

Working Group Declaration

Whereas EPCglobal Inc. (hereinafter “EPCglobal”) intends to facilitate the cooperative development and publication of useful standards for radio- frequency identification (RFID) tags, in order to provide a common set of Specifications by which manufacturers and end users of such RFID tags may utilize an interoperable system for making and using RFID tags in reliance on this Declaration relative to intellectual property claims; this Declaration is intended as a binding agreement with EPCglobal and an admission required to participate in a Working Group of EPCglobal for the purpose of developing useful Specifications for radio-frequency identification tags. EPCglobal Working Group activity is generally intended to encompass sufficient aspects of (i) tag programming, operation and tag-reader communication protocols, (ii) reader compatibility and interface protocols with data processing systems, and (iii) information exchange protocols based upon data obtained from RFID tags, to provide a sufficient standard platform for the use of radio- frequency identification tags. The intent of the policies embodied herein is to facilitate adoption of such a set of Specifications while avoiding uncertainty to the extent possible regarding intellectual property claims in the Specifications. EPCglobal seeks to encourage the development, exploitation and competition of proprietary technology and innovative approaches to implementing such specifications, while avoiding blocking proprietary claims or monopolization of use of the Specifications.

Therefore, I/We, The Working Group Participant named below as an individual and/or as an agent of the below identified Participant, intending to be legally bound hereby, declare and agree to terms of participation in the Working Group activities of EPCglobal Inc. as follows:

1. DEFINITIONS

- 1.1 “Participant” means an individual or legal entity bound hereby.
- 1.2 “Representatives” means the individual(s) authorized by the Participant to represent the Participant in the activities of a Working Group. Such Representatives shall be specifically identified upon enrollment in a Working Group.
- 1.3 “Trustee” means EPCglobal Inc., its assigns or successors in interest. Actions of Trustee as referenced herein are actions authorized by the Board of Governors of EPCglobal.
- 1.4 “Specification” means a technical specification approved by the Working Group and ratified by the Trustee.
- 1.5 “Certified Compliant System” means any system (e.g. an RFID tag, an RFID reader, an ONS server), which has been certified in a manner established by the Trustee to comply with a Specification and is subject to compliance certification conditions established by Trustee. Such certification conditions shall include licensing obligations by the party seeking certification commensurate with those set forth herein in Section 3.1. “Candidate Certified Compliant System” means any system developed, or under development, solely for the purpose of obtaining compliance certification.
- 1.6 “Compliant Portion” means a portion, module, or component of a Certified Compliant System or a candidate Certified Compliant System which implements no more than is required to operate in accordance with the Specification and which performs or implements such function only as set forth in the Specification.
- 1.7 “Necessary Claims” means all present, pending and hereafter acquired patent claims that would be necessarily infringed by implementing the Specification. A claim is necessarily infringed only when it is not possible to avoid such infringement because there is no non-infringing alternative for implementing the Specification.
- 1.8 “Contribution” means any submission of concepts, data, suggestions, or revisions to a draft Specification, whether in written or oral form, made with the intention of inclusion thereof into the Specification.
- 1.9 “Affiliate” means any entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent of the voting power or equity in another entity (“Control”), or is controlled by another entity, or is under common Control with another entity, so long as such Control exists.
- 1.10 “Working Group” shall mean a body constituted by the Trustee for the purpose of developing a Specification.

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2. GENERAL

2.1 Participant understands, admits and consents to the terms hereof as a condition of our/my participation in a Working Group of EPCglobal, and in which we intend to participate for the purpose of establishing a Specification for Certified Compliant Systems. It is our intention that the Specification is to be made freely available for use in developing Candidate Certified Compliant Systems and for use in Certified Compliant Systems free of claims of infringement, or subject to defined licensing terms under Section 3.4 hereof, to the extent that such Certified Compliant Systems operate in accordance with the Specifications.

2.2 Designation of the Representative(s) by Participant is hereby made by an officer or equivalent individual having the power to bind the Participant to the terms and conditions hereof.

2.3 Participation in a Working Group shall not constitute an undertaking to make or use any system or component in accordance with the Specification and a Participant shall not be required to implement any Specification.

2.4. The Trustee shall ensure that all Participants in a Working Group have committed to this Declaration as a condition for participation in a Working Group.

2.5 The terms and conditions hereof are intended to be limited to and binding relative to each Working Group in which the Participant participates.

3. INTELLECTUAL PROPERTY

3.1 Agreement to Grant Licenses.

Subject to Section 2.5, 3.2, 3.3, 3.4 and 4.3 hereof, the Participant and its Affiliates shall not assert, and shall grant to the extent that it owns or has a right to grant, a nonexclusive, nontransferable, non-sublicensable, worldwide royalty-free and otherwise reasonable and non-discriminatory license upon request in, its Necessary Claims to other Participants in the Working Group, and to allow Participants and others to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such agreement to license shall not extend to any part or function of a product in which a Compliant Portion is incorporated, which part or function is not itself part of the Compliant Portion, and further provided that such Participants and others comply with Section 3.2 hereof. Participant and its Affiliates shall not transfer patents having Necessary Claims for the purpose of circumventing this Section, and any transfer shall be conditioned upon the obligation to license stated herein. The covenant of non-assertion and license herein shall not extend to any claims other than Necessary Claims.

With respect to component parts of a Compliant Portion that are otherwise not subject to certification, but which establish compliance with the Specification, such component parts shall be admitted to be capable of substantial non-infringing use with respect to Necessary Claims if suitable for use in connection with a Certified Compliant System, for the purposes of a claim of contributory infringement or provided under non-infringing intent for a claim of induced infringement. Participant shall license any intellectual property associated with any testing and compliance certification process in connection with the Specification on a royalty-free and otherwise reasonable and non-discriminatory basis for the purpose of conducting compliance certification tests and processes.

3.2 Reciprocity Required.

The Participant's agreement to Section 3.1 and 3.4 shall not be effective as to any party that does not make the patent license grant of Section 3.1 or 3.4 available on substantially equivalent respective terms with respect to the same Specification as that requiring a license from the Participant.

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3.3 Limited Agreement to Disclose.

In the event that the Participant is unwilling to provide the license of Section 3.1 to a work-in-progress of the Working Group(s) in which Participant has joined, such Participant agrees to promptly provide written notification to the Trustee of such Participant's intent not to license. After the Specification is approved by the Working Group, Participants therein shall be provided with at least 60 days notice prior to the anticipated date of ratification of the Specification by the Trustee. Notification of intent not to license shall be given no later than 30 days before the anticipated date of ratification of the Specification by the Trustee. Such notification shall specifically disclose and identify to the Trustee the claim(s) believed to be Necessary Claims and which are not subject to license. The Participant shall also identify any portion of a draft Specification or other work-in-progress, which is not subject to license. The Trustee shall have the discretion to return the draft Specification to the Working Group for revision to avoid the identified claim(s), to proceed under the provisions of Section 3.4 hereof, or to decline to ratify the Specification. Failure to provide such notification of intent shall constitute consent of the Participant to the provisions of Section 3.1. Provision of notification under this section shall not operate to revoke licenses granted hereunder to the Participant.

3.4 Reasonable and Non-Discriminatory Licensing

Notwithstanding any contrary provision hereof, the Trustee shall have the option, upon notification received in accordance with Section 3.3 of determining whether identified Necessary Claims shall be permitted for inclusion in the Specification. Such option will be granted only in extraordinary circumstances. In such circumstances, the Participant shall agree to license such Necessary Claims on reasonable and non-discriminatory (RAND) terms, and the Specification shall identify the Necessary Claims available for such license. The Trustee may require the Participant affirm that the Participant is willing to offer a license to its Necessary Claims on RAND terms to all implementers of the Specification, and to specifically state the terms of such license, including the manner in which any royalty is to be computed. In no event shall the Trustee approve, or the Participant assert, a royalty right in any Specification for which the notification of intent of Section 3.3 was not provided by the Participant. The Trustee shall have the right to seek a determination of the validity of any claims identified under the terms of Section 3.3, and approval of RAND licensing terms shall not constitute an admission by Trustee that such claims are valid or infringed by practice of the Specification. Under no circumstances shall the Trustee be obligated to exercise its discretion under this Section. Participants shall enjoy the benefit of any license obtained by the Trustee from a non-Participant granting rights in a patent having Necessary Claims.

3.5 No Other License

The Participant and its Affiliates retain the independent right to grant or withhold a nonexclusive license or sublicense of patents containing Necessary Claims for use other than in connection with the license granted in Section 3.1. No patent license, immunity or other right is granted under this Declaration by any Participant, its Affiliates, or any other party to any other Participant, its Affiliates, or any other party either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth herein. All rights not affected by this Declaration are expressly reserved by the Participant.

3.6 Transfer of Necessary Claims to Third Parties.

Any transfer by Participant to a third party of a patent having Necessary Claims shall include, in the transfer agreement, a provision that the transfer is subject to existing obligations of the transferor.

3.7 Contributions Otherwise Subject to Copyright

By making a Contribution of copyrightable material, including without limitation drawings, compilations of data, software, or text, the Participant shall grant to any party a worldwide, non-exclusive, royalty-free license to copy, publish, distribute and make derivative works that are based on or incorporate all or part of the Contribution, for use (a) in developing and publishing the Specification and related materials for which such Contribution was made; (b) in developing and implementing a Candidate Certified Compliant System or a Certified Compliant System; and (c) by other standards development organizations, such as ISO, solely for the purpose of adopting the same or a substantially related Specification. Such license shall be revocable with respect to any party, which fails to make the license of this Section or Section 3.1 available.

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4.0 Termination

4.1 Termination By Participant

Unless terminated as provided in this Section, this Declaration shall remain in full force and effect. The Participant may withdraw from Participation by terminating this Declaration at any time upon the giving of written notice to the Trustee. If the Participant participates in multiple Working Groups, such notice shall indicate which Working Groups are covered by such notice. Upon termination, licenses granted by other Participants under Sections 3.1 and 3.4 shall remain in full force and effect as to the terminating Participant only as to Specifications that have been approved and ratified prior to the date of termination.

4.2 Termination by Trustee.

Trustee may terminate this Declaration on written notice, if Participant breaches its obligations under this Declaration, provided Trustee shall first give Participant written notice and thirty (30) days opportunity to cure the breach. After the effective date of termination, Participant shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Section 4.3. Participants are encouraged to utilize alternative dispute resolution for disputes arising hereunder. The Trustee may terminate this agreement upon the Participant commencing litigation alleging direct or indirect infringement on the basis of a Necessary Claim asserted against a Compliant Portion, unless such litigation is consistent with the provisions of this Policy. Any such Trustee- initiated termination shall indicate whether the termination applies to Participant's Participation in all or only certain Working Groups.

4.3 Survival of Agreement to Grant License

Notwithstanding termination under Section 4.1 and 4.2, and except as otherwise provided herein, Participant's agreement to grant licenses as provided in Section 3.1, 3.4 and 3.7 shall remain in full force and effect: (i) for subject matter included in a draft Specification more than sixty (60) days before the date of Participant's termination, for which the Participant had not given notification under Section 3.3, even if the Specification is approved by the Trustee after the date of Participant's termination; and (ii) for any Contribution made by the terminating Participant to the Specification prior to the effective date of its termination. No license grant shall survive termination for Contributions not incorporated into, or withdrawn from, the Specification under Section 3.3 or 3.4.

5. REPRESENTATION. THE PARTICIPANT REPRESENTS THAT ITS REPRESENTATIVES TO THE WORKING GROUP SHALL NOT SUBMIT A CONTRIBUTION THAT ITS REPRESENTATIVES KNOW VIOLATES THE COPYRIGHT OR TRADE SECRET RIGHTS OF ANY OTHER PARTICIPANT OR THIRD PARTY.

6. OTHER PROVISIONS

6.1 No Transfer

Neither the Participant nor the Trustee may transfer, assign or sublicense any of its rights or obligations of participation under this Declaration without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

6.2 The Participant designates the Representative identified below for the purpose of receiving notice under this Declaration. The Participant may change the designated Representative by written notice to Trustee.

6.3 No Joint Venture

Nothing contained in this Declaration and no action taken by the Participant shall be deemed to render the Participant or its Affiliates an employee, agent or representative of Trustee or any other Participant or their Affiliates, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Participants or their Affiliates or Trustee.

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6.4 Governing Law

This Declaration shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of the State of Delaware, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction. This Declaration may be asserted against the Participant as a binding admission in defense of a claim of infringement in any jurisdiction.

6.5 Integration

This Declaration supersedes and replaces any and all prior representations, agreements and understandings relating to the participation in the Working Group, including without limitation any prior version of this Declaration. The terms of this Declaration cannot be amended without express consent of the Participant to any such revision.

6.6 Authority

The Participant represents and warrants that it is authorized to enter into this Declaration. The undersigned person represents and warrants that he/she is authorized to sign this Declaration on behalf of the Participant.

6.7 Specific Software Code Shall Not be Referenced in Specifications

EPCglobal Specifications shall not include software object code or source code in any required portion of the Specification. Further, the use of particular software code shall not be a requirement for conformance to the Specification. Specifications may refer to software code that demonstrates a reference implementation of the Specification as an optional portion of the Specification.

Agreed by: *Surname* _____

Participant Name _____

Address _____

Officer Name _____

Title _____

Signature _____

Date _____