

## Gaia-X European Association for Data and Cloud AISBL

### IP Policy

Date of release: 25 May 2021 (V1.0)

#### 1. Preamble

With Gaia-X, representatives from industry, science and politics commit to create, on a European level, a proposal for the next generation of the European data infrastructure: a secure, federated system that meets the highest standards of digital sovereignty while promoting innovation. Its aim is to develop common requirements and specifications for a European data infrastructure based on European values for the data economy.

#### 2. Definitions

Any capitalised terms used in this IP Policy which are not herein defined shall have the meaning set out in the Association's Articles of Association or Bylaws.

**Affiliate** means any entity that, directly or indirectly, owns, is owned by, or is under common ownership with, the Member or Third Party Contributor that is with an ownership share of more than 50% of the securities/stock (or 50% of other equity interests) entitling the Member to vote for the election of directors or an equivalent governing body of the relevant entity, subject to the exception below.

2.1 "Affiliate" will not include an entity that meets all of the following criteria: (a) it is not wholly owned, directly or indirectly, by the Member or Third Party Contributor (even if the Member or Third Party Contributor owns more than 50% of such securities/stock), (b) it operates independently from the Member or Third Party Contributor, and (c) it derives the majority of its revenue from activities other than intellectual property licensing. Entities that meet these exception criteria will be called "Excluded Affiliates."

2.2 Excluded Affiliates will be treated as non-Members or non-Third Party Contributor of Gaia-X (including by the related Member or Third Party Contributor) unless and until they join separately as Members, including with regard to the licensing obligations according to Section 7.

2.3 Members or Third Party Contributors must notify Gaia-X of the existence of any entity that qualifies as an Excluded Affiliate within a reasonable period of time. Absent such notice, the entity will be treated as an Affiliate but not as an Excluded Affiliate.

**Association** means Gaia-X European Association for Data and Cloud AISBL ("**Gaia-X**" or the "**Association**").

**Confidential Information** means any Deliverable, and information of any kind disclosed by a Contributor for the purpose of developing a Deliverable, unless this information is already disclosed or independently developed without any breach of confidence and/or in the public domain.

**Contribution** means any contribution in writing provided to the Association for potential inclusion in a specific Deliverable and within the purpose of the Association.

**Contributor means** the entity or individual making the Contribution in accordance with the Association’s Policy, the Association’s working procedures to develop Deliverables, and any further requirements which may apply to this type of Contributor by virtue of the Association’s Articles of Association and Bylaws, as amended from time to time. A Contributor may be a Member or a Third Party Contributor.

**Deliverables** means Draft Standards, Standards, technical specifications and other work products developed by a Technical Committee or Working Group within the scope of their activities in line with the Bylaws of the Association, and other relevant Association policies and procedures.

**Draft Standard** means a technical Standard or technical specification, data models, semantic definitions, system architectures and any supporting materials that is produced by a Technical Committee or Working Group, but has not been formally adopted by the Association as a Standard.

**Enabling Technology** means any technology which may be needed for implementing the Standard and which is not expressly set forth in the Standard.

**Essential Claims** mean all claims in any patent, patent application, or utility model, in any jurisdiction worldwide, that would be necessarily infringed by an implementation of a Standard because a technically feasible non-infringing alternative implementation does not exist at the time the Association formally adopts the Standard. Essential Claims do not include:

- a. patent claims that would be infringed only by an implementation of a standard not developed by or on behalf of the Association and which is incorporated by virtue of normative referencing into a Gaia-X Deliverable;
- b. patent claims that would be infringed by any Enabling Technology;
- c. patent claims that would be infringed only by an implementation of a non-mandatory part of a Standard.

**Member** is any entity that has become a Member of the Association according to the provisions of the Articles of Association and the Bylaws.

**Participant** means any Member or Third Party Contributor participating in a Technical Committee or Working Group.

**Policy** means this Intellectual Property Policy.

**Standard** means a Draft Standard that has been formally adopted by the Association including any adoption of a later amendment to a Standard.

**Third Party Contributor** means any person or entity that participates in the activities of the Association for the purpose of its scope (as defined in Section 3 that (a) is not a Member of the Association; and (b) who has entered into a written agreement with the Association to participate and make any Contributions in accordance with the Association’s Policy and working procedures to develop Deliverables as amended from time to time. A Third Party Contributor that is an Invited Expert pursuant to Article 4.1(a) of the Association’s Internal Rules shall meet any further requirements set out in that Article.

**Working Group** means any regular Working Group, ad hoc Working Group, and subgroup of a Working Group formally constituted by the Association and under the Association’s Articles of Associations and Bylaws as amended from time to time.

### 3. **Scope of the Policy**

This Policy shall apply to the activities of the Association to develop Deliverables in order to create a common data ecosystem for users and providers in various public, industry and research domains.

### 4. **Applicability of the Policy**

This Policy applies to all Members and Third Party Contributors.

### 5. **Intellectual Property**

Nothing in this Policy shall apply to or be to the prejudice of the patents containing non-Essential Claims, trademarks, confidential information, know how or trade secrets of Members and non-Members.

### 6. **Disclosure of Essential Claims**

6.1 Each Participant shall use its reasonable endeavours to notify the Association, in a timely manner, that it owns patent(s), patent application(s) and/or utility model(s) that is or is likely to become an Essential Claim. Such notification will take place, during the development of Draft Standards, and, after the Board has approved a Standard, in the form of the Gaia-X Essential Claims Disclosure Form.

6.2 A notification under Section 6.1 may be done without specific identification of patents or patent applications or utility models that include these Essential Claims (e.g., by patent number). Unpublished patent applications do not need to be notified to Gaia-X other than by a general declaration.

6.3 Participants who opt out of the licensing commitment set out in Section 7, shall provide a specific declaration in the form of the Gaia-X Essential Claims Disclosure Form.

6.4 The incorporation of any Enabling Technology, technical specification or Standard (including by normative reference), which is not developed by or on behalf of the Association, does not result in any obligation on a Participant to (a) disclose Essential Claims or (b) be bound by the licensing commitment set out in Section 7.

6.5 In no event shall the Association, any Contributor, Participant, or Member be obligated to conduct any patent searches regarding any Essential Claims (whether owned by such entity or by Third Parties) that may be infringed by any implementation of a Draft Standard or a Standard.

### 7. **Licensing Commitment**

#### **General Licensing Discussions**

7.1 Discussions and negotiations regarding commercial issues and, in particular, issues relating to specific terms and conditions for the licensing of patents containing Essential Claims are strictly prohibited within the Association.

The exact terms and conditions for the licensing of such patents are to be agreed, in accordance with the provisions of this Policy and in good faith, by individual parties in bilateral commercial negotiations.

### **Gaia-X Licensing Commitment**

7.2 Each Participant shall be bound by the Licensing Commitment set forth in Section 7.3. A Member who is not a Participant in a particular Technical Committee or Working Group is not bound by the Gaia-X Licensing Commitment set out in Section 7.3 simply by virtue of being a Member.

7.3 A Participant provides an irrevocable undertaking that it is prepared to grant to all implementers a world-wide, non-exclusive, irrevocable, fair, reasonable, and non-discriminatory (FRAND) royalty-free licence, to its and its Affiliates' Essential Claims implemented in a Standard that was developed in a Technical Committee or Working Group in which such Participant participated. The licence grant shall include at least the following grant of rights:

- i) to make, or have made,
- ii) use, sell, offer to sell, or have sold,
- iii) import, distribute or dispose of

products, methods, or systems that implement the Standard.

This undertaking may be conditional upon those seeking a licence agreeing to reciprocate.

## **8. Opt Out**

8.1 Where, in exceptional circumstances, a Participant cannot grant licences under the terms and conditions provided in Section 7 of this Policy, it shall so notify the Association at least within 60 days from the Association's first written publication of a Draft Standard approved by the Board of Directors, by making a specific declaration to the Association under Section 6.3 of this Policy (Negative Declaration).

8.2 A Participant that provides a Negative Declaration may continue its participation in the Technical Committee or Working Group and is otherwise bound by Section 7 of this Policy.

8.3 A Participant is able to discontinue its participation in a Technical Committee or Working Group within 60 days (inclusive) of the first written release of a Draft Standard by the Technical Committee or Working Group to its Participants, its commitment to license under Section 7.3 shall only relate to Essential Claims reading on the latest written release of a Draft Standard by the Technical Committee or Working Group to its Participants prior to its discontinuation.

8.4 Where a Participant joins a Technical Committee or Working Group after the Technical Committee or Working Group has commenced, it shall follow the procedures set out in Sections 6, 7, and 8.1 to 8.3.

8.5 <intentionally omitted>

8.6 Any Negative Declaration shall be notified to the Board of Directors, and the Technical Committee or Working Group shall determine if a viable alternative technology exists. The Board of Directors may instruct the re-drafting of the relevant specification in order to avoid infringing any Essential Claims that are unavailable under the terms and conditions provided in Section 7 of this Policy.

8.7 In the event that a viable alternative technology does not exist, then the Board of Directors may:

(a) seek from the Participant an irrevocable undertaking that it is prepared to grant to all implementers a world-wide, non-exclusive, irrevocable licence on fair, reasonable, and non-discriminatory (FRAND) terms and conditions, to its and its Affiliates' Essential Claims implemented in a Standard that was developed in a Technical Committee or Working Group. The licence grant shall include at least the following grant of rights:

- i) to make or have made;
- ii) use, sell, offer to sell, or have sold; and
- iii) import, distribute or dispose of

products, methods, or systems that are fully compliant with a Deliverable or Standard.

This undertaking may be conditional on upon those seeking a licence agreeing to reciprocate.

or

(b) instruct that the development of the Draft Standard cease or proceed with other alternative solutions.

## 9. **Copyright**

9.1 Each Participant in a Technical Committee or Working Group contributing copyrighted content in any form, including software, and written content, hereby grants, an irrevocable, non-exclusive, worldwide, royalty-free, sub-licensable copyright licence under its and its Affiliates' copyrights to:

- (a) The Association, Members and Members' Affiliates to use, create derivative works (including to modify, change, translate and adapt), copy, and internally distribute any of its Contributions in order to develop Deliverables; and
- (b) The Association in order to publish, distribute, disseminate or display copyrighted Contributions.

9.2 Copyright in Contributions remains with the owner.

9.3 The Association shall own the copyright in any Deliverables.

9.4 The copyright licence to the Association, Members and Members' Affiliates under this Section shall extend to users of Standards to the extent such use is necessary for the purpose of implementing a Standard.

9.5 If copyrighted software is included in a Standard upon which there are Essential Claims, it is not mandatory that this software be used in order to achieve a compliant implementation of a Standard.

9.6 The copyright licence granted under this Section does not expressly or impliedly (through the operation of law, equity or otherwise) grant a patent licence.

10. **Transfer** of ownership of patents, patent applications and utility models containing Essential Claims

In case of transfer of ownership of a patent, patent application and/or utility model containing Essential Claims, in respect of which the transferor made a licensing commitment under the terms and conditions in Section 7 or Section 8.7 a) this commitment shall also bind any transferee, subsequent transferee, and all successors-in-interest. To ensure the effective application of this Section across national jurisdictions, the transferor shall include, in the relevant agreement for the transfer of ownership, provisions that bind any transferee, potential subsequent transferees and all successors-in-interest to offer licences to the patents and utility models containing Essential Claims(s) on at least equally beneficial terms and conditions as set out in the licensing commitment provided by the transferor under Section 7 or Section 8.7 a).

11. **Confidentiality**

All Deliverables of the Gaia-X Groups as proposed for publication in the name of the Association shall be provided to the Board of Directors for approval by the Board of Directors prior to such publication. The Board of Directors may accept or refuse the approval of a Deliverable proposed for publication and ask for re-work. Any other Deliverables or work result of the Gaia-X Groups are Confidential Information and only available to the (i) Members and (ii) Members' Affiliates of the Association that are not Excluded Affiliates and (iii) Third-Party Contributors.

12. **Applicable Law**

This Policy shall be governed by the laws of Belgium, except its conflict of law rules. Any rights and obligations provided herein shall be deemed solely contractual in nature.

13. **Implementing and Amending the Policy**

Without prejudice to the Gaia-X Articles of Association and Bylaws, decisions regarding this Policy (including its implementation or amendments) shall be taken by consensus of the Board of Directors. The Board may take into account proposals by the Association's Legal Group (or any successor of this Group) in accordance with that Group's Charter.

Consensus shall be interpreted as general agreement, characterised by the absence of sustained opposition. The process of achieving consensus shall seek to take into account the views of all Members and the objectives of the Association.

In the event that consensus is not reached, a vote will be put to the Directors, and a decision in favour requires a seventy five percent (75%) of the votes of Board of Directors. Quorum shall be met in accordance with the Articles of Association.

**14. Non-Compliance with the IP Policy**

14.1 Any party that desires to not be bound by the terms of this Policy must abstain from joining the Association or must withdraw from membership if already a Member as of the date of this Policy.

14.2 If a Member does not comply with this Policy, this shall be deemed as non-compliance by that Member with its contractual obligations to the Association under Sections 7 and 8 of the Articles of Association. The Board of Directors shall decide on the appropriate action, if any, to be taken against that Member, including measures under Section 9(1)(b) and (c) of the Articles of Association. Non-compliance shall not give rise to an express or implied waiver of patent rights and copyrights.

**15. Applicability**

15.1 This Policy supersedes and replaces any previous agreements or understandings between the Association and any Member and Third Party Contributor regarding patent rights and copyrights related to Deliverables.

15.2 The obligations of Members and Third Party Contributors under this Policy apply both before and after the effective date of this Policy.

**16. Conflict Between Documents**

In case of any conflict, discrepancy, or inconsistency between the terms of this Policy and Associations' Internal Rules, the terms of this Policy will control.