

OPC FOUNDATION

INTELLECTUAL PROPERTY POLICY

Adopted: December 18, 2006

Since its inception, the OPC Foundation (“the Foundation”) has sought to establish its specifications as an open and interoperable standard for worldwide use by all automation suppliers and end-users. To that end, the Foundation has adopted the following policy for the potential interaction between the intellectual property rights of its own members or of third parties and the Foundation's draft or final specifications. For purposes of this Policy, “member” means any member of the OPC Foundation, regardless of category of membership under the Foundation’s bylaws.

1. **Intellectual Property Arising from Foundation Activities**

At the time a party applies for membership in the Foundation, such individual, company or institution must sign an application form that contains substantially the following language:

Each member of the OPC Foundation who has representation on or is a member of any Foundation committee, working group, task force or other body of the Foundation appointed by the President or the Board of Directors agrees and acknowledges that (i) the Foundation shall own all right, title and interest in all works, information, ideas, publications, reports, trade secrets, copyrights, or other rights of property, either personal or intellectual, arising from the work and/or proceedings of such body; (ii) no proprietary information shall be disclosed to the Foundation or such body without the appropriate consent of its owner; and (iii) no work or proceedings of any such body shall be disclosed to any outside third party or any other member prior to the Foundation’s authorized publication or release of such work or proceedings.

Thus, as a fundamental policy and based on the above commitment, each individual member of the Foundation or each officer, director, employee, consultant, independent contractor or other agent of a corporate or institutional member who participates on any committee, working group, task force or other body of the Foundation appointed by the President or the Board of Directors shall be deemed to have assigned to the Foundation, irrevocably and without compensation, all right, title and interest in and to that individual's contribution if and only if it is a material part of the final collective output of that collaborative effort.

To encourage free and open discussions among such individuals, the foregoing policy is not intended to cause an owner of proprietary rights to lose or alter any rights merely because an idea or suggestion is raised and discussed, for example, during a committee meeting. Instead, the foregoing policy is meant to ensure that, throughout the Foundation's formal technology development process¹, the individual contributions of the various volunteers who produced any of that output will become merged into a single intellectual property unit that can and will be effectively owned, managed and disseminated by the Foundation to industry and the public.²

The Foundation's focus in the above policy is thus not on ownership or control of the many discrete suggestions or ideas that may inevitably come forth in such collaborative efforts – some to be included, some to be modified, some to be discarded – but, rather, only on the full ownership and control of the Foundation's work product throughout the various stages in its standards development process.

¹ Within the Foundation, the specification or standards development process usually involves a progression of documents, including one or more of the following: statement of functional requirements; feasibility study; various drafts of the specification or standard; one or more release candidates for circulation; and, upon formal adoption and approval by the TAC, a final specification or standard.

² This Policy envisions that at least three distinct types of intellectual property may become involved as potential contributions within the specification or standards development process: patented inventions, copyrighted materials and trade secrets. Regardless of type of intellectual property, this Policy endeavors to assure all such rights will vest in the Foundation appropriately to the extent necessary for it to develop, publish and support a given specification.

Accordingly, the Foundation desires to avoid the proprietary interests of such individual or such individual's employer or client flowing into such committee or other collaborative work without the appropriate consent of such employer or client and of the Foundation, and the Foundation therefore requires all such individuals to refrain from any contributions of ideas or suggestions which they know to be proprietary in nature and that cannot be rightfully contributed. If such individual or such individual's employer or client desires both to assert such a proprietary interest and to offer it to the Foundation subject to such interest, then, prior to making such a contribution, the individual should notify the Foundation in writing of that proposal and allow the Foundation to make a specific decision on whether to accept or reject the same in accordance with Section 2 of this Policy. Conversely, if an individual puts forward any contribution during such body's efforts or through participation in its work or deliberations and discussions without such a prior written notice to the Foundation and without any express acceptance or rejection of same from the Foundation under Section 2 of this Policy, it shall be presumed that such contribution is intended to become the property of the Foundation if it is later incorporated into any Foundation document created by such a collaborative effort, free and clear of any residual interests or liens, as set forth in the Foundation's signed membership application form required of all members and in this Section 1.

For the Foundation's specification or standards development effort to work in an open and collaborative manner, each participating individual and the employer or client of such individual shall disclose any actual or reasonably foreseeable conflicts between any draft Foundation specification and the proprietary interests of that individual or his or her employer or client (e.g., an issued patent or a published pending patent application³ held by the individual's employer or

³ For avoidance of doubt, under this Policy, the Foundation draws a clear distinction between a published or open patent application that has officially been made public by a patent office and an unpublished application that is still non-public. A party applying for a patent may have many good faith reasons to maintain the confidentiality of an unpublished application, but there is no legitimate reason to withhold disclosure to the Foundation of a patent application that is already open to the public through the actions of a patent office.

by any other entity known to the individual that would read upon a contribution to be made by that individual during a committee meeting). The ultimate objective of the Foundation's specifications is the development, distribution and deployment of commercially viable products that are based upon those specifications or standards, and it is thus the inherent duty of each volunteer in these committees to be candid with fellow participants and with the Foundation itself about such conflicts. The Foundation's specifications and standards can only avoid such conflicts if the Foundation has the knowledge in a timely manner to do so.

2. Assigned or Licensed Intellectual Property

If the owner of any intellectual property rights (such as a patent, trademark, copyright or trade secret) under the laws of any nation (collectively, "Proprietary Right") desires to offer any portion of such Proprietary Right for use or inclusion in the Foundation's specifications or standards, it shall do so only by means of a written assignment or license agreement duly executed between such owner and the Foundation.

Subject to the written agreement to be reached with the owner of any Proprietary Right, the Foundation may accept such Proprietary Right for use or inclusion in the Foundation's specifications or standards through:

- a. an outright assignment of all right, title and interest thereto; or
- b. a nonexclusive, worldwide, perpetual, royalty-free license to the Foundation with the right to sublicense the same in the Foundation's sole discretion without further obligation or accounting to such original owner.

This Section 2 shall apply equally to members and non-members of the Foundation. Any such assignment or license to the Foundation shall be accomplished by reasonably uniform standard forms of assignments or licenses to ensure fair, consistent and efficient administration by the Foundation of any subsequent licenses or sublicenses of such rights to members, non-members and the general public.

3. Compulsory License as Condition of Membership

If, during or within one (1) year of its membership term, a member of the Foundation possesses or acquires any Proprietary Right that is deemed essential by the Foundation's Board of Directors to implementation of a Foundation specification or standard, as a condition of initial or continued membership in the Foundation, such member shall provide to the Foundation a license of such Proprietary Right in a manner consistent with Section 2 of this Policy solely to the extent that it is essential to proceed with such implementation of the Foundation's specification or standard in any commercial products to be manufactured, distributed or used.

If a specific Proprietary Right consists of a patent, then (a) "perpetual" shall mean for the remaining life of such patent in any country; and (b) "essential" shall mean only that such patent contains one or more claims that either (i) read directly upon an element (or an equivalent of an element) of a formally approved and adopted final Foundation specification or standard, so that any implementation of that specification or standard would infringe upon those claims, or (ii) read upon any natural and commercially practical use of a formally approved and adopted final Foundation specification or standard, so that any such use would infringe upon those claims. The Foundation shall have no rights under this Section 3 as to any patents that do not come within the foregoing definitions of "essential".

Any such license of a Proprietary Right shall include a discretionary right for the Foundation to sublicense the same to members in good standing of the Foundation or to non-members of the Foundation, subject in either case on commercially reasonable, uniform and non-discriminatory terms. However, any such sublicenses to non-members shall prescribe terms and conditions that will create reasonably equivalent obligations to those carried by members in good standing, including the Foundation membership dues and the compulsory license in this Section 3 required from such members, so that non-members would gain access to such rights from the Foundation only upon proportional and reciprocal obligations to the Foundation. Any such license to the Foundation shall be accomplished by reasonably uniform standard forms to ensure fair, consistent and efficient administration by the Foundation of any subsequent licenses or sublicenses of such rights to members and non-members.

If there is any disagreement between such member and the Foundation and such disagreement cannot be resolved by good faith discussion, the member and the Foundation shall settle such disagreement by final and binding arbitration in Cleveland, Ohio, U.S.A., under the then-current Commercial Arbitration Rules of the American Arbitration Association with the reasonable costs of such arbitration split equally between such member and the Foundation and with the prevailing party therein entitled to recover its reasonable legal fees and costs thereby incurred. Any such arbitral award may be enforced in a court of competent jurisdiction.

4. Notification and Request for Comments on Proprietary Rights

For any new draft specification or standard (collectively, "Draft Specification") to be considered for official adoption and approval by the Foundation's Technical Advisory Council ("TAC") as a final specification or standard (collectively, "Final Specification"), the Foundation's President shall publish or cause to be published a written notice thereof to all members of the Foundation and to the automation industry generally through trade and industrial media and such other

reasonable means as the President may select. Such notice shall expressly request any members, non-members or other concerned parties to inform the Foundation promptly and in writing if they have any knowledge or reason to know of the existence of any Proprietary Right under the law of any nation which would legally bar or adversely affect the implementation of such Draft Specification in any commercial products. The Foundation's TAC shall not adopt and approve the Draft Specification as a Final Specification for at least ninety (90) days after the date of the notice to all members and, if any affirmative response is received from such notice, the TAC shall defer adoption and approval of such Draft Specification as a Final Specification until appropriate legal review has been made by the Foundation's intellectual property counsel, subject to Section 2 or Section 3 of this policy, as applicable.

If any member or non-member notifies the Foundation of the alleged existence of any conflicting Proprietary Right that might legally bar or adversely affect the adoption and approval by the TAC of a Draft Specification as a Final Specification,

- a. Such notice shall contain a reasonably detailed description of the Proprietary Right and of the precise nature and extent of the alleged conflict between such Proprietary Right and the Draft Specification, provided, however, no such notice shall be deemed admissible as evidence in any legal proceeding against the party providing such notice;
- b. All such communications between the Foundation and the notifying party or between the Foundation and the owner of that Proprietary Right (and between their respective counsel) shall be held in confidence to the maximum practical extent. Such duty of confidentiality, however, shall not extend to any information that:(i) is or becomes publicly known through no act or omission of the

Foundation; (ii) is independently developed by the Foundation without any use of or reliance upon disclosing party's confidential information, as shown by the Foundations' books and records; (iii) is obtained from a third party without obligation to the disclosing party; (iv) is already known to the Foundation prior to its receipt from the disclosing party, as shown by the Foundation's books and records; or (v) is required to be disclosed pursuant to law, provided, however, the Foundation shall give prompt and prior written notice thereof to the disclosing party and, provided further, the Foundation shall give reasonable cooperation to the disclosing party to limit any public release of such information to the extent provided by law;

- c. If the Proprietary Right in question is owned by a member of the Foundation, the President of the Foundation and such member shall consult with one another in good faith to determine if Sections 2 and 3 of this Policy would be applicable to obtain a license of such Proprietary Right for the Foundation or if there would be any other mutually acceptable resolution of the conflict between such Proprietary Right and the Foundation's Draft Specification; and

- d. If the Proprietary Right in question is owned by a non-member, the President of the Foundation shall endeavor in good faith to determine if rights comparable to those contained in Section 2 of this Policy can be obtained from such non-member for the benefit of the Foundation or if there would be any other mutually acceptable resolution of the conflict between such Proprietary Right and the Foundation's Draft Specification.

5. **Foundation Specifications and Materials**

The Foundation shall not knowingly use or incorporate any information or data into its specifications or any other materials to be made available to members, non-members or the general public which the Foundation does not own or have lawful rights to use through a license or assignment of title under Sections 1, 2 or 3 of this Policy.

6. Protection of Foundation Intellectual Property

The Foundation shall consult with intellectual property counsel from time to time and shall seek to register and protect such patents, copyrights, trademarks or other intellectual property of the Foundation as reasonably necessary or appropriate to further the general purposes of the Foundation and to ensure the broadest possible dissemination and implementation of the Foundation's specifications.

7. Term of Licenses in Event of Dissolution

As noted above, the compulsory licenses granted to the Foundation under Section 3 of this Policy or any other licenses granted to the Foundation are to be perpetual. If the Foundation is acquired by or merged into another entity or the Foundation is legally dissolved or otherwise ceases to do business, all such licenses shall inure to the benefit of any successors or assigns and shall, in any case, have a term of not less than twenty (20) years from the effective date of such event or the maximum life of any patent, as applicable.

In the case of any other non-compulsory licenses granted to the Foundation under this Policy, if the Foundation is acquired or merged into another entity or the Foundation is legally dissolved

or otherwise ceases to do business, then such licenses shall be assignable or terminable, as the case may be, in accordance with their respective terms, provided, however, any such permitted assignment or required termination shall not terminate, shorten, limit, modify or otherwise affect any sublicenses of such rights granted by the Foundation to others prior to the effective date of such event.

8. Implementation Procedures

The Foundation's Board of Directors or President may adopt administrative measures and procedures to implement this Policy.

9. Approval and Amendment

This Policy shall become effective upon approval by at least a two-third (2/3rd) vote by the Foundation's Board of Directors, which initial approval occurred on December 18, 2006. After such approval, this Policy may then be amended only upon approval by at least a two-third (2/3rd) vote by the Foundation's Board of Directors. Upon such approvals, the President shall promptly publish this Policy and inform the Foundation's members of its purpose and effect.