

## **OpenSocial Intellectual Property Rights Policy**

This Intellectual Property Rights Policy (“**Policy**”) of the OpenSocial Foundation (the “**Foundation**”) defines the intellectual property rights and obligations of Contributors (as defined below) and certain procedures relating to Contributions (as defined below) proposed to the Foundation for the creation of Specifications (as defined below), pursuant to the applicable Foundation processes.

### **1. Definitions**

- 1.1. “Compliant Portions”** means those specific portions of a product or service (hardware, software, firmware, or combinations thereof) only to the extent that they implement and are compliant with a particular Specification.
- 1.2. “Contribution(s)”** mean any written form of communication provided by a Contributor in accordance with the applicable Foundation process in which such Contributor directly participates, provided that such communication is clearly designated for inclusion in a Specification and provided that such communication is protectable under relevant copyright or patent laws.
- 1.3. “Contributor”** means any person (individual, entity, or otherwise) who: (a) makes a Contribution to a Specification or otherwise materially influences the development of the Specification; or (b) is required to execute the Foundation contribution agreement pursuant to the second sentence of Section 2.2.
- 1.4. “Implementation”** means a product or service (hardware, software, firmware, or combination thereof) that includes or makes use of one or more Compliant Portions.
- 1.5. “Necessary Claims”** means claims of any patent or patent application, other than design patents and design registrations, in any jurisdiction in the world: (a) for which and to the extent a Contributor has the right, at any time when and to the extent that this Policy, including the limited patent promise in Section 5.2, are applicable to and binding upon Contributor, to grant licenses or rights of the nature granted herein without such grant requiring the permission of, or resulting in payment of royalties or other consideration to, third parties (except for payments to employees or Related Entities or any other corporate affiliates); and (b) that are necessarily infringed by Compliant Portions of a particular Implementation. A claim is necessarily infringed hereunder only when such infringement could not have been avoided by another commercially reasonable non-infringing implementation of Compliant Portion(s) of that particular Implementation based on the state of the art when the applicable Specification is/was released in accordance with the applicable Foundation process. “Necessary Claims” do not, however, include any claims of any patent or patent application that read on: (x) any enabling technologies that may be necessary to make or use any product or service (or portion of either) that complies with that particular Specification with respect to which the relevant limited patent promise is given, but that are not themselves

expressly set forth in such Specification; (y) the implementation of other published standards not developed by or for the Foundation; or (z) any portion(s) of any product or service (or any combination of such portion(s)) the sole purpose or function of which is not required to comply with such Specification.

**1.6. “Related Entities”** means, with respect to any Contributor, any person, firm, corporation, partnership, or similar entity that directly or indirectly is controlled by such Contributor anytime after Contributor’s execution of the Foundation contribution agreement and prior to its withdrawal from the Foundation, but only for so long as such control exists. For purposes of the foregoing, “control” means direct or indirect control of more than fifty percent (50%) of the voting power to direct management of such entity.

**1.7. “Specification”** means, collectively, the technical documentation designated as a Specification and published by the Foundation pursuant to the applicable Foundation process in which Contributor directly participates.

## **2. Contributions/Contributors**

**2.1. Becoming a Contributor.** To become a Contributor, an individual or entity must first affirmatively accept the Foundation contribution agreement (which incorporates this Policy by reference).

**2.2. Contributions.** Contributor hereby represents and warrants that it shall not knowingly incorporate any third party materials into any Contribution, unless the Contributor knows it has sufficient rights and licenses necessary from such third party to submit such Contribution for use in accordance with the terms and conditions of this Policy. Contributor also hereby represents and warrants that if Contributor is employed or controlled by or under common control with a third party (other than pursuant to a Change of Control Transaction governed by Section 8 below) and owes a duty to such third party regarding intellectual property that the Contributor creates (in whole or in part) that is related to any Specifications or to the actions of any Foundation work groups, Contributor will ensure that such third party also affirmatively executes the Foundation contribution agreement as soon as reasonably practicable following Contributor’s execution of such agreement or upon such Contributor’s Contribution to the Foundation which triggers such a duty. Any Contributions made by Contributor in accordance with this Policy will also be deemed a Contribution made by such third party for purposes of that party’s own Foundation contribution agreement.

## **3. Non-Confidentiality**

All Contributions and other materials shared broadly by Contributors with the Foundation community for the purpose of developing Specifications (but excluding any materials shared with other Contributors outside of the context of participating in the Foundation community or for any purpose other than developing Specifications), will be treated by the Foundation community as non-confidential information, regardless of any markings to the contrary included thereon or related thereto. Contributor acknowledges and agrees that

the Foundation and all other Contributors may use and disclose such broadly shared information as they deem appropriate, without any obligations of confidentiality. However, the foregoing shall not be construed as making any grant of patent or copyright rights that may be required for such use, whether by implication, estoppel or otherwise.

#### **4. Copyrights**

**4.1. Copyright License.** To the extent that any Contribution is or may be subject to copyright, the Contributor hereby grants a copyright license to the Foundation and to any other third party to use and exploit any and all such Contributions under the terms of the Creative Commons Attribution License version 3.0 (or such other similar copyright license agreed to by the Foundation pursuant to the applicable Foundation process in which Contributor directly participates).

**4.2. No Obligation.** Contributor acknowledges that the Foundation has no duty to publish or otherwise use or disseminate any Contribution.

**4.3. References.** If and to the extent it has the right, power and authority to do so, Contributor hereby grants permission to the Foundation (including to any groups within the Foundation authorized to carry out the work of the Foundation) to reference the name(s) of the Contributor but only in association with the Contribution(s) of Contributor or any portions thereof to the extent incorporated into another Contribution (but other than with respect to such incorporated portions, not with respect to any work derived from such Contribution(s), including without limitation a Specification, without the prior written consent of Contributor).

**4.4. Retention of Rights.** Except for the licensing obligations set forth above and the limited patent promise in section 5.2, Contributor retains and reserves all of its rights in and to its Contribution, and there are no other limitations whatsoever on Contributor's ability to exercise any copyright rights or other rights in its Contribution or any portion thereof.

#### **5. Patents**

**5.1. Limited Patent Promise – Contributions Prior to Final Specification.** Prior to making any Contribution to a Specification, each Contributor shall affirm its good faith intent to make a limited patent promise in accordance with Section 5.2 by executing the Foundation contribution agreement.

**5.2. Limited Patent Promise – Final Specification.** Upon receipt of a written request (including via email) from the Foundation for approval of a final Specification, each Contributor shall, in a timely manner following receipt of such request, either (a) notify the Foundation of its withdrawal from participation in development of the Specification, in which case the Foundation will remove any Contributions by the Contributor from the final Specification as soon as practicable but in any event prior to the approval of any final Specification or (b) make the following promise on behalf of itself and, to the extent it has the power to do so, on behalf of its Related Entities (collectively, "I" or "me") with respect to such final Specification, without the

requirement of any monetary compensation or any additional terms and conditions. For the avoidance of doubt, the following promise is intended to be a covenant and not a license.

I hereby irrevocably promise not to assert any Necessary Claims against any person (individual, entity or otherwise) (“**you**”) for making, having made, using, selling, offering for sale, importing, or distributing any product or service solely to the extent it contains or uses a Compliant Portion. This is a personal promise directly from me to you, and you acknowledge as a condition of benefiting from it that no rights are granted and no promises are made by me to your suppliers (other than to your manufacturers pursuant to an exercise of your have made rights), distributors, or otherwise in connection with this promise. Notwithstanding the personal nature of my promise, I acknowledge and agree that this promise is intended to run with any patents and patent applications containing Necessary Claims and to be binding on any future owner, assignee or exclusive licensee (who has been given the right to enforce any Necessary Claims against third parties) of any such patents or patent applications. Before or at the same time I assign (other than to an Acquirer, as defined below) or grant an exclusive license of the type described above to any patent or patent application containing Necessary Claims to any third party (including, without limitation, to a Related Entity or other corporate affiliate), I shall either (a) notify and contractually require the assignee or licensee, as applicable, to honor the non-assertion promise with respect to such Necessary Claims, and flow down a similar requirement on the assignee’s or licensee’s own subsequent assignees or licensees, as applicable; or (b) utilize another method that achieves an equivalent effect (including, without limitation, as to scope and continuity of benefits and conditions to that effected by (a)).

This promise is not an assurance that: (a) any of my issued patent claims covers an Implementation or are enforceable; or (b) an Implementation will not infringe patents or other intellectual property rights of any third party. No other rights except those expressly stated in this promise will be deemed granted, waived, or received by implication, exhaustion, estoppel, or otherwise.

Notwithstanding anything to the contrary, I may revoke my promise not to assert any Necessary Claims against you if you file against me (or my Related Entities) a claim, counterclaim, defense, suit, or action alleging patent infringement with respect to any Implementation or alleging invalidity or unenforceability with respect to any Necessary Claims.

For clarity, I acknowledge and agree that this promise will apply to each version of a Specification for which it is made, and any promises which I make with respect to subsequent versions of the same Specification will not modify, supersede, replace or nullify any promises I made previously pursuant to this Section 5.2 with respect to prior versions of that same Specification.

Solely for purposes of Section 365(n) of Title 11, United States Bankruptcy Code (“**Bankruptcy Code**”) and any equivalent law in any foreign jurisdiction, this promise will be treated as if it were a license and you may elect to retain your rights under this promise if I (or any owner of any patents or patent applications referenced herein), as a debtor in possession, or a bankruptcy trustee in a case under the Bankruptcy Code, reject the Foundation contribution agreement, including this Policy which is incorporated therein.

**5.3. Patent Disclosures.** There is no requirement or expectation that Contributors should disclose patents or patent applications that they have reason to believe may be infringed by Compliant Portions so long as the Contributors agree to the above patent promise with respect to those patents or patent applications, or have withdrawn from participation in development of the Specification. The Foundation hereby disclaims any responsibility for identifying the existence, or for evaluating the applicability, of any patents, patent applications, or other intellectual property rights (including copyrights) claimed to be applicable to any Specification and will take no position on the validity or scope of any such rights.

**5.4. Patent Rights in Joint Developments.** When two or more Contributors (“**Joint Contributors**”) each make a contribution to the conception of a patentable invention in the course of activities governed by this Policy, such Joint Contributors will jointly own the patent rights arising therefrom (“**Joint Patent Rights**”), and each Joint Contributor hereby assigns and agrees to assign to the other such Joint Contributor(s) an equal, undivided interest therein, including the unrestricted right of each such Contributor (and its Related Entities and any third parties referenced in Section 2.2) is free to practice the Joint Patent Rights for itself/themselves, and to license third parties, with no duty to notify or account to the other Joint Contributors. Each Joint Contributor hereby agrees, during and after the term of this Agreement, to execute any document reasonably requested to perfect another Joint Contributor’s patent rights as set forth pursuant to this Agreement.

## **6. Disclaimer**

Contributors make no (and hereby expressly disclaim any) warranties (express, implied, or otherwise), including implied warranties of merchantability, non-infringement, fitness for a particular purpose, or title, related to any Specification, and the entire risk as to implementing or otherwise using such Specification is assumed by the implementer (i.e., a person or other entity that creates, distributes or offers a product or service that contains or makes use of an Implementation) or user thereof.

## **7. Withdrawal**

A Contributor may withdraw from the Foundation altogether or from any individual working group at any time by providing reasonable advance written notice to the Foundation pursuant to the applicable Foundation process. Immediately following the effective date of Contributor’s withdrawal, Contributor will not be permitted to submit any further

Contributions to the Foundation (in the event of a withdrawal from the Foundation) or, in any case, to any working groups in which he/she participated or made Contributions prior to the withdrawal therefrom until such time as Contributor executes another Foundation contribution agreement. Notwithstanding the foregoing, the withdrawal *per se* will not affect the withdrawing Contributor's rights as a grantee under Sections 4.1 or 5.2. The withdrawing Contributor, including its successors, heirs and assigns and Related Entities, will remain subject to its obligations as a grantor under: (a) Section 4.1, in perpetuity, only as applied to copyrights in any Contributions made by Contributor before the effective date of such withdrawal; and (b) the limited patent promise in Section 5.2, in perpetuity, but only as applied to any Specifications published by the Foundation (pursuant to the applicable Foundation process) prior to the effective date of such withdrawal.

## **8. Acquisition**

In the case of an assignment of Contributor's Foundation contribution agreement, whether voluntarily or by operation of law, in connection with a reorganization, acquisition, merger, consolidation, sale of all or substantially all of the assets, or other change of control of any Contributor pursuant to which Contributor ceases to exist as a separate corporate entity (each, a "**Change of Control Transaction**"), the terms of such Foundation contribution agreement and this Policy, including without limitation the terms of Section 4.1 and 5.2, will be binding upon and inure to the benefit of the acquirer or other successor entity (the "**Acquirer**") with respect to those intellectual property rights relating to the subject matter hereof that were owned or controlled by the Contributor (whether filed, pending, or issued) immediately prior to the closing of the Change of Control Transaction, but not as to any intellectual property rights owned, controlled or subsequently acquired by the Acquirer independently of the Change of Control Transaction. Notwithstanding the foregoing, following the effective date of such an assignment, the Acquirer shall be deemed to be the Contributor for all purposes under this Policy with respect to any Contributions made by the Acquirer following such date.