

OSGi MEMBER AGREEMENT

This Agreement is entered into as of the ____ day of _____, 20__, by and between the OSGi Alliance, Inc. ("OSGi") and _____ ("MEMBER"), with respect to the following subject matter:

WHEREAS, OSGi has been formed as a non-profit entity in order to create and promote the adoption and use of open specifications for applications and services as further described in the BY-LAWS; and

WHEREAS, MEMBER would like to participate in OSGi in accordance with the BY-LAWS, this AGREEMENT, and the applicable OSGi Alliance Inc. Intellectual Property Rights Policy attached hereto as Exhibit B ("IPR POLICY"); and

NOW, THEREFORE, in consideration of their participation in the OSGi, MEMBER agrees to the following:

1 Definitions

" AFFILIATE" of a first legal entity means any other legal entity:

- directly or indirectly owning or controlling the first legal entity, or
- under the same direct or indirect ownership or control as the first legal entity, or
- directly or indirectly owned or controlled by the first legal entity, for so long as such ownership or control lasts.

Ownership or control shall exist through the direct or indirect:

- ownership of more than 50% of the nominal value of the issued equity share capital or of more than 50% of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
- right of any other means to elect or appoint directors, or persons who collectively exercise such control. A state, a division of a state or other public entity operating under public law, or any legal entity, linked to the first legal entity solely through a state or any division of a state or other public entity operating under public law, shall be deemed to fall outside the definition of an AFFILIATE.

"AGREEMENT" shall mean this OSGi Member Agreement.

"MEMBER" shall mean the specific party to this AGREEMENT. References to MEMBER shall be interpreted as references to MEMBER and its AFFILIATES. Within the IPR POLICY (Exhibit B), the term "MEMBER" refers to an OSGi Member as set forth in the Amended and Restated By-Laws of the OSGi Alliance ("BY-LAWS").

"MEMBERS" shall mean a collection of OSGi Members as set forth in the BY-LAWS. References to MEMBERS shall be interpreted as references to MEMBERS and their respective AFFILIATES.

Terms used but not defined herein or in the IPR POLICY shall have the meanings ascribed to them in the BY-LAWS.

2 Membership

2.1 Qualification for membership in OSGi shall be as set forth in the BY-LAWS. MEMBER has reviewed and agrees to abide by the BY-LAWS, as applicable.

2.2 MEMBER shall complete a registration form, as defined by OSGi, and execute and abide by this AGREEMENT, and all other duly adopted administrative policies and procedures of

OSGi promulgated by the OSGi board of directors ("BOARD"). MEMBER shall pay the applicable membership dues and any fees or other assessments duly imposed on MEMBER as established by the BOARD in accordance with the BY-LAWS, and shall be entitled to the rights, privileges and other benefits, and shall be subject to the applicable obligations, each as described in (i) the BY-LAWS, (ii) Exhibit A of this AGREEMENT (which sets forth the current OSGi member privileges), and (iii) Exhibit B of this AGREEMENT (which sets forth the IPR POLICY), including without limitation the rights and licenses to intellectual property described therein. MEMBER shall bear its own costs and expenses for its participation in OSGi, such as compensation of its employees, and all travel and living expenses associated with the MEMBER's participation in OSGi meetings and conferences.

- 2.3 Neither OSGi nor MEMBER shall use the name of the other in any form of publicity without the written permission of the other, provided that MEMBER may publicly disclose and identify its own membership in OSGi in documentation, press releases, brochures and other materials, and OSGi (unless requested in writing by MEMBER) may publicly disclose and identify the membership of MEMBER in OSGi in documentation, press releases, brochures and other materials, provided that all such references are truthful and accurate. Notwithstanding any such written request by MEMBER, OSGi may disclose the membership of MEMBER if required by law or any court of competent jurisdiction.
- 2.4 The duties, rights, privileges and obligations of MEMBER shall be determined by the BOARD. The initial rights and privileges are set forth in Exhibit A, however the BOARD may from time to time modify such privileges in its discretion. Upon expiration or termination of MEMBER's membership in OSGi, all rights and privileges provided and/or granted to MEMBER, including without limitation the rights and privileges in Exhibit A and any policies and procedures of OSGi shall also terminate or expire, with the exception of any obligations or terms that survive as provided in Section 5 of this AGREEMENT and the IPR POLICY (Exhibit B).

3 Compliance with IPR POLICY and other Policies of OSGi.

- 3.1 MEMBER has reviewed, understands and, as applicable, agrees to be bound by and comply with this Agreement, the Bylaws, the IPR Policy, and all duly adopted administrative policies and procedures of OSGi. MEMBER also understands and specifically acknowledges that the rights and responsibilities delineated in the IPR Policy are NOT a membership right under California Corporations Code Section 7150(b) and that they may be amended by a Supermajority Vote of the BOARD in its discretion, which amendment shall be subject to approval by a majority vote of the MEMBERS.

4 Confidential Information

- 4.1 With the exception of the minutes of the meetings of the Board of Directors, and any Executive Committee of the Board of Directors of OSGi, which may be designated as confidential at the Board's discretion, and the legal agreements (including drafts and communications of counsel) between OSGi and any Member(s), which are presumed confidential unless otherwise explicitly agreed between the parties, all exchanges of information between OSGi and MEMBER and/or MEMBERS which relate to OSGi activities are non-confidential except as may be otherwise provided in Exhibit B (IPR POLICY).

5 General

- 5.1 This AGREEMENT does not create a joint venture, partnership or other form of business association between the OSGi and MEMBER nor an obligation to develop, make available, use, license, buy or sell any information, product, services or technology.
- 5.2 OSGi or MEMBER shall not assign or otherwise transfer its rights or obligations under this AGREEMENT thereof without the prior written consent of the other which consent shall not

be unreasonably withheld or delayed. OSGi and MEMBER agree to comply with all applicable laws, rules and regulations relating to the export or re-export of technical data when exporting or re-exporting any MATERIALS.

- 5.3 All costs and expenses incurred by OSGi or MEMBER in carrying out its obligations under this AGREEMENT shall be paid by OSGi or MEMBER, whichever incurred the expense. OSGi and MEMBER each shall possess or obtain at its own expense all necessary licenses or permits.
- 5.4 If any provision of this AGREEMENT is unenforceable at law, the rest of the provisions remain in effect. The headings in this AGREEMENT are for reference only. They will not affect the meaning or interpretation of this AGREEMENT.
- 5.5 OSGi or MEMBER will not bring a legal action under this AGREEMENT more than two years after the cause of action arose. OSGi and MEMBER each waive rights to a jury trial in any resulting litigation.
- 5.6 OSGi and MEMBER shall not bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this AGREEMENT due to any act of God, act of governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power malfunctions of equipment or software programs or any other cause beyond reasonable control.
- 5.7 No approval, consent or waiver will be enforceable unless signed by OSGi or MEMBER, whichever is the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.
- 5.8 This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.
- 5.9 Term and Termination.
This AGREEMENT shall come into effect, when OSGi has received a signed copy of this AGREEMENT from MEMBER. This AGREEMENT may only be terminated by the written consent of MEMBER, save that this AGREEMENT is automatically terminated with respect to a MEMBER, if that MEMBER ceases to be a MEMBER per the conditions set forth in the BY-LAWS. Any rights or obligations, which by their nature survive, shall continue after termination.
- 5.10 Modification of Agreement.
From time to time, OSGi may: (i) by Majority Vote of the Board (in accordance with the BY-LAWS) modify or amend membership rights, privileges and obligations as set forth in this agreement and Exhibit A hereto, and/or (ii) by SUPERMAJORITY VOTE OF THE BOARD and approval of a majority of the MEMBERS, modify or amend the IPR POLICY (Exhibit B) hereto. In either case, MEMBER shall be provided four (4) months' written notice prior to the effectiveness of such modification or amendment. However, these changes shall not be retroactive. They apply, as of the effective date OSGi specifies in the notice, which effective date shall be on or after the notification date, MEMBER shall be deemed not to have accepted such modification or amendment, and to have elected to terminate their membership if OSGi does not receive written notification of MEMBER's acceptance of such modification or amendment prior to the expiration of the notice period. Except as expressly provided in this Section 5.10 or other provisions of this AGREEMENT (in particular, regarding amendment of documents incorporated herein by reference), and notwithstanding any course of dealings of the parties at any time, this AGREEMENT shall not be modified except by a written agreement dated subsequent to the Effective Date and Signed on behalf of OSGi and MEMBER by their respective duly authorized

representatives.

5.11 Complete Agreement.

Except as otherwise expressly set forth herein, this AGREEMENT constitutes the entire agreement of OSGi and MEMBER, superseding all prior agreements and understandings as to the subject matter herein. Unless prohibited by applicable law, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original. Any action related to this AGREEMENT will be governed by the laws of the State of California of the United States of America, with venue and jurisdiction for any disputes being exclusively in the state and federal courts located in San Francisco, California.

IN WITNESS WHEREOF, the parties to this AGREEMENT have caused this AGREEMENT to be duly executed as of the date set forth below.

ACCEPTED AND AGREED TO FOR:

[MEMBER NAME / COMPANY]

OSGi Alliance, Inc.

Signature:

Signature:

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address

Address

2400 Camino Ramon #375

San Ramon, California, USA 94583

EXHIBIT A

OSGi Alliance, Inc. Full Member Privileges

The current rights and privileges of Full Members are set forth below. Such rights and privileges may be modified by the OSGi Board of Directors from time to time.

- Full voting member of OSGi Alliance, Inc.
- Eligible as candidate for Board of Directors and Officers
- Gain early access to OSGi specifications
- Provide input to specification evolution
- Subscribe to Expert Groups email reflectors
- Input to Requirements documents
- Use of OSGi trademarks within usage guidelines
- Attend OSGi Annual Meeting
- Participate in marketing events
- Access to “Members Only” web pages
- Access to the document and code repository for requirements documents, draft specifications, reference implementations, and compliance tests.
- Participate in marketing/press releases
- Eligible to join Expert Groups
- Eligible to chair Expert Groups
- Propose new Expert Groups
- For Expert Groups that the MEMBER has joined:
 - Propose work items
 - Contribute to Expert Groups work items
 - Eligible to Vote
 - Contribute intellectual property (IP) to specification(s), reference implementations, and/or compliance tests
- Waiver of any fees for JSR TCK licensing for JSR 232 and JSR 291

Exhibit B

OSGi Alliance Inc. Intellectual Property Rights Policy

This Intellectual Property Rights Policy ("IPR POLICY") is intended to maximize the likelihood of widespread adoption of OSGi specifications. The IPR POLICY is designed to comply with applicable law, including all federal and state antitrust laws.

DEFINITIONS

Terms used but not defined herein shall have the meanings ascribed to them in the BY-LAWS or the OSGi Member Agreement (the "AGREEMENT").

"COMPLIANCE TESTS" shall mean one or more programs and related documentation, which is finally adopted by OSGi pursuant to Section 8.2 below, and any updates, revisions or new versions thereto finally adopted by OSGi pursuant to Section 8.3 below, that are used to determine whether an implementation is FULLY COMPLIANT.

"FULLY COMPLIANT" shall mean: (a) an implementation of a SPECIFICATION which supports or implements all of the portions of that SPECIFICATION defined by that SPECIFICATION as being "Required", or (b) an implementation of all portions of a SPECIFICATION required for a specific type of product or component thereof.

"INVENTION" shall mean any idea, concept, know-how, or technique first conceived or reduced to practice during the term of the AGREEMENT and for which a patent application is filed.

"MATERIALS" shall mean any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS and COMPLIANCE TESTS, and all drafts thereof and proposals therefor.

"NECESSARY CLAIMS" shall mean those claims of all patents and patent applications, under which MEMBERS, or their AFFILIATES have the right, at any time during the term of their membership, to grant licenses of the scope contemplated herein, all to the extent and only to the extent that MEMBERS, and their AFFILIATES, have the right to grant such licenses as of the date of any license to be entered into with the MEMBER(S) as contemplated in Section 3.3 of this IPR POLICY, and which are necessarily infringed by an implementation of a version of a SPECIFICATION approved by the MEMBERS pursuant to Section 8.2 or 8.3 below, where such infringement could not have been avoided by another technically feasible noninfringing implementation of such SPECIFICATION.

"REFERENCE IMPLEMENTATION" shall mean a prototype implementation in source code form, created using a SPECIFICATION and meant to be used as a guide for developers when creating their own implementations based on a SPECIFICATION, and which is FULLY COMPLIANT and is finally adopted by OSGi pursuant to Section 8.2 below, and any updates, revisions or new versions thereto finally adopted by OSGi pursuant to Section 8.3 below.

"SPECIFICATION" shall mean a document containing a set of technical criteria which describe basic interfaces and attributes which are finally adopted by OSGi pursuant to Section 8.2 below, and any updates, revisions or new versions thereto finally adopted by OSGi pursuant to Section 8.3 below.

1 Member Developed Intellectual Property

- 1.1 If MATERIALS and/or INVENTIONS are created by MEMBERS pursuant to a written statement of work executed between participating MEMBERS and/or OSGi which references this IPR POLICY (hereinafter referred to as "DEVELOPED MATERIALS" and "DEVELOPED INVENTIONS" respectively), then such DEVELOPED MATERIALS and/or DEVELOPED INVENTIONS will be subject to licensing conditions as specified in this IPR POLICY. Any other work performed by any MEMBERS will not result in the creation of DEVELOPED MATERIALS or DEVELOPED INVENTIONS subject to licensing under this IPR POLICY and will be owned by such MEMBER or MEMBERS, provided however that this limitation does not affect the covenant set forth in Section 3.3 below.
- 1.2 Any DEVELOPED MATERIALS created by a MEMBER alone, or in combination with: (i) other MEMBERS (such MEMBER, alone or with such other MEMBERS, if any, collectively, "CREATING MEMBERS"), and/or (ii) OSGi employees, shall be owned by the CREATING MEMBERS ("MEMBER LICENSED MATERIALS") without accounting to each other, the other MEMBERS or OSGi. The CREATING MEMBERS agree to grant OSGi an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the MEMBER LICENSED MATERIALS and derivative works thereof as set out in this IPR POLICY for use in accordance with the BY-LAWS. In addition, a MEMBER may also include third party material in MEMBER LICENSED MATERIALS, provided that such MEMBER has sufficient rights and licenses to enable it to grant OSGi the rights and licenses set forth above.
- 1.3 Any DEVELOPED INVENTIONS created by a MEMBER alone, or in combination with: (i) other MEMBERS (such MEMBER, alone or with such other MEMBERS, if any, collectively "INVENTING MEMBERS"), and/or (ii) OSGi employees, shall be owned by the INVENTING MEMBERS ("MEMBER LICENSED INVENTION") without accounting to each other, the other MEMBERS or OSGi. The INVENTING MEMBERS agree to grant OSGi an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license, subject to any third party intellectual property rights, to make, have made, use, lease, sell, offer for sale or otherwise transfer any apparatus and article of manufacture and to practice any method, covered by any MEMBER LICENSED INVENTION solely for implementation of a SPECIFICATION as set out in this IPR POLICY and for use in accordance with the BY-LAWS. In addition, the INVENTING MEMBERS agree to grant OSGi an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license, subject to any third party intellectual property rights, to license all MEMBERS to make, have made, use, lease, sell, offer for sale or otherwise transfer any apparatus and article of manufacture and to practice any method, covered by any MEMBER LICENSED INVENTION solely for implementation of a SPECIFICATION as set out in this IPR POLICY and for use in accordance with the BY-LAWS.
- 1.4 MEMBERS shall deliver to OSGi, a copy of MEMBER LICENSED MATERIALS, in source code and object code form, promptly after completion.
- 1.5 The MEMBERS providing MEMBER LICENSED MATERIALS understand and agree that OSGi has no obligation to include the MEMBER LICENSED MATERIALS in any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS.
- 1.6 Except as may result from the application of this IPR POLICY, a MEMBER does not grant OSGi or any other MEMBER any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such MEMBER.

2 OSGi Developed Intellectual Property

- 2.1 Except as set forth in Section 4 below, any MATERIALS created by an OSGi employee alone or a contractor to OSGi performing work for OSGi on a "works for hire" basis or otherwise assigned to or procured by OSGi (collectively "OSGi MATERIALS"), shall be owned exclusively by OSGi. OSGi shall grant each MEMBER an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the OSGi MATERIALS and MEMBER LICENSED MATERIALS (to the extent and for the purpose set forth in Section 1.2 above) and derivative works thereof, including the right to authorize AFFILIATES to do any, some or all of the foregoing.
- 2.2 Except as set forth in Section 4 below, any INVENTIONS created by an OSGi employee alone or a contractor to OSGi performing work for OSGi on a "works for hire" basis or otherwise assigned to or procured by OSGi (collectively "OSGi INVENTIONS"), shall be owned exclusively by OSGi. OSGi shall grant each MEMBER an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license, subject to any third party intellectual property rights, to make, have made, use, lease, sell, offer for sale or otherwise transfer any apparatus and article of manufacture and to practice any method, covered by any OSGi INVENTION and/or any MEMBER LICENSED INVENTION (to the extent and for the purpose set forth in Section 1.3 above). Such license shall include the right of the licensee to grant sublicenses to its AFFILIATES.
- 2.3 OSGi shall deliver to each MEMBER, a copy of all OSGi MATERIALS and all MEMBER LICENSED MATERIALS received by OSGi, in source code and object code form, promptly after completion or receipt, as the case may be.
- 2.4 Subject to any third party intellectual property rights (including NECESSARY CLAIMS identified under Section 3.1 below), MEMBER is authorized to create and have created, and to reproduce and license, lease, sell or otherwise distribute (directly and indirectly) implementations based on a SPECIFICATION. A MEMBER's implementation may be referred to as "Compatible with OSGi SPECIFICATION, version X.X" if such implementation is FULLY COMPLIANT with that version of the SPECIFICATION. OSGi may from time to time establish trademarks, logos or other branding elements ("TRADEMARKS") that can be used to identify an implementation as being FULLY COMPLIANT, however any such TRADEMARKS will be the subject of a separate licensing agreement between MEMBER and OSGi.

3 Disclosure of Patents

- 3.1 During the REVIEW PERIOD, as defined below, the MEMBERS shall disclose to OSGi, in writing, the existence of any NECESSARY CLAIMS of any of its patents or patent applications that may cover a SPECIFICATION that are personally known to the individuals acting on behalf of such MEMBERS with respect to OSGi, provided that it is understood and agreed that such individuals do not represent that they personally know of all potentially pertinent claims of patents and patent applications owned or claimed by the MEMBER they represent or any third parties.
- 3.2 The efforts pursuant to Section 3.1 above do not, however, imply any obligations on MEMBERS (collectively or individually) to perform or conduct patent searches. Further, nothing in this IPR POLICY nor the act of a MEMBER submitting, supporting, or approving a proposal for a SPECIFICATION, a REFERENCE IMPLEMENTATION or COMPLIANCE TESTS shall be construed or otherwise interpreted as any kind of express or implied representation that such MEMBER does or does not hold any patents or patent applications which contain claims that cover such MATERIALS.

- 3.3 Upon adoption by the MEMBERS of a SPECIFICATION, as set out in Section 8.2 or 8.3 below without timely withdrawal under Section 9.1 below, each MEMBER (on behalf of itself and its AFFILIATES) that has NECESSARY CLAIMS covenants to grant to each of the other MEMBERS and their AFFILIATES, under reasonable and nondiscriminatory terms and conditions (including a reasonable royalty rate), a nonexclusive, nontransferable, license under its NECESSARY CLAIMS, to implement that SPECIFICATION in a FULLY COMPLIANT manner, and sell, promote or otherwise distribute the resulting implementation, which may be made subject to the condition that those who seek licenses agree to reciprocate or upon such other terms as the parties agree, provided however, that for such grants of third parties rights which a MEMBER, or its AFFILIATES, has the right to make, the grant shall be subject at least to the terms and conditions that the MEMBER, or its AFFILIATES, are subject to, which terms and conditions shall be considered reasonable and nondiscriminatory. Such negotiations shall be left to the parties concerned and OSGi will not participate in such negotiations. Notwithstanding the above, no MEMBER shall be required to grant a license pursuant to this Section with respect to; (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a SPECIFICATION, but are not themselves expressly set forth in that SPECIFICATION (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, etc.); (ii) the implementation of other specifications, for example, even if referred to in a SPECIFICATION; (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be FULLY COMPLIANT with a SPECIFICATION. Additionally, in no event shall a MEMBER be required to grant a license pursuant to this Section with respect to technology that is not required to implement a SPECIFICATION.

4 OSGi Licensed Intellectual Property

- 4.1. OSGi may license or otherwise acquire MATERIALS, INVENTIONS or other intellectual property under terms other than those set forth in Section 2.1 or 2.2 ("THIRD PARTY PROPERTY") for use in its operations or distribution to MEMBERS as part of a SPECIFICATION, REFERENCE IMPLEMENTATION, COMPLIANCE TEST or otherwise provided that: (i) such acquisition supports the objectives and purposes of OSGi, and (ii) the terms, conditions and restrictions associated with such THIRD PARTY PROPERTY are agreed to by not less than a two thirds majority vote of the BOARD.
- 4.2 No MEMBER shall be obligated to accept a license grant to or to use any THIRD PARTY PROPERTY.

5 OSGi Marking Requirements

- 5.1 Any MATERIALS published by OSGi shall contain the following printed notice in a clear and conspicuous place: "Implementation of certain elements of this SPECIFICATION/REFERENCE IMPLEMENTATION/COMPLIANCE TESTS may be subject to third party intellectual property rights, including without limitation, patent rights (such a third party may or may not be a member of OSGi). OSGi is not responsible and shall not be held responsible in any manner for identifying or failing to identify any or all such third party intellectual property rights."
- 5.2 Any published MATERIALS for which any relevant third party patent has been identified shall include the following notice in a clear and conspicuous place: "Implementation of this SPECIFICATION/REFERENCE IMPLEMENTATION/COMPLIANCE TEST as stated in [insert reference to relevant provisions affected by patent claim] may involve the use of a patent/patent number XXX [delete as appropriate] concerning [insert subject matter] claimed by [insert claimant name if known] as granted by [insert country, if known]. OSGi takes no position concerning the evidence, validity and scope of this claimed patent right. Implementation of certain elements of this SPECIFICATION/REFERENCE

IMPLEMENTATION/COMPLIANCE TESTS may be subject to third party intellectual property rights other than those identified above, including without limitation, patent rights (such a third party may or may not be a member of OSGi). OSGi is not responsible and shall not be held responsible in any manner for identifying or failing to identify any or all such third party intellectual property rights."

6 Confidentiality

- 6.1 Each MEMBER understands and agrees that neither OSGi nor other MEMBERS wish to receive from any MEMBER under this IPR POLICY any information, which that MEMBER considers to be confidential.
- 6.2 Prior to making any MATERIALS available to the public, the contents of such MATERIALS shall be considered to be the confidential information of OSGi and treated as set forth below. All such confidential information shall be marked "OSGi Confidential", or if disclosed orally shall be identified as confidential at the time of disclosure and OSGi will provide the MEMBER(S) with written confirmation of such confidentiality within fifteen (15) days of such disclosure. Each MEMBER agrees that (i) it will use the same degree of care and discretion to avoid disclosure of such confidential information to third parties that it takes to protect its own similar information that it does not wish to disclose; and (ii) it will only disclose such confidential information to its employees and employees of its AFFILIATES who have a need to know. This obligation of confidentiality shall expire two (2) years from the date the confidential information is first disclosed to the MEMBER, and shall not apply to any information which: (a) is or becomes publicly available other than by the MEMBER's breach of a duty; (b) is rightfully received from a third party without any obligation of confidentiality; (c) is rightfully known by the MEMBER without any limitation on disclosure prior to its receipt from OSGi; (d) is independently developed by employees of the MEMBER; (e) is released for disclosure by the MEMBER with the OSGi's written consent; or (f) is not identified as confidential information at the time of disclosure. In addition, disclosure of confidential information will not be precluded if such disclosure is: (a) in response to a valid order of a court or other governmental body or any political subdivision thereof; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a protective order; or (b) necessary to establish rights under this IPR POLICY. Each MEMBER shall be free to use any ideas, concepts, know-how and techniques contained in the confidential information for any purpose, subject to any copyright or patent rights and subject to the foregoing obligation of protection during the above-defined confidentiality period. It is understood that receipt of confidential information under this IPR POLICY will not create any obligation in any way limiting or restricting the assignment and/or reassignment of any of any MEMBER's employees.

7 Expert Group

- 7.1 One or more eligible MEMBERS may propose to the BOARD the establishment of one or more technical groups to carry out the work of OSGi ("EXPERT GROUP"). Such proposal shall include the purposes of such EXPERT GROUP, particularly including the specific technical area to be the subject of the EXPERT GROUP, and the MEMBERS that initially desire to participate in such EXPERT GROUP. The BOARD shall (i) approve the formation of each EXPERT GROUP by a two thirds majority vote, and (ii) appoint the chairperson of such EXPERT GROUP. Before beginning any activities in the EXPERT GROUP, the chairperson shall create written statements of work for each MEMBERS that wishes to participate in such EXPERT GROUP, defining such MEMBERS roles and responsibilities. No MEMBER shall participate in an EXPERT GROUP unless and until it reaches agreement on its written statement of work. If a MEMBER that cannot reach agreement on its written statement of work with the chairperson, such MEMBER may appeal to the BOARD for resolution of any unresolved issues. The BOARD shall provide timely notice of the formation and chairperson of each EXPERT GROUP to all MEMBERS. After the first

meeting of a EXPERT GROUP, a schedule for meeting and activity milestone dates will be proposed and presented to the BOARD. The schedule of meetings of the EXPERT GROUP shall be published by the BOARD.

- 7.2 Eligibility to join and vote in one or more EXPERT GROUPS is determined by the provisions of a MEMBER's AGREEMENT. Only MEMBERS who are eligible and have joined the EXPERT GROUP (under a mutually agreed written statement of work) shall be entitled to contribute to the work activities of the EXPERT GROUP. Additionally, only MEMBERS who are eligible and have joined the EXPERT GROUP shall be entitled to vote in any vote taken by the EXPERT GROUP. A simple majority shall be required to pass for votes of the EXPERT GROUP, provided that a majority of the participants in such EXPERT GROUP must be present in order to hold a vote.

8 Approval of Materials

- 8.1 An EXPERT GROUP may decide to circulate interim drafts of MATERIALS to the MEMBERS for review and comment. In addition, an EXPERT GROUP may request that an interim draft of any MATERIALS be published. This request, along with the associated MATERIALS, shall be transferred to the BOARD and the BOARD shall arrange for a vote on the publication of such MATERIALS. If a majority of the eligible MEMBERS agree, in accordance with the voting procedures set forth in the BY-LAWS, such MATERIALS shall be published.
- 8.2 The end result of an EXPERT GROUP shall be MATERIALS (in the form of final drafts or proposals) on the subject matter or undertaking assigned to such EXPERT GROUP, which drafts or proposals shall be formally submitted to the BOARD for voting by eligible MEMBERS. Such vote shall take place no sooner than forty-five (45) days after submission to the BOARD (the "REVIEW PERIOD"). A majority of all the MEMBERS eligible to vote in accordance with the BY-LAWS, is required for any such MATERIALS to be approved and thus to become a SPECIFICATION, REFERENCE IMPLEMENTATION or COMPLIANCE TESTS, as the case may be. SUCH SPECIFICATIONS, REFERENCE IMPLEMENTATIONS and COMPLIANCE TESTS shall be made available within OSGi. Additionally, it is the intent of OSGi to make such SPECIFICATIONS publicly available, upon approval by the BOARD.
- 8.3 After any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be, have been approved in accordance with Section 8.2 above, any updates or alterations thereto shall be treated as a proposal to develop a new SPECIFICATION, REFERENCE IMPLEMENTATION or COMPLIANCE TESTS, as the case may be, and shall be subject to the same processes and procedures used for development as set forth above. The adoption of new SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be, shall not terminate any right or obligation of any MEMBER under this IPR POLICY including any licenses or covenants granted or received by a MEMBER with respect to any earlier adopted SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be.

9 Withdrawal

- 9.1 At any time during the REVIEW PERIOD, a MEMBER may give notice of its intent to terminate its membership in OSGi, in accordance with the BY-LAWS, and avoid the obligations under Section 3.3 with respect to any SPECIFICATIONS that have not yet been adopted as final by the MEMBERS in accordance with Section 8.2 or 8.3 above.
- 9.2 Any licenses or rights previously granted or received by a MEMBER and any obligations that attached prior to termination of its membership shall survive and continue beyond such termination. No licenses shall be deemed granted or received by such former MEMBER as

to any new SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS adopted after the date of such termination. In addition, any licenses or rights previously granted or received by an AFFILIATE and any obligations which attached prior to the date on which it ceased being an AFFILIATE shall survive and continue even though it is no longer an AFFILIATE. No licenses shall be deemed granted or received by such former AFFILIATE as to any new SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS adopted after the date that it is no longer an AFFILIATE.

10 No Warranty

- 10.1 All MEMBER LICENSED MATERIALS and MEMBER LICENSED INVENTIONS are provided "AS IS", and no MEMBER makes any warranty of any kind, express or implied, including any implied warranties of merchantability, non-infringement of third party intellectual property rights, and fitness for a particular purpose. None of the MEMBERS, nor OSGi, warrant or assume any liabilities in connection with the rights granted, nor the actions anticipated or taken under this IPR POLICY IN NO EVENT SHALL ANY MEMBER BE LIABLE TO ANY OF THE OTHER MEMBERS OR TO OSGi, NOR SHALL OSGi BE LIABLE TO ANY MEMBER, FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR FOR DIRECT, INDIRECT, SPECIAL OR EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

11 Amendments

- 11.1 The Board reserves the right to modify or amend the terms of this IPR Policy, by a Supermajority Vote of the Board. Such modification or amendment shall require approval by a majority vote of the Members. Following such approval, MEMBERS shall be provided four (4) months' advance written notice prior to the effectiveness of such modification or amendment. However, no such changes shall be retroactive. Such changes shall apply as of the effective date OSGi specifies in the notice of amendment. MEMBER shall be deemed not to have accepted such modification or amendment, and to have elected to terminate their membership if OSGi does not receive written notification of MEMBER's acceptance of such modification or amendment prior to the expiration of the four (4) month notice period. [NOTE: Changes to the IPR Policy need to require a supermajority vote and approval of a majority of the Members. See prior comment on this point at Section 3.1 of the OSGi Member Agreement.]