

iNEMI INTELLECTUAL PROPERTY POLICY

ARTICLE I - DEFINITIONS

- 1.1 The following definitions shall apply throughout this Intellectual Property Policy. All terms that are defined (in UPPERCASE or Title Case) in the Project Participation Agreement or the iNEMI Bylaws shall have the same meaning (regardless of case used) in this statement of iNEMI Intellectual Property Policy.
- 1.2 Background Patents, as used in reference to a Project, means all patents issued or pending applications in the United States or other countries on a design, invention or improvement made or conceived prior to initiation of that Project that are owned or controlled and disclosed by a Member and in the good faith opinion of that Member cover or are reasonably expected to cover any product, device, apparatus, equipment, composition, method or process to be developed or employed in the course of work on that Project.
- 1.3 Background Copyrights, as used in reference to a Project, means all copyrights in the United States and other countries in all copyrightable materials, including software, existing prior to initiation of that Project that are disclosed or supplied by a Member for use in the work on the Project.
- 1.4 Background Technical Information, as used in reference to a Project, means all trade secrets, know how, and mask works existing prior to initiation of that Project that are disclosed by a Member for use in work on that Project.
- 1.5 Background Technology means all Background Patents, all Background Copyrights and all Background Technical Information owned or controlled by a Member. Background Technology does not include trademarks or trade names.
- 1.6 Necessary Background Technology means Background Technology that may be necessary or essential to carry out work on the Project, or to make or use any product, apparatus, equipment or composition or to use any method or process resulting from the Project. The scope of Necessary Background Technology is defined by the Statement of Work describing the Project that is incorporated into the Project Statement.
- 1.7 Project Information means information developed by one or more Project Participants in the course of work on a Project under a Project Statement.
- 1.8 Project Invention means any design, invention, copyrightable material, or improvement, made or conceived by one or more Project Participants in the course of work on a Project under a Project Statement.
- 1.9 Subsidiary of a Participant means a corporation or other legal entity (i) at least thirty percent (30%) of whose shares or other securities entitled to vote for election of directors

(or other managing authority) is now or hereafter controlled by such Participant either directly or indirectly, or (ii) which does not have outstanding shares or securities but at least thirty percent (30%) of whose ownership interest representing the right to manage such corporation or other legal entity is now or hereafter owned and controlled by such Participant either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a Subsidiary of such Participant only as long as such control or ownership and control exists.

ARTICLE II - INTELLECTUAL PROPERTY RIGHTS

2.1 Participant Background Technology

- (a) Prior to participating in a Project, a Member must submit a written declaration (“Declaration”) to the Executive Secretariat of iNEMI and the Project Manager, which identifies, subject to the provisions of 2.10, its Background Technology that the Member believes, at its sole discretion, may be necessary, essential or useful to carry out work on the Project. In such Declaration, the Member shall elect from the following options concerning use of each separate element (Background Technical Information, Background Patents and Background Copyrights) of such Member’s Background Technology by other Project Participants:
 - (i) The Member shall identify separately each element of such of its Background Technology that it will freely share with other Project Participants under Section 2.2. Such Background Technology may include Confidential Information under Section 2.10.
 - (ii) The Member shall identify separately each element of such of its Background Technology that it will share with other Project Participants under, Section 2.3 and specify terms and conditions for licensing such elements of such Background Technology to the other Project Participants. Such Background Technology may include Confidential Information under Section 2.10.
 - (iii) The Member shall identify such of its Background Technical Information that it elects not to disclose to other Project Participants and such of its Background Patents and Background Copyrights that it elects not to grant rights to other Project Participants. This option shall apply to all Background Technology, unless a designation is made under Section 2.1(a)(i) or (a)(ii).
- (b) Regardless of the selection under Section 2.1(a), each Member should use reasonable efforts and good faith to identify in its Declaration any and all Necessary Background Technology; however, failure to identify any elements of Necessary Background Technology in no way affects the rights of any Project Participant and does not constitute a breach of agreement. Such identification should be sufficient to communicate the general nature of the Necessary Background Technology, including

the existence of pending patent applications and issued patents, but it need not be a full disclosure of such Necessary Background Technology.

- (c) A Member providing notice to the Executive Secretariat or the Project Manager of an intent to participate in a Project must submit its Declaration required under Sections 2.1(a) and (b) within forty-five (45) days from the time of such notification. If it has failed to provide such Declaration within that period, such Member shall be deemed to have withdrawn its request to be a Project Participant in such Project.
- (d) A Project Participant may amend the selected options of Sections 2.1(a) and (b) during the life of the Project to allow disclosure of additional Background Technology developed or identified since the beginning of the Project. In addition, a Project Participant may amend the terms and conditions of any original declaration under Section 2.1 (a)(ii) to provide more favorable terms and conditions.

2.2 Freely Shared Background Technology

- (a) Following the initiation of a Project, each Project Participant shall make a good faith effort to disclose any Background Technical Information identified under Section 2.1(a)(i) as promptly as is reasonably convenient to the other Project Participants. The content of the disclosure shall be at the sole discretion of the Project Participant.
- (b) Each Project Participant grants to each other Project Participant and their Subsidiaries a non-exclusive, worldwide, irrevocable, royalty-free unrestricted license under any of its Background Patents and Background Copyrights identified under Section 2.1(a)(i) in its Declaration, and a non-exclusive, worldwide, irrevocable, royalty-free unrestricted license to use any of its Background Technical Information that is identified under Section 2.1 (a)(i) of its Declaration and disclosed under 2.2(a). This license to use such Background Technical Information is subject to the confidentiality provisions of Section 2.10, and it shall not be construed or interpreted to imply a license under any Background Patents or Background Copyrights that have not been separately identified under Section 2.1(a)(i) of that Declaration.

2.3 Licensing of Background Technology

- (a) Each Project Participant shall offer each other Project Participant and their Subsidiaries a non-exclusive, worldwide license under any elements of its Background Technology that it has identified under Section 2.1(a)(ii), under the terms and conditions specified in its Declaration under Section 2.1. The terms and conditions for licensing shall be no less favorable to terms and conditions for licenses offered to other parties who are not Project Participants. The content of the disclosure shall be at the sole discretion of the Project participant.

- (b) No Member shall obtain any rights or licenses under such Background Patents or Background Copyrights identified under Section 2.1(a)(ii), except as expressly set forth in a separate license agreement.
- (c) Except as stated in Section 2.10 herein, or as expressly set forth in a separate license or non-disclosure agreement with respect to Background Technical Information identified under Section 2.1(a)(ii), no Project Participant shall have any obligation or restriction with respect to the use or disclosure of any such information.

2.4 Background Technical Information

No Project Participant shall have any obligation with respect to use or disclosure of any Background Technical Information or other information that is received from any other Project Participant, (even if identified as restricted or not available in a Declaration under Section 2.1), unless and to the extent such Background Technical Information or other information is subject to Section 2.10 hereof, or is received under a separate non-disclosure agreement between the receiving Project Participant and the disclosing Project Participant.

2.5 Un-declared Background Technology

If during the course or completion of a Project a Project Participant determines that a portion of his un-declared Background Technology is critical to the implementation of, or has claims related to, the Project results, the Project participant shall make such Background Technology available to all Project participants under Section 2.1(a)(ii).

2.6 Project Inventions

- (a) Project Inventions conceived or made in the course of performance of work on a Project solely by an employee or employees of one Project Participant shall be the sole property of that Project Participant subject to the rights and licenses granted under Section 2.7.
- (b) Patent applications for Project Inventions made under Section 2.6(a) may be filed or not filed, at the discretion of the owner of such Project Inventions. The owner will bear all related costs including costs of filing, prosecuting and maintaining such applications.
- (c) Project Inventions conceived or made jointly by an employee or employees of one Project Participant and an employee or employees of another Project Participant in the course of performance of work on a Project may be jointly owned by such Project Participants, subject to the rights and licenses granted under Section 2.7.

- (d) The Project Participant having the most employees that is co-inventor of a joint Project Invention shall have the first opportunity to elect to file a patent application directed to the Project Invention. In case of a tie, the Project Participant with the greatest annual revenues shall have the first opportunity to elect to file a patent application directed to the Project Invention. Subsequent opportunities to file follow the order of the number of co-inventors of each such Project Participant, and, in case of tie, the annual revenues of each Project Participant. If the Project Participant having the first opportunity elects not to file, the next Project Participant in order may elect to file, the process being repeated until all Project Participants jointly owning the Project Invention have had an opportunity to elect to file a patent application directed thereto.
- (e) The Project Participant filing a patent application under Section 2.6(d) shall also have the first opportunity to elect to file corresponding patent applications in foreign countries. Other Project Participants jointly owning the invention may elect to file in foreign countries, the order of opportunity for such election being that of Section 2.6(d). The first named Project Participant shall cooperate with the other Project Participants in efforts to obtain patents in countries not elected by the first-named Project Participant.
- (f) The Project Participant making an election under Section 2.6(d) or (e) to file a patent application in any country shall bear all costs and expenses relating thereto, including maintenance fees for such application and patents issuing thereon.
- (g) Any Project Participant having an opportunity to elect to file a patent application for a joint Project Invention under Section 2.6(d) or (e) shall, within three (3) months of a notice from another joint owner of intent to file, notify each other Project Participant that is a joint owner of the Project Invention of its election, or shall be deemed to have waived its right to make such election.

2.7 Licenses Under Project Inventions and Information

- (a) Each Project Participant shall have an irrevocable, non-exclusive, royalty-free, worldwide license for any and all purposes under all Project Information and Project Inventions disclosed to such Project Participant, and under any patents based on any Project Inventions.
- (b) No license or other rights are intended or implied by the license under Section 2.6(c), for example with respect to any Background Patents or other patents of any Member, except as otherwise expressly stated in a separate agreement or in a Declaration under Section 2.1(a)(i).

2.8 Disclosure of Project Inventions

Upon the first filing of a patent application based on any Project Invention under Section 2.6, by an owner of such Project Invention, such owner shall disclose promptly to all Project Participants the application serial number and a summary of the Project Invention, which shall be held confidential pursuant to Section 2.10.

2.9 Project Information

- (a) Any Project Information developed in the course of performance of work on a Project solely by employees of one Project Participant shall remain the property of that Participant subject to the rights and licenses granted under Section 2.7, but it shall be disclosed promptly to all other Project Participants and shall be held confidential pursuant to Section 2.10.
- (b) Any Project Information jointly developed in the performance of a Project by employees of more than one Project Participant shall be deemed the joint property of such Project Participants. Each Project Participant jointly owning Project Information shall have an unrestricted right to disclose and license such joint Project Information subject to the rights and licenses granted under Section 2.7.

2.10 Confidentiality

- (a) Confidential Information shall mean Background Technical Information and Project Information in tangible form marked as confidential or proprietary (1) disclosed by one Project Participant (the disclosing Project Participant) to another Project Participant (the receiving Project Participant) in furtherance of work under a Project or (2) developed jointly by two or more Participants during work pursuant to a Project and marked as confidential or proprietary at the time of disclosure to a receiving Project Participant. Confidential Information discussed initially in any other form shall be protected under this Agreement only if the Project Information is designated as confidential at the time of disclosure, summarized in writing, marked as confidential and transmitted to the receiving Project Participant within thirty (30) days after the initial disclosure.

Confidential Information shall not include any information:

- i. which is independently developed by the receiving Project Participant, solely by personnel with no access to Confidential Information; or
- ii. which is lawfully received free of restriction from another source having the right to so furnish such information; or

iii. after it has become available to the public without breach of this Section 2.10 by the receiving Project Participant, or

iv. which at the time of furnishing to the receiving Project Participant was known to such Project Participant free of restriction and evidenced by documentation in such Project Participant's possession;

v. which the disclosing Project Participant agrees in writing is free of restriction; or

vi. which is necessarily disclosed by a Project Participant's commercial offering of a product or service pursuant to a license under Section 2.7.

vii. which is released pursuant to a governmental or judicial order, -provided that the receiving; Project Participant gives notice to the disclosing Project Participant of the order as is reasonable prior to disclosure.

- (b) Each receiving Project Participant agrees to not disclose any Confidential Information received hereunder to any third party, and to restrict disclosure of such Confidential Information to employees who have a need to know same for purposes of work related to the Project using the same degree of care, but no less than reasonable care, as it uses to protect like information of its own that it does not wish disclosed. This obligation shall extend for a period up to ten(10) years as agreed upon by the parties in writing prior to the disclosure of the Confidential Information hereunder. In the absence of an agreement by the parties otherwise the period shall be deemed to be three (3) years following the date of disclosure.

2.11 Export Control

The parties acknowledge that any products, software, and Project Information provided under this agreement are subject to the export laws and regulations of the U.S. and other countries and any use or transfer of such products, software, and Project Information must be authorized under those regulations. Each party receiving products, software, or Project Information under this agreement agrees that it will adhere to the export administration laws and regulations of the U.S. and other countries and shall not export or re-export any technical data or products received hereunder or the direct products of such technical data to any proscribed country listed in the U.S. Export Administration Regulations unless properly authorized by the Government.

2.12 Right to Grant Sublicenses

The grant of each license to a Project Participant hereunder includes the right to grant sublicenses within the scope of such licenses to any Subsidiary of that Project Participant for so long as it remains its Subsidiary and subject to all of the associated obligations and restrictions imposed hereunder on that Project Participant.

2.13 Nonassignability

No Licenses or rights under this agreement shall be assignable or transferable (in insolvency proceedings, by reason of a corporate merger, or otherwise) by any Project Participant without the express written consent of the Project Participant granting the license. Notwithstanding the foregoing, in the event that a Project Participant is a wholly owned subsidiary of a parent company, the Project Participant may freely assign owned licenses and rights hereunder to its parent company or to another Subsidiary of the parent company.

2.14 Effect of Terms

The rights and responsibilities set forth in this policy shall be presumed to apply to a Project, unless otherwise agreed to in writing in the Project Statement. Nothing herein shall be construed to be limiting the rights of the Project Participant's to agree upon terms and conditions that they deem appropriate for a Project.

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