

Open Compute Project Foundation Intellectual Property Rights Management Policy

The Open Compute Project Foundation (“Corporation”) has adopted the following Intellectual Property Rights Management Policy (“IPR Policy”). All Corporation Members agree to abide by the IPR Policy. Any capitalized terms not defined herein are defined in the Corporation Bylaws.

1. Definitions

- 1.1** “**Affiliate**” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject entity. For purposes of this definition control means, direct or indirect ownership of or the right to exercise (a) more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) more than fifty percent (50%) of the controlling interest representing the right to make the decisions for the subject entity.
- 1.2** “**Apache License 2.0**” means the Apache Software Foundation open source software license accessed at <http://www.apache.org/licenses/LICENSE-2.0>.
- 1.3** “**Bylaws**” means the Bylaws of Corporation.
- 1.4** “**Contribution**” means a submission to a Draft Specification or a Final Specification which may include, but is not limited to, suggestions, comments, recommendations, feedback, or edits by a Member or its Affiliate proposing an addition to or modification of a Specification, or portion thereof, whether of a technical, marketing, or business nature that is either (i) submitted in writing or other graphic form including in electronic medium, and includes the License Notice, (ii) stated orally and then summarized by the submitting Member or its Affiliate in a written summary of the oral statement that includes the License Notice or (iii) submitted electronically via the Corporation’s Github revision control system or similar revision control system used by the Corporation. The written summary of the oral statement will control in the event there is a conflict between the oral statement and the written summary.
- 1.5** “**Corporation**” means the Open Compute Project Foundation.
- 1.6** “**Draft Specifications**” means technical interface or design specifications that are under development, revision, or consideration by the Corporation, provided that the specification must promote the Corporation’s Purpose as defined in the Bylaws.
- 1.7** “**Draft Informational Document**” means any materials, in any form, including but not limited to marketing, educational, and training materials, market requirements documents, informative guidelines, white papers, and Corporation policies and procedures that are under development, revision, or consideration by the Corporation, provided that each of the above must promote the Corporation’s Purpose as defined in the Bylaws.
- 1.8** “**Specification**” means any Draft Specifications or Final Specifications.

- 1.9** “**Final Specification**” means a Draft Specification consistent with the Purpose of the Corporation that has been approved in final form by the Board of Directors in accordance with the Bylaws and designated by the Board of Directors as a Final Specification.
- 1.10** “**Final Informational Document**” means a Draft Informational Document consistent with the Purpose of the Corporation that has been approved in final form by the Board of Directors in accordance with the Bylaws and designated by the Board of Directors as a Final Informational Document. Draft Informational Documents include all materials developed by the Corporation, its Committees and subgroups thereof or developed on behalf of the Corporation, its Committees and subgroups thereof that are not Draft Specifications.
- 1.11** “**Informational Document**” means any Draft Information Document or Final Informational Document.
- 1.12** “**License Notice**” means the following statement: “Contribution to the Open Compute Project [name of Draft Specification] under the OWF CLA”, “Contribution to the Open Compute Project [name of Final Specification] under the OWF Agreement”, or, “Contribution to the Open Compute Project under the Open Compute CLA”, as applicable.
- 1.13** “**Open Compute CLA**” means a contributor license agreement substantially in the form of the Apache Foundation CLA at <http://www.apache.org/licenses/icla.txt> (for individuals) and <http://www.apache.org/licenses/cla-corporate.txt> (for corporations) to be published by the Corporation.
- 1.14** “**OWF Agreement**” means the Open Web Foundation Final Specification Agreement (OWFa 1.0) (Patents and Copyright) accessed at <http://www.openwebfoundation.org/legal/the-owf-1-0-agreements/owfa-1-0>.
- 1.15** “**OWF CLA**” means the OWF Contributor License Agreement (CLA 1.0) (Patents and Copyright) accessed at <http://www.openwebfoundation.org/legal/the-owf-1-0-agreements/owf-contributor-license-agreement-1-0---copyright-and-patent>.
- 1.16** “**Scope**” means the portions of a Final Specification that are disclosed with specificity and are within the scope of the Technical Project defined by each project plan as approved by the Board of Directors where the purposes of such disclosure are to (a) enable implementation of the Final Specification in processes, services and products as set forth in the Purpose of the Corporation and (b) identify subject matter that is expressly outside the Scope of a project plan (for example, listing specific technologies or products that are outside the Scope of a project plan).

2. Licenses

- 2.1 Licensing of Contributions.** The Corporation shall not accept contributions to a Specification except on the terms of the OWF CLA, OWF Agreement or Open Compute

CLA, as applicable. All Contributions made under the Open Compute CLA shall be licensed by the Corporation under the Apache 2.0 License.

2.2 Clarifications. A Member may elect to provide clarifying information distinguishing the technologies that are licensed by such Member from technologies merely referenced in the Specifications, such clarification to be in a form reasonably determined by the Directors. The Corporation shall reproduce such clarifying information in the Specifications.

2.3 Licensing of Informational Materials. The Board shall adopt a licensing agreement and management policy for informational materials consistent with the Purpose and the licensing terms applicable to Contributions.

3. Trademarks, Certification Marks and Logos.

3.1 Adoption of Marks. In the event that the Corporation proposes to adopt any name, logo, trademark, certification mark or trade name (collectively, “Marks”), except for the initial Corporation name and trademark based on such name, for use with any of the Specification of Informational Documents, or with products, processes or services that implement and conform to the requirements of the Final Specifications, the Corporation will provide Notice to the Members at least forty five (45) days in advance in writing of the proposal and pursuant to Section 5. The Corporation will take such steps as the Board of Directors deems necessary and proper to protect its rights under such Marks adopted for use by the Corporation. In furtherance thereof, the Board of Directors will establish and disseminate reasonable conditions and procedures for the licensing and use of such Marks, demonstrably free of any unfair discrimination among the Members.

3.2 Challenges to Proposals for New Marks. Each Member agrees that unless it provides written Notice to the Board of Directors of that Member’s challenge to the proposed Mark prior to its adoption by the Board of Directors, then the Member and its Affiliates will not bring a claim against the Corporation or any Member or their Affiliates for their use of such Marks.

3.3 Member’s Adoption and Use. Each Member and its Affiliates agree not to use or adopt any mark for any product, service, or published material that is likely to cause confusion as determined under applicable U.S. trademark laws with any of the Marks adopted by the Corporation, unless agreed to in advance by the Board of Directors.

3.4 Obligations Upon Joining. If a Mark, including the initial Corporate name and any trademark based on such name, has been adopted prior to the Member’s Effective Date, the Member and its Affiliates are bound by this Section 3 and has no opportunity to challenge such previously adopted Marks.

3.5 Initial Corporate Name. In the event that the Corporation proposes to adopt an initial Corporation name or trademark based on such name for use with any of the Deliverables, the Corporation will provide Notice to the Members at least fifteen (15) days in advance in writing of the proposal. Each Member agrees that unless it provides written Notice to the Board of Directors of that Member’s challenge to the proposed

initial Corporation name or trademark based on the such name prior to its adoption by the Board of Directors, then the Member and its Affiliates will not bring a claim against the Corporation or any Member or their Affiliates for their use of such initial Corporation name or trademark based upon such name.

3.6 The Corporation will include the following notice on all Final Specifications:

License

As of [insert date], the following persons or entities have made this Specification available under the Open Web Foundation Agreement Version 1.0, which is available at [URI for 1.0 Agreement.]

[List of persons or entities]

You can review the signed copies of the Open Web Foundation Agreement Version 1.0 for this Specification at [Insert Group Agreement Store URI], which may also include additional parties to those listed above.

Your use of this Specification may be subject to other third party rights. THIS SPECIFICATION IS PROVIDED "AS IS." The contributors expressly disclaim any warranties (express, implied, or otherwise), including implied warranties of merchantability, non-infringement, fitness for a particular purpose, or title, related to the Specification. The entire risk as to implementing or otherwise using the Specification is assumed by the Specification implementer and user. IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS SPECIFICATION OR ITS GOVERNING AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

CONTRIBUTORS AND LICENSORS OF THIS DOCUMENT MAY HAVE MENTIONED CERTAIN TECHNOLOGIES THAT ARE MERELY REFERENCED WITHIN THIS DOCUMENT AND NOT LICENSED UNDER THE OWF CLA OR OWFa. THE FOLLOWING IS A LIST OF MERELY REFERENCED TECHNOLOGY: [list of merely referenced technologies]. IMPLEMENTATION OF THESE TECHNOLOGIES MAY BE SUBJECT TO THEIR OWN LEGAL TERMS.

Member and its Affiliates agree to include the above notice on all Deliverables and further agree to retain such notice in any Deliverable that the Member reproduces

3.7 Affiliates. For the purposes of this Section 3, an Affiliate of a Member that ceases to be an Affiliate of such Member will be considered a withdrawn Member under this Section 3 at the time such Affiliate ceases to be an Affiliate of such Member.

4. No Other Licenses.

The Members agree that no other license, immunity or other right is granted by the Corporation, any Member or its Affiliates to any other Member or its Affiliates, either directly or by implication, estoppel, or otherwise, other than as expressly set forth in this IPR Policy.

5. Notices.

Any Notices given under this IPR Policy will be delivered in accordance with the Bylaws.

6. Amendments.

Any amendment to this IPR Policy will be governed by Article XV of the Bylaws. Any such amendments will only be applied prospectively and become effective thirty (30) days following notification of the vote approving such proposed amendments.

7. Limitation on the Scope of Disclosed Information.

Member and its Affiliates acknowledge that they will endeavor not to disclose or exchange information as part of the Corporation's activities among or with other Members or their respective Affiliates unless such disclosure is necessary in order to achieve the lawful Purposes of the Corporation as set forth in the Bylaws.

8. Document Precedence.

To the extent that there are any inconsistencies between the terms of the OWF CLA or OWF Agreement and this IPR Policy, the terms of this IPR Policy will be controlling in all situations.