

WEB SERVICES-INTEROPERABILITY ORGANIZATION MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT (THE “AGREEMENT”) is entered into as of the Effective Date between the Web Services-Interoperability Organization (“WS-I”), a New York non-profit corporation, and the undersigned entity (“Member”).

Background

- A. WS-I has been organized to promote a common, standards based definition of web services that will facilitate interoperability of web services across multiple platforms, development languages, and applications and accelerate the adoption and deployment of web services.
- B. WS-I seeks to develop, with the aid of Members and others in the industry, specifications and testing materials that can be used to promote the interoperability of web services and to further activities of WS-I within the Scope Of The Organization.
- C. WS-I seeks to encourage broad industry use of such specifications and materials and to make available licenses therefor as provided herein and in the IPR Agreement.
- D. Member is an entity that is interested in fostering developments within the Scope Of The Organization and is entering into the IPR Agreement contemporaneously with the execution of this Agreement.

Agreement

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WS-I and Member agree to the following:

1. DEFINITIONS

- 1.1 “Affiliate” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes of this definition control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity.
- 1.2 “Contribution” shall have the meaning set forth in the IPR Agreement.
- 1.3 “Effective Date” means the date when this Agreement is executed by WS-I, as set forth on the signature page attached hereto.
- 1.4 “Final Material” shall have the meaning set forth in the IPR Agreement.

1.5 “IPR Agreement” means the agreements set out in the document entitled WS-I IPR Agreement, attached hereto as Attachment B, as such document may subsequently be amended in accordance with its terms.

1.6 “Material” shall have the meaning set forth in the IPR Agreement.

1.7 “Membership” means all entities that have executed and have in effect a Membership Agreement with WS-I.

1.8 “Notice” or “Notify” means the act of notifying in accordance with Section 5.7.

1.9 “Operating Procedures” means the procedures set out in the Bylaws of WS-I, attached hereto as Attachment A, as it may be amended in accordance with its procedures.

1.10 “Scope Of The Organization” shall have the meaning set forth in the IPR Agreement.

1.11 “Secretary” means the entity that is appointed by the WS-I Community Board (“Board”) to undertake certain duties, as set forth in the Operating Procedures.

1.12 “Working Groups” means the groups established and organized in accordance with the Operating Procedures to develop Material and perform such other tasks as appointed by the Board.

2. COMPLIANCE WITH ANTITRUST LAWS

WS-I and Member are committed to fostering open competition in the development of web-based products and services. WS-I and Member acknowledge that each member of the Membership may compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Any member of the Membership may have similar agreements with others. Each member of the Membership may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. No member of the Membership is obligated to announce or market any products or services. Without limiting the generality of the foregoing, Member agrees not to engage in discussions that would violate the antitrust laws and agrees to abide by the antitrust guidelines adopted by WS-I. Accordingly, Member hereby assumes responsibility to provide appropriate legal counsel to its representatives regarding the importance of limiting their discussions to subjects that relate to the purposes of WS-I, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

3. MEMBERSHIP RIGHTS AND OBLIGATIONS

3.1 Generally. Member has reviewed, agrees to abide by, and shall have all applicable rights and obligations as set forth in, the Bylaws of WS-I including the Operating Procedures.

3.2 Affiliates. Only one entity of an Affiliated group of entities may be a member of the Membership at any time. Membership Agreements signed by Affiliates of any member of the Membership are void. In the event of a merger that would result in two or more Affiliates being members of the Membership, the Affiliates involved will immediately inform the Secretary as to which members are withdrawing. In any event, members of the Membership who are Affiliates shall collectively have only one vote.

3.3 Development and Adoption of Material. Member shall reasonably cooperate with WS-I and the Membership to develop Material for the purpose of creating materials that can be widely used to ensure interoperability of web services. Member is not required to make or to offer any Contribution, nor is Member guaranteed that its Contribution will be incorporated into any Material. Material will be developed by the Working Groups using the procedure specified in the Operating Procedures.

3.4 IPR Agreement. Member agrees to enter into, accept and abide by the terms of the IPR Agreement as executed by Member contemporaneously with the execution of this Agreement.

4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall begin on the Effective Date and, except as provided below, shall continue indefinitely subject to the rights of termination set forth in Section 4.2.

4.2 Termination. Member may withdraw from WS-I by terminating this Agreement at any time upon the giving of at least thirty (30) days prior written notice to the Secretary. WS-I may terminate this Agreement if Member materially defaults in the performance of any material obligation, or materially breaches any covenant, as set forth in this Agreement, the Operating Procedures, or the IPR Agreement and does not cure such default or breach within thirty (30) days after being given written notice specifying the default or breach or, if such default or breach cannot reasonably be cured within such thirty (30) day period, does not cure within such longer period which is reasonably required to cure such default or breach.

4.3 Survival. In the event of termination under Section 4.2, the following shall survive and remain in effect: Section 1 (Definitions), Section 3.4 (IPR Agreement), and Section 5 (General). In addition, Member shall be obligated to pay all costs, expenses and dues that accrued prior to the effective date of termination in accordance with the Operating Procedures.

5. GENERAL

5.1 Member Representation. Member hereby represents, warrants and covenants to WS-I that (a) it has the authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution and performance of this Agreement does not and will not violate any agreement to which Member is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of Member, enforceable in accordance with its terms.

5.2 No Other Licenses. Except for the rights expressly provided by this Agreement, the IPR Agreement or any other agreement to which WS-I and Member are parties, Member neither grants nor receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

5.3 No Warranty. WS-I and Member each acknowledges that all information provided as part of the process for developing Material, including the Material itself, except as provided for in the IPR Agreement, is provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND WS-I AND MEMBER EACH EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.

5.4 Limitation of Liability. IN NO EVENT WILL EITHER WS-I OR MEMBER BE LIABLE TO EACH OTHER OR ANY THIRD PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

5.5 Governing Law. This Agreement shall be construed and controlled by the laws of the State of New York without reference to conflict of laws principles.

5.6 Jurisdiction. WS-I and Member agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and WS-I and Member each irrevocably consents to jurisdiction and venue in, the state and Federal courts of the State of New York. The proceedings shall be conducted in the English language. WS-I and Member each hereby waives any right to trial by jury.

5.7 Notices. All notices hereunder shall be electronic or written and sent to WS-I and Member at the addresses indicated on the signature page of this Agreement or at such other address as such party may later specify by written notice. For purposes of this Section, notice can include notice by written mail, electronic mail or by facsimile and shall be deemed served when sent; provided, however, that notice of a breach of this Agreement and notice of termination of this Agreement shall be given by overnight courier service or certified mail, return receipt requested. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

5.8 Complete Agreement; No Waiver. This Agreement, including all attachments, sets forth the entire understanding of WS-I and Member and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by

authorized representatives of WS-I and Member, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

5.9 Amendment. This Agreement may be amended on a non-discriminatory basis in accordance with the Operating Procedures in effect and as amended from time to time. Member shall be given at least thirty (30) days prior written notice of the effective date of an amendment and, unless expressly stated therein, amendments shall be prospective only. Member shall be bound by a duly adopted amendment.

5.10 No Rule of Strict Construction. Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against either party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of this Agreement will continue in effect.

5.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

5.12 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of WS-I and Member shall be subject to all laws, present and future, of any government having jurisdiction over WS-I and Member, and to orders, regulations, directions or requests of any such government. It is the intention of WS-I and Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

5.13 Headings. WS-I and Member acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

5.14 Assignment. Member may not assign its rights or obligations under this Agreement without the prior written consent of WS-I. For purposes of this Agreement, an assignment shall be deemed to include a transfer or sale of all or substantially all of the business of Member, or a merger, consolidation or other transaction that results in a change in control of Member.

5.15 Force Majeure. Neither WS-I nor Member shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes or any other cause which is beyond the reasonable control of such party.

5.16 General Construction. As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. "Includes" and "including" are not limiting, and "or" is not exclusive.

5.17 Independent Contractors. The relationship of WS-I and Member established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as requiring Member to use or implement Final Material, or limit Member from competing in any way, including engaging in activities, independently or with others, that may be deemed

competitive with Final Material. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever.

5.18 Import and Export Controls. In connection with this Agreement, the parties shall comply with all applicable laws, including export, re-export and foreign policy controls and restrictions that may be imposed by any government.

5.19 Order of Precedence. Notwithstanding anything else to the contrary in this Agreement or in the Operating Procedures, in the case of the conflict between the terms of this Agreement and the terms of the Operating Procedures, the terms of this Agreement shall control. Notwithstanding anything else to the contrary in this Agreement, in the case of the conflict between the terms of this Agreement and the terms of IPR Agreement, the terms of the IPR Agreement shall control.

WEB SERVICES-INTEROPERABILITY ORGANIZATION
MEMBERSHIP AGREEMENT

SIGNATURE PAGE

In witness of this agreement, WS-I and Member have executed this Agreement below:

MEMBERSHIP CLASS: **Contributing Member** **Associate Member**

WS-I:

Notice Information:

Web Services-Interoperability Organization

Address: c/o PROSKAUER ROSE LLP

By: _____

1585 Broadway
New York, New York 10036-8299
Attention: Jeffrey D. Neuburger, Esq.

Name: _____

Telephone: _____

Title: _____

Fax: _____

Date: _____

e-mail: _____

Member:

Notice Information:

Company: _____

Address: _____

By: _____

Attention: _____

Name: _____

Telephone: _____

Title: _____

Fax: _____

Date: _____

e-mail: _____

ATTACHMENT A
BYLAWS

ATTACHMENT B
IPR AGREEMENT