

## SSI Forum

### INTELLECTUAL PROPERTY RIGHTS POLICY

This Intellectual Property Rights Policy ("Policy") is entered as of May 5, 2009 ("Effective Date") by and among each Member that has executed a Membership Agreement of the SSI Forum thereby agreeing to be bound by the terms hereof. The Members hereby agree as follows.

#### SECTION 1 DEFINITIONS

The following definitions shall apply to this Policy. Any undefined capitalized term used herein shall have the meaning set forth in the SSI Forum Bylaws ("Bylaws") and shall be deemed incorporated herein by reference as if fully set forth below.

- (a) **"Blade(s)"** means a physical device that is inserted into a Bladed System and provides storage and/or thin modular server capabilities.
- (b) **"Blade Mezzanine"** shall mean a computer board intended to be directly attached to a Blade, usually to provide additional function, connectivity, or capacity for the Blade.
- (c) **"Bladed System"** means a server chassis integrating networking, storage and compute Blades which share common power, cooling and management.
- (c) **"Compliant Portion"** means only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with all relevant portions of a Final Specification, and (ii) are within the bounds of the Scope.
- (d) **"Contribution"** means a submission by a Member proposing an addition to or modification of a Draft Specification or portion thereof, or an existing Final Specification or portion thereof, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a meeting, and attributed in the meeting minutes to the submitting Member, provided that the minutes are promptly provided to the individual representing the submitting Member, unless the submitting Member withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes. Any submission of software source code may only be made in writing by the Member making the submission pursuant to subsection (i) hereof or it shall not be deemed a Contribution pursuant to the terms of this Intellectual Property Rights Policy.
- (e) **"Module"** means a physical device that is inserted into a Bladed System and provides connectivity among Blades and other devices within the Bladed System, and/or between the Blades and other devices and external networks. The term Module does not include Blades or Blade Mezzanine.
- (f) **"Necessary Claims"** shall mean claims of a patent or patent application throughout the world that: (i) a Member or its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the nature agreed to be granted herein; and (ii) are necessarily infringed by implementing those portions of a Final Specification that are within the bounds of the Scope, provided that a claim is necessarily infringed only when there is no technically

reasonable non-infringing alternative for implementing such portions of a Final Specification within the bounds of the Scope. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims (x) other than those set forth above even if contained in the same patent or patent application as Necessary Claims; or (y) that read solely on any implementations of any portion of a Final Specification that are not within the bounds of the Scope; or (z) that, if licensable, would require a payment of royalties or other consideration by the licensor, Member, to third parties.

(g) **“Scope”** means those mechanical form factors, protocols, application program interfaces, hardware interfaces, test procedures and/or data structures of Modules solely to the extent disclosed with particularity in a Final Specification where the sole purpose of such disclosure is to enable interoperation, interconnection, interaction or communication between such Modules and other devices in Bladed Systems. Notwithstanding the foregoing, the Scope shall not include: (i) any technology that may be necessary to develop, design, manufacturer, sell or use any product or portion thereof that complies with a Final Specification but is not expressly set forth as mandatory in a Final Specification (examples of such technologies include without limitation basic computer or network technology, semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, encoding and decoding technology, encryption decryption technology, and connector internal design and manufacturing technology); or (ii) the implementation or use of other specifications published or otherwise made available but not developed and approved by the Corporation but referred to in the body of a Final Specification even if required for compliance with a Final Specification; (iii) any portion of any product or any combination of products (or portions of products) that are not required for compliance with a Final Specification such as any Processor, integrated circuits, intra-circuit buses or BIOS/firmware/drivers/libraries and software tools; and (iv) references to branded products.

## **SECTION 2 LICENSING OF MEMBER INTELLECTUAL PROPERTY RIGHTS**

(a) **Final Specification.** When a Draft Specification is adopted by the Corporation as a Final Specification, including revisions thereto, then unless Member has issued a valid Licensing Objection pursuant to Section 6.3.2 of the Bylaws, the Member and its Affiliates hereby agree to grant to other Members and their Affiliates under royalty free and otherwise reasonable and nondiscriminatory terms, a nonexclusive, non-sublicensable, nontransferable, worldwide license under its Necessary Claims to allow such Members to make, have made for such Member’s or its Affiliates own use, use, import, offer to sell, lease, 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 that is not itself part of the Compliant Portion. Each Member agrees that it will not intentionally transfer, and has not transferred, patents having Necessary Claims for the purpose of circumventing this Section 2(a). Such reasonable and non-discriminatory terms may include reasonable and non-discriminatory defensive suspension or termination provisions.

(b) **Reciprocity.** The provisions of Section 2(a), above, concerning the grant of patent licenses between Members shall not be effective as to any other Member or that other Member's Affiliates, if that Member or its Affiliates do not, in fact and practice, make the patent license grant of Section 2(a) available to the granting Members and their Affiliates.

(c) **Retention of Rights.** Nothing contained in this Section 2 shall be deemed as requiring a Member or its Affiliates to grant or withhold any license or sublicense of an individual Member's patents containing Necessary Claims to non-Members on such terms as the Member or its Affiliates may determine.

(d) **No Other License.** The Members agree no license, immunity or other right is granted under these Bylaws by any Member or its Affiliates to any other Members or their Affiliates or to the Corporation, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth in this Section 2.

(e) **Transfer of Necessary Claims.** Any transfer by Member or its Affiliates to an unaffiliated third party of a patent having Necessary Claims shall be subject to any licensing commitments undertaken pursuant to this Section 2. A Member or its Affiliates may choose the manner in which it complies with this Section 2(e), provided that any agreement for transferring or assigning Necessary Claims includes a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed on the Member or its Affiliates by standards bodies, specification development organizations, or similar organizations (or language of similar import).

(f) **Copyrights.** Each Member and its Affiliates hereby grants to the Corporation and each other Member and its Affiliates a worldwide, irrevocable, non-exclusive, non-transferable (except as otherwise provided in the Bylaws) sub-licensable, royalty-free copyright license to reproduce, create derivative works of, distribute, display, and perform the Contributions of the Members solely for the purposes of developing, and publishing Final Specifications. Subject to the Member's copyright ownership in their Contributions, the Corporation shall own all right, title, and interest in the compilation of Contributions forming the Final Specifications and each Member and its Affiliates hereby grants the Corporation a copyright license to their Contributions to the extent those Contributions are incorporated into the Final Specification sufficient to enable the Corporation to license the Final Specifications to all other Members and their respective Affiliates pursuant to Section 2(f). Upon the release of a Final Specification that has been finally adopted by the Board of Directors, the Corporation grants and agrees to grant the Members and their Affiliates a worldwide, non-exclusive, royalty-free copyright license to reproduce, distribute and display such Final Specification as reasonably necessary to implement such Final Specification. This Section 2(f) shall survive any withdrawal from membership of such granting Member.

(g) **Reference Examples and Sample Code.** A Final Specification may include implementation or reference examples but such implementation or reference examples shall not be subject to the patent license in Section 2(a) of the SSI Forum IPR Policy unless they are specifically identified within a Final Specification as being licensed. For clarity, a reference to a branded product is not subject to the patent license in Section 2(a) even if the Final Specification states that the branded product "shall be used", "must be used" or includes similar language. A Final Specification may also include source or object code and design templates, provided that

any such source code and design templates shall only be considered part of a Final Specification for purposes of the copyright licenses set forth in Section 2(f).

### **SECTION 3 TRADEMARKS**

In the event that the Corporation proposes to adopt any other name or logo as a trademark or trade name (collectively, “**Trademarks**”), the Corporation shall notify the Members in writing (including a writing in electronic medium) of the proposal within forty five (45) days of such adoption. The Corporation shall take such steps as the Board of Directors deems necessary and proper to protect its rights under such Trademarks adopted for use by the Corporation. In furtherance thereof, the Board of Directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the Members. Each Member agrees that unless it provides written notice to the Executive Director of that Member’s challenge to the proposed Trademark prior to its adoption by the Board of Directors, then the Member and its Affiliates shall not assert against the Corporation or any Member any trademark or trade name rights they may have or thereafter possess in the proposed Trademarks. Each Member agrees not to use or adopt any trademarks for any product, service, guideline or specification likely to cause confusion with any of the Trademarks adopted by the Corporation, unless agreed by the Board of Directors. In no event shall the Corporation reference or adopt any trademark owned by a Member or its Affiliates in any Final Specification, or otherwise for use by the Corporation, without first obtaining the written authorization of the Member or its Affiliates, as applicable.

### **SECTION 4 SURVIVAL OF AGREEMENT TO GRANT LICENSE**

Notwithstanding the dissolution of the Corporation or a Member’s termination of membership (as set forth in Section 12.9 of the SSI Forum Bylaws), unless a Member has timely made and not withdrawn a Licensing Objection (as defined in Section 6.3.2 of the Bylaws) a Member’s agreement to grant a license as provided in Sections 2(a), above, shall remain in full force and effect for: (a) any Necessary Claim to a Contribution made by such Member that becomes part of the particular version of any Final Specification for which the Contribution was made; (b) any Necessary Claim to a Final Specification that has been finally adopted by the Corporation prior to the effective date of the Member’s termination or expiration of membership; and (c) any Necessary Claim to a Final Specification resulting from a Draft Specification in which the Licensed Review Period as defined in Section 6.3.1 of the Bylaws is concluded prior to the effective date of the Member’s termination or expiration of membership unless the Member has provided notice of its termination pursuant to Section 12.9.2 of the Bylaws prior to the last day of the License Review Period. Notwithstanding the generality of the foregoing, the obligations set forth in (a) and (b) above will additionally survive to the extent such Necessary Claims are both: (i) necessary for future Final Specifications to be backwards compatible with the prior Final Specifications (i.e., designed to fully interoperate, communicate or connect with or to products that comply with the prior Final Specification); and (ii) used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Necessary Claims were used in a prior Final Specification for which the Member is obligated to grant licenses. Except as set forth in this Section 6, a withdrawn, terminated or former Member shall not be subject to any additional obligation to license its Necessary Claims. Further, for the purposes of this section, an Affiliate of a Member that ceases to be an Affiliate of such Member will be considered a withdrawn Member under this section at the time such Affiliate ceases to be

an Affiliate of such Member.

**SECTION 5 EXCEPTION IN THE EVENT OF NONCOMPLIANCE**

The agreement to license, which survives under Section 4, shall terminate completely as to any Final Specification which is not within the Scope that was in effect prior to the effective date of the Member’s termination or expiration or Membership, or prior to the effective date of dissolution of the Corporation.

**SECTION 6 CHOICE OF LAW**

Any claim arising under or relating to this Intellectual Rights Policy shall be governed by the internal substantive laws of the State of New York, without regard to principles of conflict of laws.

**SECTION 7. FINAL SPECIFICATION RELEASE AND PUBLICATION**

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

***“Important Information and Disclaimers:***

© Copyright [insert year] by SSI Forum. All rights reserved.

1. THE SERVER SYSTEM INFRASTRUCTURE FORUM (“SSI FORUM”) AND ITS MEMBERS MAKE NO WARRANTIES WITH REGARD TO THIS SSI SPECIFICATION (“SPECIFICATION”), AND IN PARTICULAR DOES NOT WARRANT OR REPRESENT THAT THIS SPECIFICATION OR ANY PRODUCTS MADE IN CONFORMANCE WITH IT WILL WORK IN THE INTENDED MANNER. NOR WILL THE SSI FORUM OR ITS MEMBERS ASSUME ANY RESPONSIBILITY FOR ANY ERRORS THAT THE SPECIFICATION MAY CONTAIN OR HAVE ANY LIABILITIES OR OBLIGATIONS FOR DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHETHER ARISING FROM OR IN CONNECTION WITH THE USE OF THIS SPECIFICATION IN ANY WAY.

2. NO REPRESENTATIONS OR WARRANTIES ARE MADE THAT ANY PRODUCT BASED IN WHOLE OR PART ON THIS SPECIFICATION WILL BE FREE FROM DEFECTS OR SAFE FOR USE FOR ITS INTENDED PURPOSE. ANY PERSON MAKING, USING OR SELLING SUCH PRODUCT DOES SO AT HIS OR HER OWN RISK.

3. THE USER OF THIS SPECIFICATION HEREBY EXPRESSLY ACKNOWLEDGES THAT THE SPECIFICATION IS PROVIDED AS IS, AND THAT THE SSI FORUM AND ITS MEMBERS MAKE NO REPRESENTATIONS, EXTEND NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED ORAL OR WRITTEN, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OR REPRESENTATION THAT THE SPECIFICATION OR ANY PRODUCT OR TECHNOLOGY UTILIZING THE SPECIFICATION OR ANY SUBSET OF THE SPECIFICATION WILL BE FREE FROM ANY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY, INCLUDING PATENTS, COPYRIGHTS AND TRADE SECRETS NOR DO THE SSI FORUM OR ITS

MEMBERS ASSUME ANY OTHER RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE SPECIFICATION OR SUCH PRODUCTS.

4. A NON-EXCLUSIVE COPYRIGHT LICENSE IS HEREBY GRANTED TO REPRODUCE, DISTRIBUTE AND DISPLAY THIS SPECIFICATION AS REASONABLY NECESSARY TO IMPLEMENT THIS SPECIFICATION PROVIDED THIS "IMPORTANT INFORMATION AND DISCLAIMERS SECTION (PARAGRAPHS 1-6) IS PROVIDED IN WHOLE.

5. EACH MEMBER AND ITS AFFILIATES SHALL GRANT PATENT LICENSES IN ACCORDANCE WITH SECTION 2 OF THE SSI FORUM IPR POLICY TO ANY OTHER MEMBER AND SUCH OTHER MEMBER'S AFFILIATES UPON REQUEST. FOR PURPOSES OF CLARITY, NO LICENSES ARE GRANTED FOR BRANDED PRODUCTS\* (INCLUDING BUT NOT LIMITED TO VENDOR-SPECIFIC PART NUMBERS) REFERENCED IN THIS SPECIFICATION. BRANDED PRODUCTS REFERENCED IN THIS SPECIFICATION MAY BE PURCHASED DIRECTLY FROM THE MANUFACTURER OF SUCH BRANDED PRODUCTS OR ITS AUTHORIZED DISTRIBUTORS.

6. NO OTHER LICENSE, EXPRESS OR IMPLIED, BY ESTOPPEL OR OTHERWISE, TO ANY OTHER INTELLECTUAL PROPERTY RIGHTS IS GRANTED.

\* No right, title, or interest in or to any trademarks, service marks, or trade names of any Member is granted hereunder. <<insert any of the marks referenced>> -related logos, marks and names are trademarks or registered trademarks of <<Member owning such marks>> in the U.S. and other countries."

Member and its Affiliates agree to include the above notice on all Specifications and further agree to retain such notice in any Specification that the Member or its Affiliates reproduce.

The Corporation shall identify any marks referenced in the Final Specification and their owners in the above notice as prescribed. No Specification shall be published as a Final Specification without first obtaining written permission as set forth in Section 3 of this IPR Policy concerning the use of trademarks."

## **SECTION 8. MODIFICATIONS OR AMENDMENTS**

No amendment to this Intellectual Property Rights Policy shall become effective except upon twenty (20) days prior written notice to the Members.