

DDEX Intellectual Property Policy for Members

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By becoming a Member of DDEX, Member agrees to the terms of this Intellectual Property Policy (“IP Policy”). These terms are a binding agreement between the Member and DDEX. Capitalized terms not defined herein shall have the meanings given to them by the DDEX Operation Agreement.

1. Purpose of Intellectual Property Policy

DDEX’s and DDEX Member’s activities related to the creation, development, and contribution of intellectual property undertaken to further the objectives set forth in Section 2.3 of the DDEX Operating Agreement are governed by this IP Policy. This IP Policy also defines disclosure and licensing requirements relating to intellectual property that is, or may be necessary, to the implementation of the Standards.

2. Applicability to Members of DDEX

- 2.1 This IP Policy is applicable to the entirety of DDEX’s membership including Charter Members, Contributing Members, and Participating Members as such categories are defined and described in DDEX’s Operating Agreement.
- 2.2 Subscription by written agreement to the terms and conditions of this IP Policy is a prerequisite to admission to membership in DDEX.

3. Definitions

- 3.1. “Adopter” means a person or entity that implements a Standard (in whole or in part).
- 3.2. “Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under direct control with, a Member. Control for purposes of this definition shall mean direct or indirect beneficial ownership of more than fifty percent of the voting stock, or decision-making authority in the event there is no voting stock, in the entity.
- 3.3. “Contribution” or “Contributed” means any data or information contributed by a Member in the development of a Standard which is ultimately incorporated into that Standard.
- 3.4. “Committee Draft” means a Standard that is in the Consultation Phase as contemplated by the “Procedures for DDEX Standard Development and Maintenance” document.
- 3.5. “Disclosure Statement(s)” shall have the meaning set forth in Section 6.6 below.
- 3.6. “Essential Claims” means claims of a patent or patent applications, other than design patents and design registrations, that are: (i) owned or controlled by a Member now or at any future time; and (ii) are infringed by implementation of the applicable Standard, where such infringement cannot be avoided by another technically reasonable non-infringing alternative for implementing such Standard. For purposes of clarification,

a claim may be an Essential Claim whether it is disclosed under Section 6.2, Section 6.6, or not at all.

Notwithstanding the foregoing, “Essential Claims” does not include any claims: (a) that read solely on an optional implementation example included in such Standard; (b) other than those set forth above, even if contained in the same patent as Essential Claims; or (c) that, if licensed, would require a payment of royalties by the licensor to third parties that are not Affiliates.

Also notwithstanding the foregoing, “Essential Claims” does not include claims that cover: (w) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with such Standard, but are not themselves expressly set forth in such Standard; (x) the implementation of other published specifications developed elsewhere but referred to in the body of such Standard; (y) any portions of any product and any combinations thereof the purpose or function of which is not required for compliance with such Standard; and (z) any software code set out in such Standard for purposes of illustration, sample implementation, or reference.

- 3.7. “IP Policy” means this DDEX “Intellectual Property Policy for Members” document.
- 3.8. “IP Notice Period” shall mean, with respect to any proposed Standard or portion thereof, a period of thirty (30) calendar days following receipt of the notice from DDEX by the designated Member representative.
- 3.9. “Licensing Statement” shall have the meaning as set forth in Section 6.9 below.
- 3.10. “Member” means an entity or person that has executed a Membership Agreement with DDEX and includes Charter Members, Contributing Members, and Participating Members as such categories are defined and described in DDEX’s Operating Agreement.
- 3.11. “DDEX” means Digital Data Exchange, LLC, a non-profit corporation organized under the laws of the State of Delaware.
- 3.12. “DDEX Standard” means a Standard declared as a DDEX Standard by the DDEX Board of Directors in accordance with the “Procedures for DDEX Standard Development and Maintenance”.
- 3.13. “Objective Review Criteria” means that the applicable documentation for a particular Notice Period has sufficient description and identification of methods and processes to enable Members to address the following during the applicable IP Notice Period: (a) properly evaluate their patents (both registered patents and patent applications); (b) give a meaningful patent Disclosure Statement; and (c) properly evaluate and declare their Licensing Statement.

- 3.14. “Representative(s)” means any person or persons who, on behalf of a Member, attend the Working Group meetings regarding the applicable Standard in question.
- 3.15. “Review Documentation” means a document or documents that shall include but not be limited to the Committee Draft which is the subject of an IP Notice Period and must be delivered to the Members in the notification of that IP Notice Period. The Review Documentation shall satisfy the Objective Review Period Criteria which constitutes the basis for the Calling of the IP Notice Period, and, which, in turn, constitutes the basis for any Disclosure Statement and Licensing Statement by a Member during such Notice Period.
- 3.16. “Standard” shall have the meaning as set forth in “Procedures for DDEX Standard Development and Maintenance” document, and includes, but may not be limited to, Working Draft, Committee Draft, Draft Standards, New and Revised Standards.
- 3.17. “Working Draft” means a Standard that is in the Development Phase as contemplated by the “Procedures for DDEX Standard Development and Maintenance” document.
- 3.18. “Working Group” shall have the meaning as set forth in the “Procedures for DDEX Standard Development and Maintenance”.

4. Confidentiality

Any information discussed or disclosed in the course of deliberations, meeting or discussions of DDEX, its committees and working groups, shall be confidential, and subject to the confidentiality protections of the DDEX Operating Agreement. Notwithstanding the foregoing, certain meetings of DDEX Members or Working Groups may be expressly designated as “non confidential” meetings. Such designation will occur at the beginning of each such meeting. The Members attending such meeting shall use their best efforts to repeat such designation promptly upon the addition of any new participants in such meeting, provided that any failure to do so shall not create any confidentiality obligation with regards to such meeting. During such expressly designated meetings, a Member’s disclosure of its trade secrets or other confidential information in the course of such deliberations will not be subject to any obligation of confidentiality or nondisclosure on DDEX or other Members. This IP Policy does not preclude any Member or Member’s Representative from entering into separate confidentiality agreements with other Members of DDEX.

5. Normative Reference Policy.

Any normative references included in a Standard will be in accordance with the Normative Reference Policy set forth in Appendix A of this IP Policy.

6. Member Provision of Proprietary Technology

- 6.1 Except as provided in this Section and Section 7.2, each Member shall retain all ownership of its patent, copyright, trade secret and other proprietary rights in and to any inventions, works, data or technologies which it owns.
- 6.2 At any time prior to notification to Members of the IP Notice Period for a particular Committee Draft, if a Member's Representative participating in DDEX has personal knowledge that any of the Member's patents or patent applications contain Essential Claims, (at such time that the Standard is declared as a DDEX Standard by the DDEX Board of Directors) then the Representative **may disclose** the existence of such Essential Claims either to the Chair of the relevant working group or in a meeting of the DDEX plenary body, committee, or Working Group in which such Standard is under consideration. Such voluntary disclosures shall be promptly documented by the Member in writing or via email, to the Chair of the Working Group or subgroup in which such Standard is under consideration and also shall be reflected in the minutes of the relevant Working Group or other body.
- 6.3 In the course of determining that a Working Draft should be declared a Committee Draft by a Working Group (as set out in the Procedures for DDEX Standard Development and Maintenance), a Working Group shall, upon a proper vote of the Members of the Working Group in accordance with the voting rules for the Working Group (also set out in the Procedures for DDEX Standard Development and Maintenance) initiate an IP Notice Period (hereinafter referred to as a "Call of an IP Notice Period " or the "Calling of an IP Notice Period"). In order to authorize a Call of an IP Notice Period, the Working Group must, in addition to any other terms and conditions set forth in this IP Policy satisfy the following conditions: (i) the Working Group must identify the specific Review Documentation, that shall include but not be limited to the Committee Draft, which will constitute the basis for the IP Notice Period and which, in turn, will constitute the basis for the Members' Disclosure Statements, as contemplated by Section 6.6 below, and Licensing Statements, as contemplated by Sections 6.9 to 6.14 below; (ii) the Review Documentation must be sufficiently detailed to satisfy the Objective Review Period Criteria; and (iii) as a part of each vote by a Working Group to approve a Call of an IP Notice Period, the Working Group must also approve an affirmative statement that such Working Group has evaluated the Objective Review Period Criteria and concludes that the Review Documentation including the Committee Draft that is the subject of the applicable IP Notice Period fully satisfies such Objective Review Period Criteria.
- 6.4 The chairperson of the Working Group shall report to DDEX the results of each Working Group vote related to the Calling of an IP Notice Period. If the Working Group has voted to call an IP Notice Period, DDEX shall proceed with the process set forth in Section 6.5.
- 6.5 In the event that DDEX receives notice that an IP Notice Period has been called DDEX shall provide each Member identified in DDEX records with a

written notice that the IP Notice Period has been called and shall notify each Member that (i) Members may be required, during such Notice Period, to provide, if applicable (a) a Disclosure Statement, as contemplated in Section 6.6; and (b) a Licensing Statement, as contemplated by this Sections 6.9 to 6.13, and (ii) may have an opportunity to review and comment on the Committee Draft during the IP Notice Period. A copy of the applicable Review Documentation (including the Committee Draft) shall accompany the applicable notice from DDEX.

- 6.6 During an IP Notice Period notified to Members in accordance with Section 6.5, if a Member's Representative has personal knowledge (i) that any of such Member's patents or published patent applications contain Essential Claims, such determination to be based only upon the applicable Review Documentation that is the basis of the applicable Notice Period, then the Representative ***shall disclose***, in writing or via e-mail, the existence of any such patents, claims, or published patent applications by providing the registration or application number/serial number for the applicable published patent application to the Chair of the Working Group or Sub-Group in which such draft is under consideration and (ii) that any patent application of such Member which has *not* yet been published anywhere in the world (hereinafter, "Non-published Application(s)") contains Essential Claims, such determination to be based only upon the applicable Review Documentation that is the basis of the applicable Notice Period, bearing upon the Standard to which the Notice Period pertains, then the Representative shall disclose, in writing or email, to the Chair of the Working Group in which such draft is under consideration, information sufficient to allow the Chair of the Working Group to identify the general nature of each Essential Claim and the portions of the Standard that may be affected by each Essential Claim (The contents of any statement in accordance with (i) and (ii) above being hereinafter "Disclosure Statement").
- 6.7 Any voluntary disclosure made by a Representative as described in Section 6.2 or any Disclosure Statement that is submitted by a Member representative as required by Section 6.6 does not include any obligation to disclose information not actually and personally known to the Member Representative; and (ii) does not impose any obligation on a Member or its Representative to conduct any patent or other intellectual property searches of any kind.
- 6.8 Member agrees that, during an IP Notice Period, Member will make a good faith effort to determine Member's policy with respect to the licensing of its Essential Claims to provide Members and Adopters with the necessary rights to implement the applicable Standard (if and when such Standard is duly approved and adopted without substantive amendment or modification by DDEX as a DDEX Standard).
- 6.9 Before the end of an IP Notice Period, regardless of whether the relevant Disclosure was made voluntarily as set out in Section 6.2, or, as required by Section 6.6, the Member shall provide a Licensing Statement to DDEX indicating that, with respect to any implementation described in such proposed or pending DDEX Standard the Member either: (a) agrees to

license its Essential Claims for use only in such implementation, without charge or upon reasonable royalty bearing terms and conditions that are demonstrably free of any unfair discrimination to Members and Adopters desiring to implement the Standard, if the Standard is adopted by DDEX; (b) is, in good faith, unable to determine whether it will license its Essential Claims potentially implicated by the proposed Standard and desires more time to make such determination, pursuant to Section 6.13 below; or (c) does not agree to license its Essential Claims in connection with any or all of the implementations described in the proposed Standard. Notwithstanding the foregoing, if a Member provides or is deemed to provide a Licensing Statement pursuant to 6.9(a) that it will license its Essential Claims without charge, that Member may nonetheless charge a reasonable royalty for its Essential Claims to any Member or Adopter who is offering their Essential Claims on royalty bearing terms.

- 6.10 If a license that will be granted by a Member to an Adopter pursuant to Section 6.9(a) is conditioned on receipt by the Member of a license to Adopter's Essential Claims, Member must also require such Adopter to covenant to grant a license to Adopter's Essential Claims to all other Adopters on reasonable and non-discriminatory terms.
- 6.11 If the Member does not provide a Licensing Statement before the end of the Notice Period, the Member will be deemed to have provided a Licensing Statement pursuant to Section 6.9, wherein that Member agrees to license its Essential Claims on the terms set forth in Section 6.9(a) without charge. Any such Licensing Statement shall be deemed to apply only to the proposed Standard as provided to the Member. In the event of subsequent changes to the proposed Standard, the Member agrees to provide the same information within an IP Notice Period of the same duration starting upon receipt by its representative of written notice regarding such changed proposed Standard. If the Member withdraws from DDEX before the end of the Notice Period and does not provide a Licensing Statement, the Member will be deemed to have provided a Licensing Statement pursuant to Section 6.9, wherein that Member agrees to license its Essential Claims on the terms set forth in Section 6.9(a) without charge.
- 6.12 In the circumstances arising under 6.9(b) above, a Member will use good faith efforts to: (a) promptly identify with reasonable particularity the basis for its failure to submit a Licensing Statement and communicate the same in writing to the other members of the relevant Working Group; (b) request and collect such additional information as may be necessary to facilitate such Member's decision to provide a final Licensing Statement pursuant to Section 6.9(a); and (c) reasonably cooperate with other Members to resolve its concerns and attempt to submit a final Licensing Statement pursuant to Section 6.9(a) or 6.9(c) above before the end of the IP Notice Period.
- 6.13 If a Member that has submitted a Licensing Statement pursuant to Section 6.9(b) has complied with the requirements set forth above in Section 6.12, and as of the last day of the applicable Notice Period has still not resolved its concerns nor issued a Licensing Statement pursuant to either Section 6.9(a) or 6.9(c), such Member may request that the applicable Notice Period be

extended by thirty (30) calendar days by giving written notice to the Chair of the relevant DDEX Working Group before the end of the applicable Notice Period. Within a reasonable time from its receipt of such notice, the Chair of the relevant DDEX Working Group will promptly give notice to all other Members that the applicable Notice Period has been extended, upon which time all Members will have an additional thirty (30) calendar days to submit Licensing Statements as required under Section 6.9. Subject to the limitations set forth below in this paragraph, a Member's request for an extension of any Notice Period will be granted automatically, provided, however, that the Notice Period may be extended automatically for a total of no more than two (2) times in connection with a particular Standard and, thereafter, may be extended only upon a vote of the Working Group. If, after any such extended Notice Period, such Member still has not submitted a Licensing Statement before the end of the applicable Notice Period, it will be deemed to have provided a Licensing Statement pursuant to Section 6.9, wherein that Member agrees to license its Essential Claims on the terms set forth in Section 6.9(a).

7. Production and Rights in Standards

- 7.1 Nothing in this Policy shall prohibit a Working Group of DDEX from producing Standards that can be implemented, in whole or in part, with royalty-free technologies.
- 7.2 To ensure that Standards can be made available to all interested parties without competing copyright claims in the document itself interfering with its publication and distribution, Member agrees that DDEX shall be the sole owner of the copyright in the Standard(s).
- 7.3 Member hereby grants to the DDEX a worldwide, perpetual, irrevocable, non-exclusive, sub-licensable license under any copyright or trade secret in Member's and Representatives Contributions included in all Standards to reproduce, adapt, distribute, perform, display, and create derivative works of such Contributions in connection with the Standards (including any successor thereof). For purposes of clarification, this license is only applicable to Contributions included in the final Standard(s). Member agrees that neither it nor its Representatives will knowingly infringe a copyright or misappropriate a trade secret in any Contribution it makes to the Standard or other material submitted to the DDEX.

8. Trademarks

Members acknowledge that the terms of the IP Policy and Members' participation in DDEX grant Members no license or other rights with respect to any trademarks, certification marks or other indications of origin used by DDEX in connection with its Standards except as may otherwise be expressly prescribed by DDEX in writing.

9. Contributions Subject to Additional Restrictions or Conditions

Each Member acknowledges and agrees that it will not knowingly submit Contributions that may subject any Contribution or Standard, in whole or in part, to licensing

obligations with additional restrictions or requirements inconsistent with those set forth in sections 6 and 7 of this IP Policy, or that would require any portion of the Contribution to: (i) be disclosed or distributed in source code form; (ii) be licensed to or from a third party for the purpose of making derivative works; or (iii) be redistributable at no charge. If a Member has knowledge that a Contribution has been made that may subject any Contribution or Standard, in whole or in part, to one or more of the licensing obligations listed in this Section 9 above, such Member shall give prompt notice of the same to the Working Group Chair or Board of DDEX.

10. No Other Warranties

Except as may otherwise be set forth in this IP Policy, DDEX and all Members acknowledge that all information provided as part of the standard development process, including all Standards, are all provided "AS IS" with no warranties whatsoever, whether express, implied, statutory, or otherwise, and each Member expressly disclaims any warranty of merchantability, non-infringement, fitness for any particular purpose, or any warranty otherwise arising out of any contribution.

11. Survival of License

The obligations of a Member and its Affiliates under these Policies shall survive termination or resignation of its Membership and participation provided, however, that a Member whose membership and participation has been terminated or resigned shall only be obligated to license its Essential Claims to Adopters and other Members (as contemplated by Section 6.11) with regard to only those DDEX Standards that are either 1) subject to an IP Notice Period as of the effective date of such Member's termination or resignation of its membership and participation, or 2) completed the IP Notice Period prior to the effective date of such Member's termination or resignation of its membership and participation and, further provided, that such Member's licensing obligation shall (a) only apply to the extent of the terminating or resigning Member's Disclosure Statement and Licensing Statement provided during the IP Notice Period (including any Licensing Statement that is "deemed" provided hereunder); and (b) be subject to all of the terms and limitation otherwise set forth in this IP Policy. Without limiting the generality of the foregoing, any licenses Member has granted prior to the effective date of the Member's termination or resignation of its membership and participation shall survive such termination or resignation; and Member shall continue to offer licenses under the same terms to other Adopters.

Appendix A

Normative Reference Policy

Guidance for including references to documents of other organizations in DDEX Standards

1. Scope

These rules for including references to documents of non-DDEX organizations in DDEX Standards are intended to ensure that implementers and evaluators of DDEX Standards, and other interested parties, have access to all materials needed to implement those Standards. These rules are meant to apply not only to documents that are created within internal DDEX procedures but also to any Standards that are developed elsewhere but are sent to DDEX to be standardized.

Two categories of references are possible:

- a) "Normative references" are references to documents to which conformance is necessary to claim compliance to the DDEX Standard containing the reference.
- b) "Informative references" are references to documents that may be useful in implementing a DDEX Standard or add to the reader's understanding but which are not required for conformance to the DDEX Standard.

These rules are pointed toward normative references because they are functionally a part of the DDEX Standard itself. It is best practice to follow these principles for informative references as well, but more flexibility is permitted for informative references because these documents are not strictly necessary for the implementation of a DDEX Standard.

2. Documents that may be referenced

In considering whether a normative reference to a document should be included in a DDEX Standard, preference should be given to standards and specifications issued by recognized standards development organizations. Normative referencing of documents under the possession of other organizations is allowed where the use of such normative references has been justified by the Working Group in charge of development of the DDEX Standard containing the reference. Where an objection to the use of a normative reference has been raised within Working Group discussion, this shall be noted in the minutes or some other record that will be available to DDEX Members. A normative reference to such a document is permissible only if the referenced document is Publicly Available, as defined in Section 3 below, during the approval phases and at the time of publication of the DDEX Standard. If Public Availability cannot be ensured after publication of the DDEX Standard has occurred, the originating body of the document shall be requested to provide DDEX with the right to make available the text. If normative references in a DDEX Standard are not Publicly Available during the drafting stage, the Standard shall not be submitted to an approval procedure until the reference is Publicly Available or the text shall be made available to be held by DDEX.

3. Public Availability

All normatively referenced documents shall be Publicly Available to implementers, evaluators and other interested parties for as long as the DDEX Standard that references them is an active document. A document is Publicly Available when:

- It may be obtained from the source organization by any person (with or without payment) simply by quoting the reference number given in the DDEX Standard to the source organization or typical supplier.
- It is available in the English language from a publicly accessible source, preferably via the Internet or other means of electronic access.
- It is available 1) without contractual limitations relating to its evaluation (other than limitations reasonably intended to restrict duplication and redistribution) and 2) on terms for implementation generally consistent with DDEX policies.

This section, however, does not imply any obligation on DDEX to investigate the Public Availability of each normative reference used in a DDEX Standard at the time that reference is made. Public Availability also requires that implementers, evaluators and other interested parties may not be required to prove qualifications to gain access to the referenced material. In particular, entities entitled to evaluate and implement DDEX Standard shall not be required to be members of any other organization to gain access to a normatively referenced document.

4. Intellectual property rights

DDEX promotes a policy that any essential intellectual property rights ("IPRs") contained in normatively referenced documents be available for use in DDEX Standards on licensing and disclosure terms that do not materially differ from the terms defined in the DDEX IP Policy. This normative reference policy, however, does not imply any obligation on DDEX to investigate or ensure the availability of any essential normatively referenced IPRs, under any specific licensing and disclosure terms, at the time a Normative Reference is provided, explicitly or implicitly, within a DDEX Standard.

5. Stability and Maintenance

Normative references may be "specific" or "non-specific":

- a) A "specific" reference is a reference to the particular revision or version of the normatively referenced document. Specific references are favored because they lead to permanence and stability in DDEX Standards. Normative references generally should be limited to documents that are finally approved by the organizations responsible for issuing them.
- b) A "non-specific" reference is a reference to a deliverable of another organization that will apply to all future revisions and versions of the originally referenced document. Non-specific references require additional procedures to ensure that any revisions made necessary to the DDEX Standard by virtue of revisions made to the normatively referenced materials are considered by the appropriate Working Group in charge of the DDEX Standard.

If a normative reference is non-specific, the body in charge of the DDEX Standard should establish a process for gaining access to all future revisions and versions of the normatively referenced material. In addition, the body should establish a work plan for ensuring that any such new revisions and versions of the normatively referenced material do not require a substantive amendment to the DDEX Standard referencing that document or, alternatively, for ensuring that any such needed amendments are made and approved appropriately. Any future versions incorporated by reference should meet with the requirements for Public Availability and Intellectual Property as set forth above.

6. Test suites

If conformance with a specification that includes normative references requires the use of a test suite, the test suite for the normatively referenced part should also be made Publicly Available. Any such test suite should be usable by potential implementers on terms at least as favorable as those contained in the DDEX IP Policy.