

OSGi ADOPTER ASSOCIATES AGREEMENT

This Agreement is entered into as of the ____ day of _____, 20__, by and between the OSGi Alliance, Inc. ("OSGi") and _____ (the "ASSOCIATE", as defined below), 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 and services as further described in the OSGi By-Laws; and

WHEREAS, ASSOCIATE would like to participate in OSGi in accordance with this AGREEMENT; and

WHEREAS, in order to facilitate discussions and activities among and between ASSOCIATES and OSGi to further define any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS and COMPLIANCE TESTS, this AGREEMENT sets out the terms which will govern those discussions and activities;

NOW, THEREFORE, in consideration of its participation as an associate of OSGi and as a condition of becoming an associate the ASSOCIATE 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 Adopter Associates Agreement.

"ASSOCIATES" are nonvoting associates of OSGi created in accordance with Section 11.1 of the OSGi Bylaws. ASSOCIATES are not members of the Corporation pursuant to California Corporations Code Section 5056. References to ASSOCIATES shall be interpreted as including their AFFILIATES. References to "ASSOCIATE" in the singular shall mean the particular associate of OSGi that has executed this instance of the OSGi Adopter Associates Agreement (and its AFFILIATES).

"COMPLIANCE TESTS" shall mean one or more programs and related documentation, which is finally adopted by OSGi, and any updates, revisions or new versions thereto finally adopted by OSGi, 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 for which a patent application is filed.

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

"MEMBER" shall mean a voting member of OSGi, as such members are described in Section 11.1 of the OSGi Bylaws. References to a MEMBER shall be interpreted as references to that MEMBER and its AFFILIATES.

"NECESSARY CLAIMS" shall mean those claims of all patents and patent applications, under which ASSOCIATE or its AFFILIATES has the right, at any time during the term of their membership, to grant licenses of the scope contemplated herein, and which are necessarily infringed by an implementation of a version of a SPECIFICATION approved by OSGi, 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, and any updates, revisions or new versions thereto finally adopted by OSGi.

"REVIEW MATERIAL" shall mean any documents that are being developed by OSGi to be considered for adoption as a SPECIFICATION as well as any SPECIFICATIONS themselves.

"SPECIFICATION" shall mean a document containing a set of technical criteria which describe the basic interfaces and attributes of software, which is finally adopted by OSGi, and any updates, revisions or new versions thereto finally adopted by the OSGi.

2 Associates of OSGi

- 2.1 Qualifications for ASSOCIATES shall be as determined by the OSGi board of directors ("BOARD") as set forth in the By-Laws of OSGi ("BY-LAWS"). ASSOCIATE has reviewed and agrees to abide by the BY-LAWS, as applicable.
- 2.2 ASSOCIATE shall complete a registration form, as defined by OSGi, and execute and abide by this AGREEMENT. ASSOCIATE shall pay the applicable membership dues and any fees or other assessments duly imposed on associates as established by the BOARD in accordance with the BY-LAWS and shall be entitled to privileges and benefits as established by the BOARD as described in the BY-LAWS and this AGREEMENT. ASSOCIATE 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 ASSOCIATE's participation in OSGi meetings and conferences.
- 2.3 Neither OSGi nor ASSOCIATE shall use the name of the other(s) in any form of publicity without the written permission of the other, provided that ASSOCIATE may publicly disclose and identify its own relationship with OSGi in documentation, press releases, brochures and other materials using the ASSOCIATE's logo, and OSGi may publicly disclose and identify the relationship of ASSOCIATE with OSGi in documentation, press releases, brochures and other materials using the ASSOCIATE's name and logo, provided that all such references are truthful and accurate. Notwithstanding any such written request by ASSOCIATE, OSGi may disclose the relationship of ASSOCIATE if required by law or any court of competent jurisdiction.

3 Associate Developed Intellectual Property

- 3.1 If OSGi provides ASSOCIATE with access to REVIEW MATERIAL ASSOCIATE agrees to review such REVIEW MATERIAL during the ASSOCIATE REVIEW PERIOD and may provide additions, edits, suggestions, or other feedback on it ("ASSOCIATE LICENSED MATERIALS"). ASSOCIATE hereby grants OSGi and each MEMBER an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, paid-up right and license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the ASSOCIATE LICENSED MATERIALS and derivative works thereof as set out in this AGREEMENT for use in accordance with Section 2.2 of the BY-LAWS.
- 3.2 ASSOCIATE may provide additions, edits, suggestions, or other feedback on the REFERENCE IMPLEMENTATIONS and COMPLIANCE TESTS or any other software produced by OSGi ("ASSOCIATE LICENSED CODE"). ASSOCIATE hereby licenses all such ASSOCIATE LICENSED CODE to OSGi and each MEMBER under the Apache License, Version 2.0.
- 3.3 If ASSOCIATE provides any ASSOCIATE LICENSED MATERIALS or ASSOCIATE LICENSED CODE to OSGi, ASSOCIATE hereby grants OSGi and each MEMBER a license to any INVENTIONS licensable by it that are embodied in, or necessarily infringed by implementations of, such ASSOCIATE LICENSED MATERIALS or ASSOCIATE LICENSED CODE ("ASSOCIATE LICENSED INVENTIONS"). Such license shall be an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, 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 ASSOCIATE LICENSED INVENTION solely for implementation of a SPECIFICATION as set out in this AGREEMENT and for use in accordance with Section 2.2 of the BY-LAWS. In addition, ASSOCIATE hereby grants OSGi an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, paid-up right and license, subject to any third party intellectual property rights, to license MEMBERS to i) make, have made, use, lease, sell, offer for sale or otherwise transfer any apparatus and article of manufacture and to ii) practice any method, covered by any ASSOCIATE LICENSED INVENTION solely for implementation of a SPECIFICATION as set out in this AGREEMENT and for use in accordance with Section 2.2 of the BY-LAWS.
- 3.4 ASSOCIATE understands and agrees that OSGi has no obligation to include the ASSOCIATE LICENSED MATERIALS or ASSOCIATE LICENSED CODE in any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS.
- 3.5 Except as explicitly set forth in this AGREEMENT, ASSOCIATE does not grant OSGi or any MEMBER or any other ASSOCIATE any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of ASSOCIATE.

4 OSGi Developed Intellectual Property

- 4.1 OSGi may provide ASSOCIATE with access to newly developed REVIEW MATERIAL during the ASSOCIATE REVIEW PERIOD. In addition, OSGi will provide ASSOCIATE with access to the final, approved versions of SPECIFICATIONS prior to public availability. OSGi will provide ASSOCIATE with copyright and patent grants under OSGi's Specification License, Version 1.0 (or such other license adopted by OSGi for public distribution of SPECIFICATIONS) for any approved SPECIFICATIONS.
- 4.2 ASSOCIATE's implementation of the OSGi SPECIFICATION may be referred to as "Compatible with OSGi SPECIFICATION, version X.X" if such implementation is FULLY COMPLIANT with that version of the SPECIFICATION. An implementation of the SPECIFICATION must not claim to be a compliant implementation of the

SPECIFICATION unless it passes the OSGi Alliance COMPLIANCE TESTS for the SPECIFICATION in accordance with OSGi Alliance processes.

- 4.3 OSGi may from time to time establish trademarks, logos or other branding elements ("TRADEMARKS") that might be used to identify an implementation as being FULLY COMPLIANT, or for other purposes aligned with the objectives and purposes of OSGi as described in the BY-LAWS, however any such TRADEMARKS will be the subject of a separate licensing agreement between ASSOCIATE and OSGi.

5 Disclosure of Patents

- 5.1 During the ASSOCIATE REVIEW PERIOD, as defined below, ASSOCIATE shall disclose to OSGi, in writing, the existence of any NECESSARY CLAIMS of any of its patents or patent applications that may cover implementations of the REVIEW MATERIAL that are personally known to the individuals acting on behalf of ASSOCIATE 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 ASSOCIATE they represent or any third parties.
- 5.2 The efforts pursuant to Section 5.1 above do not, however, imply any obligations on ASSOCIATE to perform or conduct patent searches. Further, nothing in this AGREEMENT nor the act of ASSOCIATE submitting, supporting, or reviewing 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 ASSOCIATE does or does not hold any patents or patent applications which contain claims that cover such MATERIALS.
- 5.3 Upon adoption by OSGi of a SPECIFICATION, without timely withdrawal under Section 11.1 below, ASSOCIATE (on behalf of itself and its AFFILIATES) hereby covenants to grant to OSGi and to each MEMBER 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 ASSOCIATE, or its AFFILIATES, has the right to make, the grant shall be subject at least to the terms and conditions that ASSOCIATE, 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, ASSOCIATE shall not 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 ASSOCIATE be required to grant a license pursuant to this Section with respect to technology that is not required to implement a SPECIFICATION.

6 OSGi Licensed Intellectual Property

- 6.1. OSGi may license or otherwise acquire MATERIALS, INVENTIONS or other intellectual property under terms other than those set forth in this AGREEMENT ("THIRD PARTY PROPERTY") for use in its operations or distribution to MEMBERS and/or ASSOCIATES as part of a SPECIFICATION, REFERENCE IMPLEMENTATION, or COMPLIANCE

TESTS.

7 OSGi Marking Requirements

- 7.1 Any MATERIALS published by OSGi will contain the following printed notice (or such other noticed adopted by OSGi) 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."
- 7.2 Any published MATERIALS for which any relevant third party patent has been identified shall include the following notice (or such other notice adopted by OSGi) in a clear and conspicuous place: "Implementation of this SPECIFICATION/REFERENCE IMPLEMENTATION/COMPLIANCE TESTS 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."

8 Confidentiality

- 8.1 ASSOCIATE understands and agrees that neither OSGi nor MEMBERS wish to receive from ASSOCIATE under this AGREEMENT any information, which ASSOCIATE considers to be confidential.
- 8.2 Prior to making any MATERIALS available to the public, the contents of such MATERIALS may be considered by OSGi to be the confidential information of OSGi to be 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 ASSOCIATE with written confirmation of such confidentiality within fifteen (15) days of such disclosure. ASSOCIATE 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 ASSOCIATE, and shall not apply to any information which: (a) is or becomes publicly available other than by ASSOCIATE's breach of a duty; (b) is rightfully received from a third party without any obligation of confidentiality; (c) is rightfully known by ASSOCIATE without any limitation on disclosure prior to its receipt from OSGi; (d) is independently developed by employees of ASSOCIATE; (e) is released for disclosure by ASSOCIATE 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 AGREEMENT. ASSOCIATE 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 Agreement will not create any obligation in any way limiting or restricting the assignment and/or reassignment of any of ASSOCIATE's employees.

9 Expert Group

- 9.1 OSGi establishes one or more technical groups to carry out the work of OSGi ("EXPERT GROUP"). Membership and participation in EXPERT GROUPS is generally reserved to MEMBERS that have also executed an OSGi Statement of Work ("SOW"). Should ASSOCIATE decide that it wishes to participate in the initial development work for SPECIFICATIONS, REFERENCE IMPLEMENTATIONS, and COMPLIANCE TESTS, ASSOCIATE would need to join OSGi as a full MEMBER, and execute an appropriate SOW.

10 Approval of Materials

- 10.1 An EXPERT GROUP may decide to circulate interim drafts of MATERIALS to the MEMBERS for review and comment. Such MEMBER reviews will generally not involve ASSOCIATES.
- 10.2 A work product 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. During the development of the MATERIALS, OSGi may make REVIEW MATERIAL available to ASSOCIATE for its review. In addition, no later than five (5) business days after the EXPERT GROUP approves a proposed SPECIFICATION for submission to the BOARD, OSGi will provide a copy of the proposed SPECIFICATION to ASSOCIATE. The ASSOCIATE REVIEW PERIOD for any REVIEW MATERIAL provided to ASSOCIATE begins when the MATERIAL is provided and ends when the SPECIFICATION is published. During such ASSOCIATE REVIEW PERIOD, ASSOCIATE shall review the REVIEW MATERIAL. ASSOCIATE may provide ASSOCIATE LICENSED MATERIALS and ASSOCIATE LICENSED CODE as provided for in Section 3.

11 Withdrawal

- 11.1 At any time during the ASSOCIATE REVIEW PERIOD, ASSOCIATE may give notice of its intent to terminate its relationship with OSGi by providing thirty (30) days written notice to the President and to the Secretary of OSGi and avoid the obligations under Section 5.3 with respect to any SPECIFICATIONS that have not yet been published by OSGi.
- 11.2 Any licenses or rights previously granted or received by ASSOCIATE 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 ASSOCIATE 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 ASSOCIATE and any obligations which attached prior to the date on which it ceased being an ASSOCIATE shall survive and continue even though it is no longer an ASSOCIATE. No licenses shall be deemed granted or received by such former ASSOCIATE as to any new SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS adopted after the date that it is no longer an ASSOCIATE.

12 General

- 12.1 Except as provided below in this Section 12.1, all ASSOCIATE LICENSED MATERIALS,

ASSOCIATE LICENSED CODE, and ASSOCIATE LICENSED INVENTIONS are provided "AS IS", and ASSOCIATE makes no 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. Neither ASSOCIATE nor any MEMBER nor OSGi, warrant or assume any liabilities in connection with the rights granted, nor the actions anticipated or taken under this AGREEMENT. IN NO EVENT SHALL ANY MEMBER, ASSOCIATE, OR OSGi BE LIABLE TO ANY OF THE OTHER MEMBERS, TO THE ASSOCIATE OR TO OSGi, 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. Notwithstanding the above, ASSOCIATE represents to OSGi that, to the knowledge of the individuals participating in OSGi on behalf of the ASSOCIATE, no ASSOCIATE LICENSED MATERIALS or ASSOCIATE LICENSED CODE infringe the copyright or trade secret of any other party.

- 12.2 This AGREEMENT does not create a joint venture, partnership or other form of business association between ASSOCIATE and OSGi or the MEMBERS, nor an obligation to develop, make available, use, license, buy or sell any information, product, services or technology.
- 12.3 ASSOCIATE shall not assign or otherwise transfer its rights or obligations under this AGREEMENT without the prior written consent of OSGi, which consent shall not be unreasonably withheld or delayed. ASSOCIATE agrees 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.
- 12.4 All costs and expenses incurred by any party in carrying out its obligations under this AGREEMENT shall be paid by the party that incurred the expense. Each party shall possess or obtain at its own expense all necessary licenses or permits.
- 12.5 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.
- 12.6 No party hereto will bring a legal action under this AGREEMENT more than two years after the cause of action arose. Each party waives its rights to a jury trial in any resulting litigation.
- 12.7 No party shall 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 the reasonable control of the party delayed.
- 12.8 No approval, consent or waiver will be enforceable unless signed by 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.
- 12.9 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.
- 12.10 This AGREEMENT shall come into effect, when the Secretary of OSGi has received a signed copy of this AGREEMENT from ASSOCIATE and it has been executed on behalf of OSGi. This AGREEMENT may be terminated by the written withdrawal of

ASSOCIATE in accordance with Section 11.1, or by OSGi in the case of any material breach of any provision of this AGREEMENT, the BY-LAWS, or any other policy of OSGi by ASSOCIATE on thirty (30) days prior written notice unless ASSOCIATE cures such breach within such notice period. Any rights or obligations, which by their nature survive, shall continue after termination.

12.11 This AGREEMENT constitutes the entire agreement between ASSOCIATE and OSGi concerning its subject matter. No addition to or modification of any provision of this AGREEMENT shall be binding upon ASSOCIATE unless made by a written instrument signed by a duly authorized representative of OSGi. Any action related to this AGREEMENT will be governed by California law.

12.12 OSGi may change the terms and/or conditions of this AGREEMENT on sixty (60) days written notice to the ASSOCIATE. If ASSOCIATE does not provide a written notice of termination during such sixty (60) day period, ASSOCIATE will be bound to all of the revised terms and/or conditions without further notice or action on the part of OSGi or ASSOCIATE.

The parties agree any reproduction of this AGREEMENT made by reliable means (for example, photocopy or facsimile) is an original.

ACCEPTED AND AGREED TO FOR:

OSGi

ASSOCIATE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

OSGi

(ASSOCIATE NAME) _____

(ADDRESS) _____

(ADDRESS) _____