



ethernet alliance

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# Ethernet Alliance Terms and Conditions

**Version 1.3**

**April 15, 2008**



## Document Revision History

<b>Version</b>	<b>Date Approved by Board of Directors</b>	<b>History</b>
Version 1.3	April 15, 2008	Updated corporate address; corrected spelling errors, added revisions to section 7 and 9
Version 1.2	September 12, 2006	Reformatted to include Document Revision History and Table of Contents
Draft 1.1	January 10, 2006	Updated Section 3 Item (9) Indemnity
Draft 1.0	November 11, 2005	Initial Draft



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## 1 Background

The Ethernet Alliance is committed to the continued success and expansion of Ethernet technology. Its mission is to promote industry awareness, acceptance, and advancement of technology and products based on both existing and emerging IEEE 802 Ethernet standards and their management.

## 2 Membership Requirements

The requirements for membership in the Ethernet Alliance are that Applicant must:

- Publicly display a legitimate business interest in the IEEE 802 Ethernet standards
- Publicly support the IEEE 802 Ethernet standards by shipping or developing products, Ethernet networks or enabling technologies employing the IEEE 802 Ethernet standards, or by issuing press releases in support of the IEEE 802 Ethernet standard products or networks
- Pay the annual dues for Applicant's desired level of participation. The initial annual dues are payable upon membership acceptance.

### 2.1 Terms of Membership

Applicant named herein hereby applies for membership to the Ethernet Alliance, subject to the following terms.

Applicant will:

Pay dues and fees, as established by the Ethernet Alliance from time to time, within 30 days of invoice. If Applicant at any time ceases to be a member of Ethernet Alliance, no refund of any such dues or fees shall be made, and Applicant shall nonetheless remain liable for any and all applicable dues and fees remaining due and unpaid to the Ethernet Alliance for any period of a calendar year in which Applicant has been an active member of the Ethernet Alliance until the date of such ceasing of its membership in the Ethernet Alliance. Applicant will be responsible for all expenses and other costs incurred by it or by any of its representatives or personnel in connection with the Ethernet Alliance and/or its relevant activities;

Not transfer its membership to an acquiring company without prior approval by the Ethernet Alliance Board of Directors ("Board") to do so. An acquisition or change of control of Applicant member results in an automatic suspension of membership until the Board determines that the new entity satisfies the Ethernet Alliance's membership requirements;

Abide by the provisions of this Agreement, and the Governing Documents (defined in Section 1 of this Agreement), as amended, and the policies and procedures, that the



Ethernet Alliance may approve from time to time, including but not limited to any dispute resolution procedures contained therein;

Actively participate in the Ethernet Alliance, and perform assignments as reasonably requested and agreed to by the Board or its committees;

Assign and identify a general representative to attend the Ethernet Alliance functions and act as liaisons between the Parties;

Use or reproduce the Ethernet Alliance certification marks, service marks, trademarks and copyrighted materials only if and as permitted by the Ethernet Alliance guidelines and any additional specific terms that the Ethernet Alliance may impose;

Not take any action or make any statement on behalf of the Ethernet Alliance unless expressly authorized by the Board;

Cause any affiliate that it has registered to the Ethernet Alliance as a member affiliate to comply with all membership terms and conditions; and

So long as it is a member, permit the Ethernet Alliance to accurately identify it as a member in its membership directory and public statements.

## **2.2 Member Dues and Fees**

Once the Application is accepted by the Board, a written notice is sent via email to Applicant and invoice is prepared and delivered with notice. Payment is due upon receipt of the invoice and Applicant's membership will not be activated until full payment is received.

The Ethernet Alliance bills annually based upon the Applicant's membership activation date. All membership dues must be paid within 30 days of invoice. Failure to pay membership dues when they are due is a basis for suspension or termination of membership. In addition, Applicant who does not pay its renewal dues will lose its membership privileges, including access to Applicant's section of the Ethernet Alliance web site and the right to attend member meetings, until the annual dues are paid in full.

## **3 Agreement**

In consideration of the admission of Applicant to the Ethernet Alliance, Applicant hereby agrees as follows:

- 1) Articles of Incorporation, Bylaws, Guidelines and Policies. Applicant agrees to comply with the Ethernet Alliance Articles of Incorporation, Bylaws, guidelines and policies as in effect from time to time, including any rules or directives adopted by the Board in connection therewith ("Governing Documents"). The Governing



Documents are available at <http://www.ethernetalliance.org>. Applicant acknowledges that it has reviewed copies of each of the Governing Documents and that it understands the contents. Applicant understands that they may be revised from time to time and new policies and guidelines may be added. The Ethernet Alliance will post all such changes on its web site at the above location and will send an email to the list-all reflector that such changes have been posted. If Applicant is dissatisfied with any changes, it may protest them. If the Ethernet Alliance declines to address or respond to Applicant's objections, Applicant's sole and exclusive remedy is to resign its membership and to forfeit its remaining membership fees for the year.

- 2) Membership Dues and Other Fees and Assessments. Applicant agrees to pay when due all dues, fees, and assessments that are applicable to it, including the annual membership dues for its membership class and all fees imposed in connection with Applicant's elective participation in optional membership activities.
- 3) Confidentiality.
  - a) Applicant's Confidential Information. Applicant agrees that it will not disclose to the Ethernet Alliance or to any Ethernet Alliance member Applicant's non-public information of any kind in connection with its participation in the Ethernet Alliance and its activities unless Applicant wishes to make that information public. Applicant agrees that the Ethernet Alliance has no obligation to maintain as confidential any such information.
  - b) The Ethernet Alliance Confidential Information. Applicant shall not disclose to any third party who is not a member of the Ethernet Alliance any information concerning the Ethernet Alliance, its membership, or its activities unless the Ethernet Alliance has publicly disclosed that information or the Board has authorized its disclosure.
- 4) Intellectual Property Rights. Applicant will respect any intellectual property rights that the Ethernet Alliance may acquire from time to time and shall not take any action that is inconsistent with Ethernet Alliance ownership of those rights. Without limitation, Applicant shall comply with the terms and requirements of the applicable mark usage manual and license agreement for any mark that the Ethernet Alliance licenses to it. In all matters which are governed by the Ethernet Alliance Intellectual Property Rights Policy (such as but without limitation, specifications), Applicant shall comply with that policy. Should Applicant provide to the Ethernet Alliance, for its use or for the use of its members, any materials that are subject to the laws of copyright but are not subject to the Intellectual Property Rights Policy (such as but without limitation, white papers, marketing collateral and the like), Applicant hereby grants to the Ethernet Alliance a worldwide, irrevocable, royalty-free, payment-free, copyright license to incorporate such materials and any modifications thereof in creation of a Ethernet Alliance publication; to copyright in the Ethernet Alliance's name any Ethernet Alliance



publication even though it may contain portions of such materials; and at the Ethernet Alliance's sole discretion to permit others to reproduce in whole or in part the resulting Ethernet Alliance publication.

- 5) Press Releases. Applicant agrees that the Ethernet Alliance or any Ethernet Alliance member may indicate in its press releases and other public announcements that Applicant is a member of, and participates in, the Ethernet Alliance, provided that any such reference shall be accurate and Applicant shall not be portrayed in a manner that criticizes Applicant or places it in a negative light. Likewise, Applicant agrees that its use of the name of the Ethernet Alliance or any of its members shall comply with the foregoing restrictions. The Ethernet Alliance shall have a limited, nonexclusive, fully-paid license to use Applicant's name and any logo that Applicant provides to the Ethernet Alliance to identify Applicant as an Ethernet Alliance member on the Ethernet Alliance web site, in its press releases, and in its public announcements.
- 6) Programs and interoperability events. Should Applicant elect to participate in any product or service program or interoperability event of the Ethernet Alliance, it shall comply with all applicable program requirements.
- 7) Execution; Effective Date; Term. Applicant executes this Agreement upon Applicant's submission to the Ethernet Alliance of the Application. This Agreement is executed by the Ethernet Alliance and shall commence upon notification by the Ethernet Alliance that it has accepted member's application for membership ("Effective Date"). This Agreement shall remain in effect until the end of the membership year in which notification of acceptance is received, or until the Ethernet Alliance or Applicant terminates Applicant's membership as provided herein. The term of this Agreement shall only be extended for an additional membership year upon payment by Applicant of the annual membership dues. Prior to the end of the membership year, applicant may terminate this Agreement concurrently with the termination of its membership by providing the Ethernet Alliance with written notice of such termination. The Ethernet Alliance may terminate this Agreement concurrently with the termination by the Ethernet Alliance of Applicant's membership for the reasons, and pursuant to the procedure, established from time to time in the Governing Documents. All fees paid by Applicant prior to termination are nonrefundable.
- 8) Transfer of Membership. Applicant's membership and this Agreement are personal to Applicant and are not transferable without the prior written consent of the Ethernet Alliance. A membership may be transferred in accordance with the procedures set forth in the Governing Documents.
- 9) Indemnity. To the extent permitted by any applicable law, Applicant agrees to defend and indemnify the Ethernet Alliance and its officers, directors, employees, agents, and members (each an "Indemnified Party") and hold them harmless from



and against any and all damages, judgments, costs (including without limitation reasonable attorneys' fees), claims and liabilities that an Indemnified Party may sustain as a result of (i) the breach by Applicant of the provisions of this Agreement, (ii) Applicant's failure to comply with the Governing Documents, and (iii) any violation of any law, regulation, rule, ordinance, or judicial or administrative order by Applicant while participating in the Ethernet Alliance activities. The obligations under this Section shall survive any termination of membership in the Ethernet Alliance for the applicable statute of limitations provided by law.

- 10) **Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL A PARTY TO THIS AGREEMENT BE LIABLE TO ANY OTHER PARTY UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY COMMERCIAL OR ECONOMIC LOSSES, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF INFRINGEMENT OR PRODUCT LIABILITY CLAIMS, LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11) **Miscellaneous.** This Agreement and the documents referenced herein constitute the entire agreement between the Parties. This Agreement may be modified or amended only by a subsequent writing signed by the authorized representative of each Party. The Ethernet Alliance may modify the Governing Documents at any time pursuant to the terms of Section 1 of this Agreement, subject only to any limitations imposed by law. No delay or omission by either Party in exercising any right under this Agreement will operate as a waiver of that or any other right. All waivers by either Party hereto must be contained in a written instrument signed by the Party to be charged. A waiver or consent given by either Party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. In any dispute hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses. All notices shall be deemed given upon personal delivery, upon confirmed delivery if sent by overnight courier or other means that provides tracking and delivery information, or upon confirmation of delivery by email in accordance with the established Ethernet Alliance procedures, if sent to the address listed in the membership records of the Ethernet Alliance. This Agreement is governed by and will be construed in accordance with the laws of the State of California as applied to contracts entered into and wholly performed therein by residents thereof, and the state and federal courts of California shall be the exclusive forum. This Agreement is entered into for the benefit of Parties and not for the benefit of any third party. Similarly, Applicant agrees that it will not assert rights under any agreement between the Ethernet Alliance and any other member unless such agreement provides by its express terms that Applicant is an





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intended beneficiary of that agreement. In the event that any of the provisions of this Agreement shall be held to be either illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected. In the event that there is a conflict between this Agreement and the Articles of Incorporation and Bylaws of the Ethernet Alliance, the Articles of Incorporation and the Bylaws of the Ethernet Alliance shall control. In the event that there is a conflict between this Agreement and any policy of the Ethernet Alliance (including but not limited to the Intellectual Property Rights Policy), this Agreement shall control.