

OSGi Alliance Inc. Intellectual Property Rights Policy Amended and Restated as of May 23, 2011

This OSGi Alliance Inc. ("OSGi") 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

"AGREEMENT" shall mean the OSGi Member Agreement or OSGi Associates Agreement.

"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.

"BOARD" shall mean the board of directors of OSGi.

"BY-LAWS" shall mean the Amended and Restated By-Laws of OSGi.

"CODE" shall mean computer software (either source or object versions) including XML schema, document type definitions (DTDs) and other data or document formats.

"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 with its FINAL SPECIFICATION.

"CONTRIBUTOR" shall mean any individual or entity that submits a CONTRIBUTION to OSGi.

"CONTRIBUTION" shall mean any work of authorship, including any modifications or additions to an existing work, that is submitted to OSGi for inclusion in any MATERIAL. For the purposes of this definition, "submitted" means any form of electronic or written communication sent to OSGi or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, wikis, and other systems that are managed by, or on behalf of, OSGi for the purpose of developing, discussing, or distributing MATERIAL.

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"FULLY COMPLIANT" shall mean: (a) an implementation of a FINAL SPECIFICATION which supports or implements all of the portions of that FINAL SPECIFICATION defined as being "Required", or (b) an implementation of all portions of a FINAL SPECIFICATION required for a specific type of product or component thereof; in either case, such implementation shall be able to pass all applicable COMPLIANCE TESTS that are adopted by OSGi and licensed to the implementor for such FINAL SPECIFICATION.

"MATERIALS" shall mean any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS, COMPLIANCE TESTS, and any related documentation, white papers, or other descriptions, and all drafts thereof and proposals therefor.

"MEMBER" shall mean an OSGi Member as set forth in the By-Laws and their respective AFFILIATES.

"NECESSARY CLAIMS" shall mean those claims of all patents and patent applications, under which a party has the right at any time relevant to this policy to grant licenses of the scope contemplated herein, and which are infringed by a CONTRIBUTION, REVIEW SPECIFICATION or a FINAL SPECIFICATION, as the case may be, or which are necessarily infringed by an implementation of a CONTRIBUTION, REVIEW SPECIFICATION or FINAL SPECIFICATION, as the case may be, where such infringement could not have been avoided by another technically feasible noninfringing implementation of such CONTRIBUTION, REVIEW SPECIFICATION or FINAL SPECIFICATION. Notwithstanding the above, NECESSARY CLAIMS shall not include claims that are necessarily infringed by an implementation of a CONTRIBUTION, REVIEW SPECIFICATION or FINAL SPECIFICATION solely due to: (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a CONTRIBUTION, REVIEW SPECIFICATION or FINAL SPECIFICATION, but are not themselves expressly set forth in that CONTRIBUTION, REVIEW SPECIFICATION or FINAL 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 CONTRIBUTION, REVIEW SPECIFICATION or FINAL 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 FINAL SPECIFICATION.

"OSGi PARTICIPANT" shall mean a MEMBER and any associates that enter into a written agreement with OSGi pursuant to Section 11.1(c) of the By-Laws and their respective AFFILIATES.

"REFERENCE IMPLEMENTATION" shall mean an implementation of a FINAL SPECIFICATION and which is meant to be used as a guide for developers when creating their own implementations based on a FINAL SPECIFICATION, and which is FULLY COMPLIANT and is finally adopted by OSGi, and any updates, revisions or new versions thereto finally adopted by OSGi.

"SPECIFICATION" shall mean a document containing a set of technical criteria which describe basic interfaces and attributes. A SPECIFICATION is a FINAL SPECIFICATION when it is adopted as final by OSGi. A DRAFT SPECIFICATION is any draft, version, or other interim work or document identified as a predecessor of a FINAL SPECIFICATION. A REVIEW SPECIFICATION is any DRAFT SPECIFICATION produced by an EXPERT GROUP that is circulated by OSGi to all OSGi PARTICIPANTS for the purposes of review.

"SUPERMAJORITY VOTE OF THE BOARD" shall mean a resolution adopted by a minimum of a two-thirds (2/3) majority vote of the full Board of Directors, less any vacancies.

1 CONTRIBUTIONS

- 1.1 Each CONTRIBUTOR grants OSGi and each OSGi PARTICIPANT an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, paid-up copyright and trade secret license to reproduce, display,

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perform, prepare and have prepared derivative works based upon and distribute and sublicense the CONTRIBUTOR'S CONTRIBUTIONS and derivative works thereof as set out in this IPR POLICY for the development and implementation of MATERIALS, including the licensing by OSGi of the CONTRIBUTIONS incorporated into MATERIAL to OSGi PARTICIPANTS and non-OSGi PARTICIPANTS under any license adopted by OSGi. A CONTRIBUTOR may include third party material in CONTRIBUTIONS, provided that such CONTRIBUTOR has sufficient rights and licenses to enable it to grant the rights and licenses set forth within this IP Policy.

- 1.2 Each CONTRIBUTOR grants OSGi and each OSGi PARTICIPANT an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, paid-up right and license to any of its NECESSARY CLAIMS infringed by its CONTRIBUTIONS or an implementation thereof to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute any apparatus and article of manufacture and to practice any method, solely for a FULLY COMPLIANT implementation of a FINAL SPECIFICATION into which all or part of the CONTRIBUTIONS were incorporated.
- 1.3 In addition to the other grants or covenants in this IPR POLICY, to the extent any CONTRIBUTIONS includes CODE, the CONTRIBUTOR licenses such CODE to OSGi and each OSGi PARTICIPANT under the Apache License, Version 2.0.
- 1.4 The CONTRIBUTOR providing the CONTRIBUTION understands and agrees that OSGi has no obligation to include the CONTRIBUTION in any SPECIFICATIONS, REFERENCE IMPLEMENTATIONS, COMPLIANCE TESTS, or other MATERIAL.

2 Final Specifications

- 2.1 Upon adoption by OSGi of a FINAL SPECIFICATION, without timely withdrawal under Section 6.1 below, each OSGi PARTICIPANT covenants not to assert its NECESSARY CLAIMS against any FULLY COMPLIANT implementation of such FINAL SPECIFICATION created, distributed, or used by any OSGi PARTICIPANT or by any other party; provided however that the covenant may be suspended or terminated with regard to any OSGi PARTICIPANT or any other party that asserts a NECESSARY CLAIM in litigation against a FULLY COMPLIANT implementation of a FINAL SPECIFICATION or otherwise knowingly asserts or threatens to initiate a lawsuit which would assert that the implementation would infringe a NECESSARY CLAIM owned or controlled by it, unless such OSGi PARTICIPANT or third party withdraws the assertions promptly after being informed that the assertions are being made against a FULLY COMPLIANT implementation. This non-assertion covenant does not include sublicensing and/or "have made" rights. All implementing parties and users (including suppliers) benefit directly from the non-assert as outlined herein. Except to the extent required by law, rights or benefits promised to one party do not flow to any other party.

In addition, the OSGi PARTICIPANT agrees to grant, upon request, a nonexclusive, worldwide, non-sublicensable, perpetual, royalty-free, paid up right and patent license to its NECESSARY CLAIMS, to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute a FULLY COMPLIANT implementation of such FINAL SPECIFICATION.

If a commitment to license or to not assert a NECESSARY CLAIM applies to a FINAL SPECIFICATION, then the same commitment also applies to each future version of the FINAL SPECIFICATION to the extent that the same NECESSARY CLAIM (i) is required for implementation of the future version of the FINAL SPECIFICATION, and (ii) is used in a substantially similar manner, to a substantially similar extent, to achieve a substantially similar result as it was for the original version of the FINAL SPECIFICATION.

- 2.2 Any agreement in which an OSGi PARTICIPANT assigns, sells, conveys, or otherwise transfers, or grants an exclusive license to, a NECESSARY CLAIM (or patent or patent application that includes it)

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must provide either (i) that all such subsequent transferees and exclusive licensees assume and are bound by the prior non-assert and commitment to provide a patent license pursuant to this IPR POLICY (specifically or in a general statement about standards commitments), including this Section 2.2, or (ii) other measures are taken so that NECESSARY CLAIMS, after transfer, continue to be subject to obligations pursuant to this IPR POLICY.

- 2.3 Each OSGi PARTICIPANT agrees that its obligations in Section 2.1 and 2.2 shall apply to any NECESSARY CLAIMS that read on any FINAL SPECIFICATIONS that had been adopted by OSGi prior to the OSGi PARTICIPANT joining OSGi. Except as may result from the application of this IPR POLICY, an OSGi PARTICIPANT does not grant OSGi or any other OSGi PARTICIPANT or any third party any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such OSGi PARTICIPANT.
- 2.4 An implementation may be referred to as "compatible with" or "compliant with" a SPECIFICATION only if such implementation is FULLY COMPLIANT with the appropriate version of the SPECIFICATION. OSGi may from time to time establish trademarks, certification marks 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 from OSGi.
- 2.5 Each OSGi PARTICIPANT and CONTRIBUTOR agrees that OSGi is the organization for developing, adapting, and evolving OSGi SPECIFICATIONS and that it will not, assuming OSGi remains in existence, submit OSGi SPECIFICATIONS to another organization for subsequent development without the consent of OSGi.

3 OSGi Licensed Intellectual Property

- 3.1. OSGi may license or otherwise acquire MATERIALS, NECESSARY CLAIMS, 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 OSGi PARTICIPANTS as part of a SPECIFICATION, REFERENCE IMPLEMENTATION, COMPLIANCE TEST, or other MATERIAL 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 SUPERMAJORITY VOTE OF THE BOARD.
- 3.2 No OSGi PARTICIPANT shall be obligated to accept a license grant to or to use any THIRD PARTY PROPERTY.

4 OSGi Marking Requirements

- 4.1 Any published MATERIALS for which any potentially 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 portions affected by patent claim] may involve the use of a patent/patent application 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 enforceability, 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 an OSGi Participant). 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."

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5 Non-Confidentiality

- 5.1 Each OSGi PARTICIPANT understands and agrees that neither OSGi nor other OSGi PARTICIPANTS wish to receive from any OSGi PARTICIPANT under this IPR POLICY any information, which that OSGi PARTICIPANT considers to be confidential.
- 5.2 No OSGi PARTICIPANT shall publish or distribute draft MATERIALS to third parties without the approval of the OSGi PARTICIPANTS who authored such draft MATERIALS in accordance with the charter of the EXPERT GROUP carrying out the work. Notwithstanding the foregoing sentence, and regardless of whether the draft MATERIAL is marked as "confidential", it is not a violation of the obligations of this Section 5.2 for an OSGi PARTICIPANT to implement or incorporate the contents of any draft MATERIAL in any of its products, or to disclose such MATERIAL in the marketing, sale or distribution of such products.

6 Withdrawal

- 6.1 An OSGi PARTICIPANT may terminate its membership in OSGi prior to a SPECIFICATION becoming a FINAL SPECIFICATION and avoid the obligations under Sections 2.1 and 2.2 with respect to such FINAL SPECIFICATION except that, in the case of such termination, the obligations under Sections 2.1 and 2.2 will apply to any NECESSARY CLAIMS that read on any predecessor REVIEW SPECIFICATIONS that were circulated to that OSGi PARTICIPANT for review more than sixty (60) days prior to such termination. For the sake of clarity, the obligations with respect to an OSGi PARTICIPANT's CONTRIBUTION under Section 1 shall survive the OSGi PARTICIPANT's termination of membership, even if the CONTRIBUTION is first incorporated into a SPECIFICATION after such termination.
- 6.2 Any licenses or rights previously granted or received by an OSGi PARTICIPANT and any obligations that attached prior to termination of its membership shall survive and continue beyond such termination with the limitation that new versions of a previously approved FINAL SPECIFICATION will not cause additional patent claims to be considered NECESSARY CLAIMS under Section 2.1. No licenses shall be deemed granted or received by such former OSGi PARTICIPANT 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.

7 No Warranty

- 7.1 All OSGi PARTICIPANT CONTRIBUTIONS are provided "AS IS", and no OSGi PARTICIPANT 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 OSGi PARTICIPANTS, 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 OSGi PARTICIPANT BE LIABLE TO ANY OF THE OTHER OSGi PARTICIPANTS OR TO OSGi, NOR SHALL OSGi BE LIABLE TO ANY OSGi PARTICIPANTS, 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.

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8 Amendments

- 8.1 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, OSGi PARTICIPANTS 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. OSGi PARTICIPANT 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 OSGi PARTICIPANT's acceptance of such modification or amendment prior to the expiration of the four (4) month notice period.

9 Expert Groups

- 9.1 One or more eligible OSGi PARTICIPANTS may propose to the BOARD OF DIRECTORS 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 OSGi PARTICIPANTS that initially desire to participate in such EXPERT GROUP. This proposal shall be recorded as the charter of the EXPERT GROUP. The BOARD OF DIRECTORS shall (i) approve the formation of each EXPERT GROUP by a SUPERMAJORITY VOTE OF THE BOARD, and (ii) appoint the chair or co-chairs of such EXPERT GROUP. All production of MATERIALS within OSGi shall be done within an EXPERT GROUP in accordance with its charter. In the event that the BOARD OF DIRECTORS elects to accept a CONTRIBUTION produced outside of an EXPERT GROUP, the BOARD OF DIRECTORS shall adopt procedures for such CONTRIBUTIONS by a SUPERMAJORITY VOTE OF THE BOARD. Before beginning any activities in the EXPERT GROUP, the chair or co-chairs shall ensure written statements of work have been executed by each OSGi PARTICIPANT that wishes to participate in such EXPERT GROUP in accordance with that EXPERT GROUP'S charter. No OSGi PARTICIPANT shall participate in an EXPERT GROUP unless and until it has executed a written statement of work. The BOARD OF DIRECTORS shall provide timely notice of the formation and chairperson(s) of each EXPERT GROUP to all OSGi PARTICIPANTS. After the first meeting of a EXPERT GROUP, a schedule for meeting and activity milestone dates will be proposed and presented to the BOARD OF DIRECTORS. The schedule of meetings of the EXPERT GROUP shall be published to the OSGi PARTICIPANTS.
- 9.2 Eligibility to join and vote in one or more EXPERT GROUPS is determined by the provisions of the AGREEMENT. Only OSGi PARTICIPANTS who are eligible to join 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 OSGi PARTICIPANTS who are eligible and have joined the EXPERT GROUP shall be entitled to vote in any vote taken by the EXPERT GROUP.

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10 Approval of Materials

- 10.1 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 OF DIRECTORS for voting by eligible OSGi PARTICIPANTS. A period for eligible to vote OSGi PARTICIPANTS review and voting (the "REVIEW PERIOD") on the submitted MATERIALS shall be set by the BOARD OF DIRECTORS to be between a minimum of sixty (60) days and maximum of ninety (90) days (inclusive) in duration, and the BOARD OF DIRECTORS shall start this REVIEW PERIOD within forty-five (45) days from the date of formal submission of MATERIALS by an EXPERT GROUP. A majority of all the OSGi PARTICIPANTS eligible to vote, is required during the designated REVIEW PERIOD for any such MATERIALS to be approved and thus to become a FINAL SPECIFICATION, REFERENCE IMPLEMENTATION or COMPLIANCE TESTS, as the case may be. Such FINAL SPECIFICATIONS, REFERENCE IMPLEMENTATIONS and COMPLIANCE TESTS shall be made available within OSGi. Additionally, it is the intent of OSGi to make such FINAL SPECIFICATIONS publicly available, upon approval by the BOARD OF DIRECTORS.
- 10.2 After any FINAL SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be, have been approved in accordance with Section 10.1 above, any updates or alterations other than errata 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. The adoption of new FINAL SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be, shall not terminate any right or obligation of any OSGi PARTICIPANT under the IPR POLICY including any licenses or covenants granted or received by an OSGi PARTICIPANT with respect to any earlier adopted FINAL SPECIFICATIONS, REFERENCE IMPLEMENTATIONS or COMPLIANCE TESTS, as the case may be.