

**Open CAPI Consortium  
Intellectual Property Rights (IPR) Policy**

1. Introduction

The OpenCAPI Consortium Intellectual Property Rights (IPR) Policy (hereinafter referred to as the Policy) governs the treatment of confidential information and intellectual property shared by the Members for the Purpose of the OpenCAPI (as defined in the OpenCAPI Bylaws) including in the production of deliverables by the OpenCAPI Consortium (hereafter referred to as OpenCAPI).

This Policy applies to all members of OpenCAPI and their Affiliates (as defined in the OpenCAPI Bylaws). The OpenCAPI Board Members may amend this Policy at any time pursuant to the Bylaws. In the event of such change to this Policy, the Board will provide instructions for transition of membership and OpenCAPI Work Groups to the new Policy; however, no amendment to this Policy will be effective in less than sixty (60) calendar days from the date that written notice of such amendment is given to the Member at its address of record with OpenCAPI.

2. Definitions

Each capitalized term within this document shall have the meaning provided below:

1. **Code** – computer software (either source or object versions), including XML schema, DTDs, and other data or document formats.
2. **Continuing Licensing Obligation** - a licensing or non-assertion obligation, of the types defined by Sections 6 and 9 of this Policy, which is designated a “Continuing Licensing Obligation” and survives a Work Group Party's withdrawal from an OpenCAPI Work Group and a Member’s withdrawal from OpenCAPI.
3. **Contribution** - any material submitted to an OpenCAPI Work Group by a Work Group Member of its material, in writing or electronically, whether in an in-person meeting or in any electronic conference or distribution to a mailing list maintained by OpenCAPI for the OpenCAPI Work Group for inclusion in an OpenCAPI Deliverable.
4. **Contribution Obligation** - a licensing or non-assertion requirement, as described in Section 10, that results from making a Contribution as described in Section 9.1.
5. **Contributor** - a Work Group (WG) Party on whose behalf a Contribution is made by the WG Party's WG Member.
6. **Eligible Person** - one of a class of individuals that include: employees or designees of members of

OpenCAPI, and such other persons as may be designated by the OpenCAPI Board.

7. **Essential Claims** - those claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by an implementation of those portions of a particular OpenCAPI Standards Final Deliverable or OpenCAPI Standards Draft Deliverable created within the scope of the Work Group charter in effect at the time such deliverable was developed. A claim is necessarily infringed hereunder only when it is not feasible to avoid infringing it because there is no commercially reasonable non-infringing alternative for implementing the Normative Portions of that particular OpenCAPI Standards Final Deliverable or OpenCAPI Standards Draft Deliverable. Existence of a commercially reasonable non-infringing alternative shall be judged based on the state of the art at the time the OpenCAPI Standards Final Deliverable is approved.
8. **Feedback** – (a) any written or electronic input provided to an OpenCAPI Work Group (WG) by individuals who are not Eligible Persons. All such non-Eligible Person Feedback must be made under the terms of the Contribution/Feedback License (Appendix A) and the non-Eligible Person shall provide a signed copy of such Contribution/Feedback License to the relevant WG(s); (b) any written or electronic input provided to an OpenCAPI Work Group by Eligible Persons who are not WG Members of the relevant WG. All such non-WG Member Feedback is hereby irrevocably granted under the Contribution/Feedback License (Appendix A) without further action by such Eligible Persons. For avoidance of doubt, such Eligible Persons, by virtual of their status as Eligible Persons, have granted, and agreed to grant, the Contribution/Feedback License upon becoming an Eligible Person and have forfeited any right to object to the granting of this Feedback License.
9. **Final Maintenance Deliverable** - Any OpenCAPI Standards Final Deliverable that results entirely from Maintenance Activity.
10. **IPR Mode** - an element of an OpenCAPI Work Group charter, which specifies the type of license required for any Essential Claims associated with the output produced by a given Work Group. This is further described in Section 3.2 and Section 10. Currently, this Policy only permits a Work Group to require RAND licenses.
11. **Licensed Products** - includes only those specific portions of a Licensee's products (hardware, software or combinations thereof) that (a) implement and are compliant with all Normative Portions of an OpenCAPI Standards Final Deliverable that must be implemented to comply with such deliverable, and (b) to the extent that the Licensee's products implements one or more optional portions of such deliverable, those portions of Licensee's products that implement and are compliant with all Normative Portions that must be implemented to comply with such optional portions of the deliverable.

12. **Licensee** - any organization, including its Affiliates as defined in this Policy, or individual that licenses Essential Claims from Obligated Parties for a particular OpenCAPI Standards Final Deliverable.
13. **Maintenance Activity** - Any drafting or development work to modify an OpenCAPI Standards Final Deliverable that (a) constitutes only error corrections, bug fixes or editorial formatting changes to the OpenCAPI Standards Final Deliverable; and (b) does not add any feature; and (c) is within the scope of the Work Group that approved the OpenCAPI Standards Final Deliverable (whether or not the work is conducted by the same WG).
14. **Normative Portion** - a portion of an OpenCAPI Standards Final Deliverable that must be implemented to comply with such deliverable. If such deliverable defines optional parts, Normative Portions include those portions of the optional part that must be implemented if the implementation is to comply with such optional part. Examples and/or reference implementations and other specifications or standards that were developed outside the Work Group and which are referenced in the body of a particular OpenCAPI Standards Final Deliverable that may be included in such deliverable are not Normative Portions.
15. **OpenCAPI Deliverable** - a work product developed by a Work Group within the scope of its charter which is enumerated in and developed in accordance with the OpenCAPI Work Group Process.
16. **OpenCAPI Standards Draft Deliverable** - an OpenCAPI Deliverable that has been designated and approved by a Work Group as an OpenCAPI Standards Draft Deliverable and which is enumerated in and developed in accordance with the OpenCAPI Work Group Process.
17. **OpenCAPI Standards Final Deliverable** - an OpenCAPI Deliverable that has been designated and approved by a Work Group as an OpenCAPI Standards Final Deliverable and which is enumerated in and developed in accordance with the OpenCAPI Work Group Process.
18. **OpenCAPI Party** - a member of OpenCAPI (i.e., an entity that has executed an OpenCAPI Membership Agreement) and its Affiliates.
19. **Work Group (WG) Lead** - the person(s) appointed to represent/support OpenCAPI in administrative matters relating to Work Groups as provided by the OpenCAPI Work Group Process.
20. **OpenCAPI Work Group (WG)** - a group of Eligible Persons formed, and whose actions are conducted, according to the provisions of the OpenCAPI Work Group Process.

21. **OpenCAPI Work Group Process** - the "OpenCAPI WORK GROUP PROCESS", as from time to time amended, which describes the operation of Work Groups at OpenCAPI.
22. **Obligated Party** - any Work Group Party that incurs a licensing obligation for its Essential Claims by either a Contribution Obligation or a Member Obligation, and any entity that is a Member at the commencement of a Review Period.
23. **Open Source** – A software package released under an open source license approved by the Open Source Initiative(<http://opensource.org/licenses>).
24. **Open Source Software (OSS) Community** – A formal or informal community organized around an open source development model or software package, such as, but not limited to, The Apache Foundation and Eclipse Foundation.
25. **Member Obligation** - a licensing requirement, as described in Section 10, that arises from membership in OpenCAPI, as described in Section 9.2.
26. **RAND Mode WG** - an OpenCAPI Work Group that is chartered under the RAND IPR Mode described in Section 10.
27. **WG Member** - an Eligible Person who has completed the requirements to join a Work Group (WG) as defined in the eligibility requirements section of the Work Group Charter during the period in which s/he maintains his or her WG membership as described by the OpenCAPI Work Group Process. A WG Member may represent the interests of a WG Party in the WG.
28. **WG Party** - an OpenCAPI Party that is, or is represented by, a Work Group Member in the relevant Work Group.
29. **Review Period** – A period of twenty-one (21) days beginning when an OpenCAPI Standards Final Deliverable is delivered to all Members that are not WG Parties for the purpose of determining whether they are required to make a disclosure under Section 8.3 of this Policy, which delivery shall occur when such Deliverable is deemed ready for final WG approval.
30. **Member Representative** - An individual responding on behalf of a Member during a Review Period. Member Representatives shall be appointed by Members in good faith (e.g., a specific individual shall not be chosen because he or she has no familiarity with the relevant patent portfolio of the Member).
31. **Eligible OpenCAPI Party** – A party that is eligible under the Bylaws to receive the rights or deliverables in question, as follows:

- a. Strategic, Contributor and Observing Members are eligible to receive licenses to any Standards, enablement materials for product development, and other deliverables as the Board of Directors may from time to time approve for such class of Membership;
- b. Academic/Non-Profit Members are eligible to receive copies of OpenCAPI's Standards and such other deliverables as the Board of Directors may from time to time approve for such class of Membership;

32. **Member** – A member of any class of membership of OpenCAPI.

### 3. Work Group Formation

- 3.1 The OpenCAPI Board shall charter the WG and name the WG Lead.
- 3.2 At the time a WG is chartered, the proposal to form the WG must specify the IPR Mode under which the Work Group will operate, as described in Section 10.
- 3.3 At the time a WG is chartered, the proposal to form the WG must specify the Confidentiality Mode under which the Work Group will operate, as described in Section 4. If no Confidentiality Mode is specified, then the default will be Written Confidentially Mode.
- 3.4 [Intentionally Left Blank]
- 3.5 [Intentionally Left Blank]
- 3.6 At the time a WG is chartered, the proposal to form the WG must specify any eligibility requirements to join the WG. If no eligibility requirements are specified, eligibility will be limited to Eligible Persons. A WG may not change its IPR Mode or Policy.

### 4. Confidentiality

If the WG Charter states that Contributions are confidential, then Contributions and Feedback are subject to a requirement of confidentiality as described in the WG Charter. If the WG Charter specifies that Contributions are non-confidential then neither Contributions nor Feedback that are subject to any requirement of confidentiality may be considered in any part of the OpenCAPI Work Group Process and all Contributions and Feedback will therefore be deemed to have been submitted on a non-confidential basis, notwithstanding any markings or representations to the contrary, and OpenCAPI shall have no obligation to treat any such material as confidential.

This Policy describes the following Confidentiality Modes:

- 4.1 [Intentionally left Blank]
- 4.2. Formation Confidentiality – this Confidentiality Mode allows the WG to list specific

documents in the WG charter that shall be kept confidential for the length of time specified by the WG (with a default of five (5) years) from the date of formation of the WG, or until such information is publicly released in an OpenCAPI Deliverable.

- 4.3. Written Confidentiality (default status for a WG if not specified) – this Confidentiality Mode requires that all WG Members and WG Parties keep confidential all written or electronic information provided to the WG by a WG Member or WG Parties that is marked as confidential for the length of time specified in the WG Charter (with a default of five (5) years), or until such information is publicly released in an OpenCAPI Deliverable.

These Confidentiality Modes are described in more detail in Appendix C. In the event of a conflict between this Section 4 and Appendix C, the detailed confidentiality terms in Appendix C govern. For avoidance of doubt, these terms automatically apply when a WG selects a confidentiality mode under section 4.2 or 4.3 and are not optional or modifiable by the WG.

All OpenCAPI Parties are deemed to agree to the terms in Appendix C of each WG’s chosen Confidentiality Mode.

## 5. Contributions

### 5.1 General

At the time of submission of a Contribution for consideration by an OpenCAPI Work Group, each named co-Contributor (and its respective Affiliates) is deemed to agree to the following terms and conditions and to make the following representations (based on the actual knowledge of the WG Member(s) making the Contribution, with respect to items 3 - 5 below, inclusive):

1. OpenCAPI has no duty to publish or otherwise use or disseminate any Contribution.
2. OpenCAPI may reference the name(s) of the Contributor(s) for the purpose of acknowledging and publishing the Contribution.
3. The Contribution properly identifies any holders of copyright interests in the Contribution.
4. If the relevant WG Charter requires that information be kept confidential, such information shall be kept confidential according to the terms of the WG’s chosen confidentiality policy.
5. If the relevant WG Charter does not require that information be kept

confidential, no information in the Contribution is confidential, and OpenCAPI may freely disclose any information in the Contribution.

6. There are no limits to the Contributor's ability to make the grants, acknowledgments, and agreements required by this Policy or a WG Charter with respect to such Contribution.

7. Except as provided above, CONTRIBUTIONS ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 5.1, CONTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR INTENDED PURPOSE, ACCURACY, COMPLETENESS, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY OTHER WARRANTY.

## 5.2 Copyright Licenses

5.2.1. To the extent that a Contributor holds a copyright interest in its Contribution, such Contributor grants to OpenCAPI a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Contribution in any way, and to prepare derivative works that are based on or incorporate all or part of the Contribution solely for the purpose of developing and promoting the OpenCAPI Deliverable and enabling the implementation of the same by Licensees.

5.2.2. To the extent that a Contribution is subject to copyright by parties that are not Contributors, the submitter(s) must provide OpenCAPI with a signed "Copyright License Grant" (Appendix B of this Policy) from each such copyright owner whose permission would be required to permit OpenCAPI to exercise the rights described in Appendix B of this Policy.

5.2.3. To the extent that a Contribution is subject to copyright by parties that are not Contributors and the Contribution has been previously licensed under an Open Source License, the Contribution shall be provided under the existing Open Source license. For avoidance of doubt, an OpenCAPI Party or Eligible Person shall not contribute code under an Open Source license and make use of this Section 5.2.3 to avoid the requirements of Section 5.2.1.

5.2.4. For each Contribution to a WG and to the extent that OpenCAPI holds a copyright interest and/or the right to license such Contribution, OpenCAPI grants, and agrees to grant, to each WG Party and each WG Member who is a member of the WG(s)

receiving such Contribution a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, publish, and distribute the Contribution in any way, and to prepare derivative works that are based on or incorporate all or part of the Contribution solely for the purpose of developing and promoting the OpenCAPI Deliverable and enabling the implementation of the same by Licensees.

For the avoidance of doubt, no patent licenses are granted by this Section 5.2, by implication, estoppel, or otherwise.

### 5.3 Trademarks

5.3.1. Trademarks or service marks that are not owned by OpenCAPI shall not be used by OpenCAPI, except as approved by the OpenCAPI Board, to refer to work conducted at OpenCAPI, including the use in the name of an OpenCAPI WG, an OpenCAPI Deliverable, or incorporated into such work.

5.3.2. No OpenCAPI Party may use an OpenCAPI trademark or service mark in connection with an OpenCAPI Deliverable or otherwise, except in compliance with a written license agreement and usage guidelines as OpenCAPI may specify.

### 5.4 Tools, Documents, and Reference Implementations

5.4.1. An OpenCAPI Party may contribute software tools, simulation models, and other software items ("Tools"), in binary or source code form, to OpenCAPI. OpenCAPI shall then make the Tools available to Eligible OpenCAPI Parties under a fee-free and royalty-free license: (a) that allows for both commercial and non-commercial use, linking, creation of derivative works, performance and distribution of such Tools in binary form, (b) that shall not restrict the form of distribution or type of software used therewith (by way of example and not of limitation, the license to the Tools shall not require distribution of software linked with the Tools to be distributed in sourcecode form), and (c) that may optionally prohibit reverse engineering, decompilation and attempts to determine the source code thereof.

5.4.2. An OpenCAPI Party may contribute documentation, specifications and other information ("Documents") to OpenCAPI. OpenCAPI shall then make the Documents available to Eligible OpenCAPI Parties and/or the public at large under a fee-free and royalty-free license: (a) that allows for commercial and non-commercial copying; and (b) may prohibit creation of derivative works therefrom.



5.4.3 An OpenCAPI Party may contribute an implementation of a specification ("Reference Implementations") to OpenCAPI. OpenCAPI shall then make the Reference Implementation available to Eligible OpenCAPI Parties under a fee-free and royalty-free license: (a) that allows for both commercial and non-commercial use, and the creation of derivative works therefrom; and (b) that prohibits non-confidential distribution and performance of the Reference Implementations and any derivative works thereof.

## 6. Limited Patent Covenant for Deliverable Development

To permit WG Members and their WG Parties to develop implementations of OpenCAPI Standards Draft Deliverables being developed by a WG, each WG Party represented by a WG Member in a WG, at such time that the WG Member joins the WG, grants to each other WG Party in that WG automatically and without further action on its part, and on an ongoing basis, a limited covenant not to assert any Essential Claims required to implement such OpenCAPI Standards Draft Deliverable and covering making or using (but not selling or otherwise distributing) an implementation of such OpenCAPI Standards Draft Deliverable, solely for the purpose of testing and developing such implementation and only until either the OpenCAPI Standards Draft Deliverable is approved as an OpenCAPI Standards Final Deliverable or the Work Group is closed. The covenant not to assert set forth in this Section 6 is a Continuing Licensing Obligation.

## 7. Feedback

OpenCAPI encourages Feedback to OpenCAPI Deliverables from both OpenCAPI Parties and those who are not Eligible Persons. Feedback will be accepted only under the "Contribution/Feedback License" (Appendix A) from non-Eligible Persons. OpenCAPI will require that non-Eligible Person submitters of Feedback agree to the terms of the Feedback License before transmitting submitted Feedback to the Work Group. Eligible Persons hereby agree to the Feedback License upon becoming Eligible Persons.

## 8. Disclosure

**8.1. Disclosure Obligations** -Each WG Party in a WG with an IPR Mode of "RAND" shall reasonably promptly disclose to OpenCAPI in writing the existence of all patents and/or patent applications owned or claimed by such WG Party that are actually known to the WG Member directly participating in the WG, and which such WG Member believes may contain any Essential Claims or claims that might become Essential Claims upon approval of an OpenCAPI Standards Final Deliverable as such document then exists (collectively, "Disclosed Claims").

**8.2. Disclosure of Third Party Patent Claims** - Each WG Party whose WG Members become aware of patents or patent applications owned or claimed by a third party that contain claims

that might become Essential Claims upon approval of an OpenCABI Standards Final Deliverable should disclose such patents or patent applications, provided that such disclosure is not prohibited by any confidentiality obligation binding upon such WG Party and/or WG Member. It is understood that any WG Party that discloses third party patent claims to OpenCABI does not take a position on the essentiality or relevance of the third party claims to the OpenCABI Standards Final Deliverable in its then-current form.

**8.3 Review Period Member Disclosure Obligations** - During each Review Period, each Member that is not a WG Party in a WG with an IPR Mode of "RAND" shall appoint a Member Representative to review the OpenCABI Standards Final Deliverable distributed at the commencement of that Review Period, which individual:

(a) shall disclose to OpenCABI in writing the existence of all patents and/or patent applications owned or claimed by such Member that are actually known by such Member Representative, and which such Member Representative believes may contain any Essential Claims or claims that might become Essential Claims upon approval of such OpenCABI Standards Final Deliverable; and

(b) may disclose any patents or patent applications owned or claimed by a third party of which the Member Representative is aware that contain claims that might become Essential Claims upon approval of the OpenCABI Standards Final Deliverable distributed to it at the beginning of such Review Period, provided that such disclosure is not prohibited by any confidentiality obligation binding upon such Member. It is understood that any Member that discloses third party patent claims to OpenCABI does not take a position on the validity, essentiality, or relevance of the third party claims to the OpenCABI Standards Final Deliverable in its then-current form.

**8.4 All Disclosures** - in all cases (Sections 8.1 – 8.3), it is understood and agreed that the person making the disclosure does not represent that they know of all potentially pertinent claims of patents and patent applications owned or claimed by the WG Party or Member, as the case may be, or any third parties. For the avoidance of doubt, while the disclosure obligation under Sections 8.1 and 8.2 or 8.3 applies directly to all WG Parties and Members, respectively, this obligation is triggered based on the actual knowledge of the WG Party's WG Members or Membership Representative, as the case may be, regarding the WG Party's or Member's, as appropriate, patents or patent applications that may contain Essential Claims.

**8.5. Limitations** - A disclosure request and the obligation to disclose set forth above do not imply any obligations on the recipients of disclosure requests (collectively or individually) or on any OpenCABI Party to perform or conduct patent searches. Nothing in this Policy nor the act of receiving a disclosure request for an OpenCABI Standards Final Deliverable, regardless of

whether it is responded to, shall be construed or otherwise interpreted as any kind of express or implied representation with respect to the existence or non-existence of patents or patent applications which contain Essential Claims, other than that such WG Party or Member Representative, as appropriate, has acted in good faith with respect to its disclosure obligations.

## 9. Types of Obligations

### 9.1 Contribution Obligation

A WG Party has a Contribution Obligation, which arises at the time the Contribution is submitted to a WG, to license as appropriate for the IPR mode described in Section 10, any claims under its patents or patent applications that become Essential Claims when such Contribution is incorporated (either in whole or in part) into (a) the OpenCAPI Standards Final Deliverable produced by the WG that received the Contribution, or (b) any Final Maintenance Deliverable with respect to that OpenCAPI Standards Final Deliverable.

### 9.2 Member Obligation

An OpenCAPI Party has a Member Obligation to license as appropriate for the IPR mode, as described in Section 10, any claims under its patents or patent applications that would be Essential Claims in the then current OpenCAPI Standards Draft Deliverable, if that draft subsequently becomes an OpenCAPI Standards Final Deliverable, if (a) it is member of OpenCAPI at the commencement of the Review Period with respect to which such OpenCAPI Standards Final Deliverable and such document is finally approved, either in whole or in part, or (b) it is or becomes a member of OpenCAPI subsequent to the final approval of such OpenCAPI Standards Final Deliverable.

Once the foregoing conditions are met, that Member's Obligation to license continues with respect to that OpenCAPI Standards Final Deliverable, and any Final Maintenance Deliverable subsequently approved with respect to that OpenCAPI Standards Final Deliverable.-

Each time a new OpenCAPI Standards Draft Deliverable is approved by the WG, the Member Obligation adjusts to encompass the material in the latest OpenCAPI Standards Draft Deliverable twenty-one (21) days after such draft has been approved for publication.

### 9.3 Continuing Licensing Obligations

The licensing obligations set forth in Sections 9.1 and 9.2 above are Continuing Licensing Obligations.

## 10. Licensing Requirements

## 10.1 RAND Mode WG Requirements

For an OpenCAPI Standards Final Deliverable developed by a RAND Mode WG, except where a Licensee has a separate, signed agreement under which the Essential Claims are licensed to such Licensee on more favorable terms and conditions than set forth in this section (in which case such separate signed agreement shall supersede this Limited Patent License), each Obligated Party hereby covenants that, upon request and subject to Section 11, it will grant to any Eligible OpenCAPI Party: a nonexclusive, worldwide, non-sublicensable, perpetual (subject to licensee compliance with this section) patent license (or an equivalent non-assertion covenant) under its Essential Claims covered by its Contribution Obligations and/or Member Obligations on fair, reasonable, and non-discriminatory terms to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute (a) Licensed Products that implement such OpenCAPI Standards Final Deliverable, and (b) Licensed Products that implement any Final Maintenance Deliverable with respect to that OpenCAPI Standards Final Deliverable. For the sake of clarity, a WG Member and each of its Affiliates would have an obligation under Section 9.1 with respect to any of its Essential Claims in any Contribution the WG Member makes that are included in an OpenCAPI Standards Final Deliverable, and would have a Member Obligation with respect to any of its Essential Claims in the rest of such deliverable, and a non-WG Member and each of its Affiliates would have a Member Obligation with respect to any of its Essential Claims in the entire OpenCAPI Standards Final Deliverable.

At the election of the Obligated Party, such license may include a term requiring the Licensee to grant a reciprocal license to its Essential Claims (if any) covering the same OpenCAPI Standards Final Deliverable and any such Final Maintenance Deliverable. The Obligated Party may also include a term providing that such license may be suspended with respect to the Licensee if that Licensee first sues the Obligated Party for infringement by the Obligated Party of any of the Licensee's Essential Claims covering the same OpenCAPI Standards Final Deliverable or any such Final Maintenance Deliverable. In addition, an Obligated Party's and its Affiliates' obligation to extend a license shall be suspended with respect to any entity if that entity first sues the Obligated Party or any of its Affiliates for infringement by the Obligated Party or any of its Affiliates of any of such entity's Essential Claims covering the same OpenCAPI Standards Final Deliverable or any such Final Maintenance Deliverable.

Each Member, including its Affiliates, agrees that it has not transferred, and it will not transfer, any patents or published patent applications having patent claims that are or become Essential Claims under the OpenCAPI Standards Final Deliverable, solely for the purpose of circumventing its obligations under this Policy.

In the event a Member, or its Affiliate, attempts to assign or transfer a patent or published

patent application in violation of, the preceding paragraph, the Member, or its Affiliate, immediately, and prior to the effectiveness of such an assignment or transfer, grants each current and future Eligible OpenCAPI Member a royalty-free, nonexclusive, worldwide, non-sublicensable, perpetual (subject to licensee compliance with this section) patent license (or an equivalent non-assertion covenant) under its Essential Claims covered by its Contribution Obligations and/or Member Obligations to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute (a) Licensed Products that implement an OpenCAPI Standards Final Deliverable, and (b) Licensed Products that implement any Final Maintenance Deliverable with respect to that OpenCAPI Standards Final Deliverable.

License terms that are fair, reasonable, and non-discriminatory beyond those specifically mentioned above are left to the Licensees and Obligated Parties involved.

#### 10.2 [Intentionally left Blank]

### 11. Withdrawal and Termination

A Member may withdraw from OpenCAPI at any time by notifying OpenCAPI in writing of such decision to withdraw. Withdrawal shall be deemed effective when such written notice is sent, and shall not relieve a Member from any of its Continuing Licensing Obligations. Limitations on Liability

ALL OpenCAPI DELIVERABLES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND OpenCAPI, AS WELL AS ALL OpenCAPI PARTIES AND WG MEMBERS, EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR INTENDED PURPOSE, ACCURACY, COMPLETENESS, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY OTHER WARRANTY.

In no event shall OpenCAPI, any of its constituent parts (including, but not limited to, the OpenCAPI Board), its authors and developers, or its OpenCAPI Parties, be liable to any other person or entity for any loss of profits, loss of use, direct, indirect, incidental, consequential, punitive, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this Policy, whether or not such party had advance notice of the possibility of such damages.

In addition, OpenCAPI Parties and WG Members (or their representatives) shall not be liable to any other person or entity for any loss of profits, loss of use, direct, indirect, incidental, consequential, punitive, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this Policy, whether or not such party had advance notice of the possibility of such damages. OpenCAPI assumes no responsibility to compile, confirm, update or make public any assertions of Essential Claims or other intellectual property rights

that might be infringed by an implementation of an OpenCAPI Deliverable.

If OpenCAPI at any time refers to any such assertions by any owner of such claims, OpenCAPI takes no position as to the validity or invalidity of such assertions, or that all such assertions that have or may be made have been referred to.

## 12. General

13.1. By ratifying this document, OpenCAPI warrants that it will not inhibit the access to OpenCAPI documents for which license and right have been assigned or obtained according to the procedures set forth in this section. This warranty is perpetual and will not be revoked by OpenCAPI or its successors or assigns as to any already adopted OpenCAPI Standards Final Deliverable; provided, however, that neither OpenCAPI nor its assigns shall be obligated to:

13.1.1. Perpetually maintain its existence; nor

13.1.2. Provide for the perpetual existence of a website or other public means of accessing OpenCAPI Standards Final Deliverables; nor

13.1.3. Maintain the public availability of any given OpenCAPI Standards Final Deliverable that has been retired or superseded, or which is no longer being actively utilized in the marketplace.

13.2. Where any copyrights, trademarks, patents, patent applications, or other proprietary rights are known, or claimed, with respect to any OpenCAPI Deliverable and are formally brought to the attention of the WG Lead, OpenCAPI shall consider appropriate action, which may include disclosure of the existence of such rights, or claimed rights. The OpenCAPI Work Group Process shall prescribe the method for providing this information.

13.2.1. OpenCAPI disclaims any responsibility for identifying the existence of or for evaluating the applicability of any claimed copyrights, trademarks, patents, patent applications, or other rights, and will make no assurances on the validity or scope of any such rights.

13.2.2. Where the WG Lead is formally notified of rights, or claimed rights under Section 8 with respect to entities other than Obligated Parties, the OpenCAPI President shall attempt to obtain from the claimant of such rights a written assurance that any Licensee will be able to obtain the right to utilize, use, and distribute the technology or works when implementing, using, or distributing technology based upon the specific OpenCAPI Standards Final Deliverable (or, in the case of an OpenCAPI Standards Draft

Deliverable, that any Licensee will then be able to obtain such a right) under terms that are consistent with this Policy. All such information will be made available to the WG that produced such deliverable, but the failure to obtain such written assurance shall not prevent votes from being conducted, except that the WG Lead may defer approval for a reasonable period of time where a delay may facilitate the obtaining of such assurances. The results will, however, be recorded by the WG Lead, and made available to the public. The OpenCAPI Board may also direct that a summary of the results be included in any published OpenCAPI Standards Final Deliverable.

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## **Appendix A. Contribution/Feedback License**

### 1. Definitions

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  - (b) any written or electronic input provided to an OpenCAPI Work Group by Eligible Persons who are not WG Members of the relevant WG. All such non-WG Member Feedback is hereby irrevocably granted under the Contribution/Feedback License (Appendix A) without further action by such Eligible Persons. For avoidance of doubt, such Eligible Persons, by virtual of their status as Eligible Persons, have granted, and agreed to grant, the Contribution/Feedback License upon becoming an Eligible Person and have forfeited any right to object to the granting of this Feedback License.
  
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## **Appendix C: Formal Confidentiality Terms**

### **C.1 Mode Specific Terms**

C.1.1. [Intentionally Left Blank]

C.1.2. Formation Confidentiality

All WG Parties and WG Members are subject to the following confidentiality obligation to OpenCAPI, with each WG Party and WG Member being third-party beneficiaries thereof, immediately upon joining the WG and the consent of such new WG Members or WG Parties shall not be required. "WG Confidential Information" shall mean the items identified in the WG charter, optionally including the WG formation. The WG, TSC, and Board must all approve public release of WG Confidential Information by the WG.

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"Discloser" shall mean the WG Member or WG Party that provides the WG Confidential Information. "Recipient" shall mean all WG Parties that are members of this WG. The Discloser will not disclose any Confidential Information which the Discloser does not have the right to disclose to the Recipient.

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The Recipient may disclose the Discloser's WG Confidential Information to: (i) its employees and

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