

# Open19 Foundation Intellectual Property Rights Policy

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In accordance with the Bylaws of Open19 Foundation Inc. (“Open19”), all members of Open19 are subject to these terms. Additionally, these terms apply to non-members who participate in any Open19 activities.

- 1. Single-source projects.** The Open19 Board of Directors (the “Board”) may accept technology created by a single member and redistribute this technology to other members or to the public. Single-source projects are subject to the following licensing obligations:
  - a. Software.** All software associated with a project must be licensed under the MIT license (<https://opensource.org/licenses/MIT>), unless the Board agrees to the use of a different Open Source Initiative (OSI)-approved open source license.
  - b. Documentation.** Except as otherwise agreed by the Board, all documentation associated with a project must be licensed under either a Creative Commons Attribution license (CC-BY) or, in the case of technical specifications, under a Creative Commons Attribution-NoDerivs license (CC-BY-ND).
  - c. Patent licenses.** Upon submission of technology to Open19, the technology contributor irrevocably commits to grant any implementing party a worldwide, non-exclusive license, under the contributor’s Included Claims, to make, have made, use, import, offer to sell, lease, sell, promote and otherwise distribute products or services that otherwise would infringe the Included Claims, limited in scope to the third party’s implementation of the technology provided to Open19 by the contributor. This license must be granted under royalty-free and otherwise reasonable and non-discriminatory (“RAND-Zero”) terms. RAND-Zero terms may include a requirement that implementers grant reciprocal licenses to their analogous claims to contributor, a provision that suspends the license grant in the event an implementer initiates litigation against the contributor related to the particular technology, and other customary terms. “Included Claims” means those claims of a patent owned, controlled or licensable (without additional consideration other than to employees or Affiliates) by the contributor or an Affiliate that would necessarily be infringed by an implementation of the technology, precisely as delivered to Open19. An “Affiliate” is any entity that, directly or indirectly, owns, is owned by, or is under common ownership with, the contributor, as indicated by ownership of more than 50% of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body of the relevant entity. The patent license granted in this section co-exists with any patent licenses granted under an applicable open source license.
  - d. Feedback license.** A third party can optionally choose to provide written proposals for specific changes or additions to the technology (“Feedback”) directly to the original contributor. Feedback will be non-confidential. The original contributor will have no obligation to use Feedback. Except as otherwise agreed, the party providing

Feedback grants (on behalf of itself and its Affiliates) to the original contributor: (a) a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense, to copy, perform, display, and distribute the Feedback in any way, and to prepare derivative works that are based on or incorporate all or part of the Feedback, and (b) a royalty-free, worldwide, non-exclusive, sublicensable license, under those patent claims that read directly on the Feedback, to make, have made, use, import, offer to sell, lease, sell, promote and otherwise distribute Feedback in contributor's products or services.

- 2. Collaborative projects.** Open19 will also facilitate collaborative projects. Any communication (including oral communications) provided for the purpose of advancing an Open19 collaborative activity will be a "Contribution." The entity (or individual, in a case where an individual is acting in an individual capacity) making the Contribution is the "Contributor." Licensing obligations associated with Contributions depend on how Open19 uses the Contribution, as described below.
  - a. Software.** The MIT license will be the default license for collaborative projects, but prior to starting a software development project, the Open19 Board may identify a different Open Source Initiative-approved license that will apply as the outbound license for that project. All software Contributions in connection with that project will be licensed on an 'inbound = outbound' basis. That is, Contributors will license their associated Contributions inbound to Open19 under terms that are identical to the outbound license terms that Open19 has selected for that project. If a Contributor includes additional or different terms as part of a Contribution, the additional or different terms are void unless Open19 agrees otherwise in writing.
  - b. Documents and other works.** Apart from software, when a Contribution is included (in whole or in part) in any work of authorship created in connection with Open19 activities, the Contributor grants Open19 a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, fully-sublicensable copyright license to reproduce, create derivative works, distribute, display and perform the Contributions. Subject to the Contributor's continued copyright ownership in their Contributions, Open19 will own the copyright in any collective works, compilations, joint works or derivative works created in connection with Open19 activities, and will own the copyright in any works created by Open19 employees or agents. Open19 will exercise its rights and license its own copyrights in a manner consistent with its non-profit mission. Open19 expects to license most works out under a CC-BY license. Specifications will typically be licensed under CC-BY-ND terms.
  - c. Necessary Claims grant for specifications.** The Board can charter a working group to create technical specifications that define requirements necessary to facilitate interoperability between third party products or services, and the Board can formally approve the specifications for distribution (once approved, these are "Specifications"). The written charter for such a group may expressly define boundaries for technology areas that are included and excluded from the effort (i.e.,

that are in or out of “Scope”). Each Participant in a working group that creates a Specification agrees that if a patent claim that is owned, controlled or licensable (without additional consideration other than to employees or Affiliates) by that Participant or an Affiliate of the Participant becomes a Necessary Claim, then the Participant will grant, or will cause its Affiliate to grant, a Reciprocal License to any implementer of that Specification who requests such a license, subject to the exceptions described below.

- i. A **“Participant”** is the legal entity that employs or is otherwise the principal of an individual who participates in a working group (e.g. by joining a group mailing list, accessing member-only online forums, or attending working group meetings).
- ii. A **“Necessary Claim”** is any claim in a patent in any jurisdiction that would necessarily be infringed by a compliant implementation of the Specification. A claim is necessarily infringed only when it is impossible to avoid infringing it, because there is no non-infringing alternative for implementing the normative portions of the Specification. All other claims, even if contained in the same patent as Necessary Claims, are not Necessary Claims. Claims which would be infringed only by portions of an implementation that (a) are not expressly specified in the normative portions of the Specification, or (b) are out of Scope, are not Necessary Claims.
- iii. A **“Reciprocal License”** is a worldwide, non-exclusive license, limited to Necessary Claims, to make, have made, use, import, offer to sell, lease, sell, promote and otherwise distribute the portions of implementer’s products and services that comply with the normative portions of the Specification. A Reciprocal License must be granted on RAND-Zero terms. The license may require that the licensee grant a license to claims that the licensee owns, controls, or can license (without additional consideration other than to employees or Affiliates) to contributor that are necessarily infringed by implementations of the Specification. It may include a provision that suspends the license grant in the event an implementer initiates litigation related to the Specification, and may include other customary terms.
- iv. **Opt out.** The license obligation described above will not apply to patent claims that the Participant opts out. A Participant may opt out a claim by identifying the claim and the applicable portion of the Specification in writing to the Board at any time prior to formal approval of the Specification. The Board will provide notice and a substantially complete draft version of the Specification to Participants no less than 30 days prior to formal approval of a Specification. Participants may not opt out claims that read directly on Contributions made by the Participant that are embodied in the Specification.

- v. **Withdrawal.** Even after the date a Participant formally withdraws from a working group and ceases all participation (the “Withdrawal Date”), a Participant will be obligated to license those claims that became Necessary Claims prior to the Withdrawal Date, as well as Necessary Claims that read on portions of future versions of a Specification that existed prior to the Withdrawal Date if the portions are substantially the same as in the Specification as it was approved prior to the Withdrawal Date. Otherwise, no new obligations attach post Withdrawal Date.

**d. Confidentiality.**

- i. **Confidentiality of Contributions.** Contributions (a) that are clearly marked “confidential” or with a similar legend, (b) that, if disclosed orally, are described as confidential at the time of disclosure, or (c) that a reasonable observer would understand to be confidential due to unequivocal and objective facts and circumstances, will be deemed the “Confidential Information” of the Contributor. Contributions are otherwise non-confidential. A party receiving Confidential Information will maintain the Confidential Information in confidence with the same degree of care that it uses to protect its own confidential information (and at least exercise a reasonable degree of care). Confidential Contributions may be shared among parties that have agreed to these terms.
  - ii. **Confidentiality of draft and final deliverables.** Open19 collaborative activities will generally produce particular deliverables, such as technical specifications, software code, written reports, engineering notes, reference designs, or similar material (the “Deliverables”). All draft and final Deliverables will be deemed the Confidential Information of Open19 and be subject to the non-disclosure duty described above. The Board will determine the timing and nature of any public release of the Deliverables. In the event that a Contribution or portion of a Contribution that is Confidential Information under subsection (i) above is included in a Deliverable with the consent of the Contributor, then the confidentiality obligation associated with the included material will be deemed waived upon public release. Deliverables released publicly are non-confidential.
- e. Attribution; moral rights.** Open19 will use reasonable efforts to abide by industry norms and to honor requests related to individual attribution. Open19 reserves the right to attribute collaborative work to just “Open19,” however. Each Contributor, and each individual making a Contribution, waives any moral rights (or similar rights related to attribution or work integrity) to the maximum extent permitted by applicable law.

- 3. Alternative IP terms.** The Board may approve alternative intellectual property terms in connection with particular single-source or collaborative projects. These terms will be binding only on parties that expressly agree to them.
- 4. Trademarks.** Open19 will be permitted to use the name and corporate logo (or similar mark) of members in connection with communications about Open19 membership, subject to reasonable use limitations communicated by the member to Open19. Open19 members may use the Open19 name and corporate logo solely to communicate their membership in Open19, subject to a reasonable trademark use policy to be published by the Board. The Open19 name and trademarks may not be used to communicate compliance or conformance with any Open 19-distributed technology, and may not otherwise be used in connection with any member product or service, unless permitted by an applicable Open19 license agreement or Board-approved policy.
- 5. Authority; no other licenses.** Individuals acting within the scope of their employment or otherwise as an agent of a legal entity act on behalf of their employer or other legal entity. The individual represents that they have the right and authority to bind their employer or other principal to these terms. The bound entity represents and warrants that it has the right to grant the licenses described in these terms. Except as expressly described above, no intellectual property licenses are granted under these terms.