribute (in any and all print, electronic or other means of reproduction, storage or transmission) its Contributions and derivative works thereof for the purpose of developing Deliverables. Each Member further hereby grants EGA an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive license under the Member's copyrights in its Contributions to reproduce, publish, distribute (in any and all print, electronic or other means of reproduction, storage or transmission), implement, use, and distribute implementations of, any Deliverable and to sublicense any party (including non-Members) to do any of the above. EGA hereby grants, under its licensable copyright interests, to each Member and Affiliate an irrevocable, worldwide, perpetual, royalty-free, nontransferable, non-exclusive, nonsublicenseable license to implement, use, and distribute implementations of, any Deliverable.

2.4 Contributors' Patent Licensing Obligations. Each Member that offers a Contribution for inclusion into a Draft Deliverable shall disclose in writing to the chair of the relevant Working Group at the time the Contribution is first introduced to the Working Group any Essential Contributor Claims that the Member is not willing to license according to the EGA Royalty-Free Licensing Requirements of section 2.5. Such disclosure shall identify the relevant patent or publication number and the one or more claims regarded to be Essential Contributor Claims. For Essential Contributor Claims in unpublished applications, the disclosure must provide either 1) the text of the unpublished application or 2) identification of the specific part(s) of the Contribution whose implementation makes the unpublished claim essential, in which latter case the obligation-avoiding effect of the disclosure will be limited to the identified part(s) of the Contribution. The contributing Member agrees to license, upon inclusion of the Contribution into a Deliverable and according to the requirements of section 2.5, any Essential Contributor Claims that have not been disclosed at the time of contribution.

2.5 EGA Royalty-Free Licensing Requirements for Contributors

2.5.1 Compliance Tests and Reference Implementations: With respect to a Contribution to either a Compliance Test or a Reference Implementation, an EGA Royalty-Free Contribution license shall mean a non-assignable, non-sublicensable, and perpetual patent license to use the Contribution that:

- (a) shall be available to all parties, worldwide, whether or not they are Members;
- (b) shall extend to all Essential Contributor Claims that are owned or controlled by the licensor;
- (c) may be conditioned on a grant of a reciprocal RF license to all Essential Contributor Claims with respect to the licensor's Contribution that are owned or controlled by the licensee. A reciprocal license may be required to be available to all parties, and a reciprocal license may itself be conditioned on a further reciprocal license from all parties;
- (d) may not be conditioned on payment of royalties, fees or other consideration;

- (e) may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement or use any Deliverable;
- (f) may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution provisions;

2.5.2 Technical Specifications: With respect to a Contribution to a Technical Specification, an EGA Royalty-Free Contribution license shall mean a non-assignable, non-sublicensable, and perpetual patent license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of implementations of the Contribution that:

- (a) shall be available to all parties, worldwide, whether or not they are Members;
- (b) shall extend to all Essential Contributor Claims that are owned or controlled by the licensor;
- (c) may be limited to implementations of the Contribution and to what is required by the Contribution;
- (d) may be conditioned on a grant of a reciprocal RF license to all Essential Contributor Claims with respect to the licensor's Contribution that are owned or controlled by the licensee. A reciprocal license may be required to be available to all parties, and a reciprocal license may itself be conditioned on a further reciprocal license from all parties;
- (e) may not be conditioned on payment of royalties, fees or other consideration;
- (f) may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement or use any Deliverable;
- (g) may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as choice of law and dispute resolution provisions.

2.6 **Interim grant to Working Group Participants**: Each Member that makes a Contribution to a Technical Specification being developed by a Working Group hereby grants to each Member that participates in the Working Group under the contributing Member's applicable Intellectual Property Rights which it currently has or acquires in the future a royalty-free, non-exclusive, non-transferable, non-sublicensable, worldwide, perpetual license to use the Contribution to further the objectives of EGA and for research and development purposes related to the activities of the Working Group (such purposes including development of early access implementations of a Technical Specification

being developed by the Working Group, but not their distribution to third parties prior to publication of the Technical Specification). EGA hereby grants to each Member that participates in a Working Group under EGA's applicable Intellectual Property Rights which it currently has or acquires in the future a royalty-free, non-exclusive, non-transferable, non-sublicensable, worldwide, perpetual license to further the objectives of EGA and for research and development purposes related to the activities of the Working Group (such purposes including development of early access implementations of a Technical Specification being developed by the Working Group, but not their distribution to third parties prior to publication of the Technical Specification).

- 2.7 **Members' Duty to Disclose.** Each Member and Affiliate shall promptly disclose to the Board any Essential Patent Claims in a Draft Deliverable, and/or Deliverable that are personally known to the individuals directly participating in EGA on behalf of the Member or Affiliate who have received a disclosure request for the Draft Deliverable or Deliverable. The above obligation does not include a duty for such individual(s) or the Member to search and/or analyze Member's patent portfolio for Essential Patent Claims. Member agrees that EGA may consider, as a factor in deciding whether or not to approve, rescind, or amend a Deliverable or Draft Deliverable, the license terms (if any) on which disclosed Essential Claims are offered.

3. CONFIDENTIALITY

- 3.1 **Disclosure.** All information disclosed by a Member under this Policy relating to EGA business and/or Draft Deliverable(s) or Deliverable(s) and appropriately identified as set forth below shall be considered confidential ("Confidential Information"). Information shall be considered Confidential Information of the disclosing party if, and only if, the information is specifically designated as Confidential Information by the disclosing party by: (1) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (2) by orally indicating, prior to disclosure, that any information disclosed orally is the Confidential Information of the disclosing party and, then within thirty (30) business days providing the recipient Members with a written summary of the orally disclosed Confidential Information so that such Confidential Information is more easily identified. Notwithstanding the foregoing, Member hereby consents to the disclosure and/or publication, the scope and nature of which shall be determined by the Board, of any Member Confidential Information which is incorporated in a Deliverable.
- 3.2 **Protection.** For the earlier of either two (2) years after the disclosure, or until a Deliverable that contains said Confidential Information is made publicly available, the recipient Member will use the same care (and at least a reasonable standard of care) and discretion to avoid disclosure of the disclosing Member's Confidential Information as the recipient Member uses with its own confidential or proprietary information. Notwithstanding the foregoing, the recipient Member may disclose to other Members the disclosing Member's Confidential Information but only to further the purposes of EGA. In addition, during the above-specified period of protection, the recipient Member will use the disclosing Member's Confidential Information only to further the objectives of the EGA, and for purposes related to the activities of the

Working Group in which the Confidential Information is disclosed as specified in section 3.1.

3.3 **Residuals.** Notwithstanding anything herein to the contrary, any party may use Residuals for any purpose, including without limitation use in development, manufacture, promotion, sale and maintenance of its products and services; provided that this right to Residuals does not represent a license under any patents, copyrights or other registerable intellectual property rights of the disclosing party.

3.4 **Exceptions.**

3.4.1 The recipient Member may disclose the Confidential Information to i) its employees and Subcontractors and employees and Subcontractors of its Subsidiaries who have a need to know; and ii) any other party with the disclosing Member's prior written consent.

3.4.2 Before disclosure to any of the parties set forth in Section 3.4.1, the recipient Member must have an appropriate written agreement with such party sufficient to require that party to treat the Confidential Information in accordance with this Policy.

3.4.3 The recipient Member may disclose Confidential Information to the extent required by law, but the recipient Member must give the disclosing Member advance notice to allow the disclosing Member a reasonable opportunity to obtain a protective order.

3.4.4 No obligation under this Policy shall apply to Confidential Information that is: i) already rightfully in the recipient Member's possession or rightfully received by recipient Member without a non-disclosure obligation; ii) developed independently by recipient Member; iii) publicly available when received, or thereafter becomes publicly available through no fault of the recipient Member; or iv) disclosed by the disclosing Member without a non-disclosure obligation.

4. **FREEDOM OF ACTION**

Nothing contained in this Policy shall be construed as restricting the right of any member to design, develop acquire, manufacture, market or service or otherwise deal in, directly or indirectly, competitive products or services independent of the Deliverable.

5. **WITHDRAWAL**

5.1 **Conditions for Withdrawal.** Any Member may withdraw at any time by written notice to the EGA Alliance as further defined in the EGA Sponsor Agreement, EGA Contributor Agreement, EGA Associate Agreement or other similar agreement between EGA and Member, as applicable.

5.2 **Effect of Withdrawal.** If a Member withdraws under this Section 5:

5.2.1 This Policy shall continue in full force and effect for all remaining Members; and,

5.2.2 With respect to such withdrawing Member, the provisions of sections 3, 4, 6 and 7 survive, as do all patent and copyright licensing obligations of section 2 with respect to Deliverables existing at the time of the Member's withdrawal; and

All other rights, licenses, obligations, terms and conditions of this Policy shall terminate with respect to such withdrawing Member, including the licensing obligations with respect to a Contribution of the withdrawing Member that has not been incorporated into a Deliverable by the date of withdrawal.

6. WARRANTIES AND LIABILITIES

6.1 **No Indemnification.** It is agreed that the Parties will not provide and do not owe any duty to provide indemnification or defense with respect to a Member's use of Single Member Intellectual Property or Multiple Member Intellectual Property or EGA Intellectual Property.

Except for any violations or breaches of confidentiality under section 3, no Member nor its Subsidiaries shall be liable to another Member, its Subsidiaries, or EGA for incidental, consequential, special or punitive damages arising out of or related to this Policy, including lost profits or savings, even if advised in advance of the possibility of such damages. No Member or its Subsidiaries shall be liable for any third party claims against another Member, its Subsidiaries, or EGA for any losses or damages arising out of or related to this Policy, including without limitation loss or damages to records or data.

6.2 **No Warranty.** ALL SINGLE MEMBER INTELLECTUAL PROPERTY OR MULTIPLE MEMBER INTELLECTUAL PROPERTY OR EGA INTELLECTUAL PROPERTY PROVIDED TO A MEMBER OR PROVIDED BY A MEMBER TO EGA IS PROVIDED "AS IS", AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

7. GENERAL

7.1 **No Other Licenses.** Other than as expressly provided in this IPR Policy, no license or immunity under any patents, copyrights, trademarks, or other registerable intellectual property rights including third party rights are granted under this Policy by any Member, either directly or by implication, estoppel, or otherwise.

7.2 **Supervening Illegality.** If any provision or term of this Policy is held to be invalid or illegal under any applicable statement or rule of law, such provision shall be deemed omitted from this Policy to the extent of such invalidity or illegality but the remainder of this Policy shall continue in full force and effect and the Members shall negotiate in good faith to replace the invalid or illegal provision or term with a valid and legal provision or term having effect as closely as possible to the provision or term being replaced.

7.3 **Survival.** The definitions and rights and obligations of Sections 2 (except licensing obligations with respect to Deliverables not yet existing at the time of termination or expiration), 3, 6 and 7 of this Policy, and any other provision that by their nature survive termination or expiration of this Policy shall survive and continue after expiration of -Membership and shall bind the Members and their successors.

- 7.4 **Amendments and Modifications.** This IP Policy may only be amended as described in the Sponsor Member Agreement, EGA Contributor Agreement, EGA Associate Agreement or other similar agreement between EGA and Member, as applicable. Any such amendment shall be executed in writing by each affected party.
- 7.5 **Governing Law Venue.** This Policy shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the substantive laws of the State of California, United States of America, without regard to the conflict of laws principles thereof. Any proceedings to resolve disputes relating to this Policy shall be commenced in federal and/or state courts located in San Francisco, California.