

# DRAFT 2012 May 14

## OSLC IP Policy

### Article I. Definitions

All capitalized terms in this IP Policy have the meaning defined in the OSLC Bylaws as they appear at [URL](#) ("the Bylaws"), unless such term is defined explicitly in this IP Policy.

**"Compliant Implementations"** means an implementation of all required portions of a Final Specification within the bounds of the Workgroup Charter.

**"Draft Specification"** means a Specification that is under development, revision, consideration or the like by a Workgroup, but is not yet a Final Specification.

**"IPR Review Period"** means a period of thirty (30) days following notification to Workgroup Members that a Draft Specification is ready for review prior to approval as a Final Specification by the Steering Committee.

**"Necessary Claim"** means a claim of a patent or patent application other than design patents and design registrations, throughout the world that: (a) is owned, controlled, or licensable by a Workgroup Member now or at any future time; and (b) is necessarily infringed by implementing those required portions of a Final Specification that is within the Workgroup Charter, provided that a claim is necessarily infringed only when there is no technically reasonable non-infringing alternative for implementing such portions of the Final Specifications. A Necessary Claim does not include any (i) claim contained in the same patent or patent application as a Necessary Claim that does not itself satisfy the definition a Necessary Claim; (ii) claim that would require a payment of a royalty or other consideration by the Workgroup Member to an unaffiliated third party; (iii) claim covering any enabling technology that may be necessary to develop, design, manufacture, sell or use a Compliant Implementation but is not expressly set forth as required in a Final Specification (examples of such technologies include without limitation: basic computer or network technology, semiconductor manufacturing technology, compiler technology, basic operating system technology); (iv) claim covering the implementation or use of specifications or documents published by entities other than OSLC that are referenced in the body of a Final Specification but not described with specificity; or (v) claim covering

any product or process that are not required for conformance with the Final Specification.

## **Article II. Obligations Upon Joining a Workgroup**

By signing a Workgroup Participation Agreement (“WPA”) for a Workgroup, an OSLC Member, the Entity specified in the WPA as being represented by the Workgroup Member and Affiliates of the Entity, collectively become a Workgroup Member of this Workgroup, bound to the terms and conditions of this IP Policy..

## **Article III. Patents**

### ***A. Royalty-free License Commitment***

Subject to the terms and conditions of this IPR Policy, and except to the extent a Workgroup Member submits a Exclusion Notification pursuant Article III.B below, Workgroup Member grants to any party a non-exclusive, worldwide, royalty-free license under the Necessary Claims of the Workgroup Member to make, use, sell, offer to sell, export, and import Compliant Implementations (“Royalty-free License”) of any Final Specification produced by this Workgroup.

### ***B. IPR Review Period***

No later than the end of the close of the IPR Review Period, but as soon as reasonably known, each Workgroup Member must identify any Necessary Claims of the Workgroup Member for which the Workgroup Member is unwilling to agree to grant the Royalty Free License pursuant to Article III.A (referred to hereinafter as an “Exclusion Notification”). Any such Exclusion Notification shall be provided in writing to the Steering Committee prior to the end of the IPR Review Period with the following information for any such Necessary Claim: the patent number including the Necessary Claim if the patent is granted or the patent application number if the Necessary Claim is contained in a pending application; the claim number of the Necessary Claim; and the required portion(s) of the Draft Specification that, if implemented as part of a Compliant Implementation of the Draft Specification, would necessarily infringe the Necessary Claim. For the sake of clarity, no Exclusion Notification may be submitted for any Necessary Claim that is subject to the agreement to grant a Royalty Free License as a result of a Workgroup Member’s own Contribution.

If a Workgroup Member Exclusion Notification has been properly submitted in accordance with this Article III.B, and the Steering Committee decides to approve the Draft Specification as a Final Specification, then the Workgroup Member will grant to any party, upon request, a license under reasonable and non-discriminatory terms and conditions for those Necessary Claims contained in the patents or patent applications identified in the Exclusion Notification, for so long as such Necessary Claims are valid and enforceable, to make, use, sell, offer to sell, export, and import Compliant Implementations (“RAND License”). This commitment to grant a RAND license is effective upon approval by the Steering Committee of the Draft Specification as a Final Specification.

### ***C. Defensive Suspension or Termination***

A Workgroup Member may suspend or terminate a Royalty-free License or RAND License to any party that: asserts a patent in litigation against a Compliant Implementation; or otherwise knowingly asserts or threatens to initiate a lawsuit which would assert that any Compliant Implementation would infringe a patent owned or controlled by such party, unless such party withdraws the patent assertions promptly after being informed that the assertions are being made against a Compliant Implementation.

## **Article IV. Copyrights**

### ***A. Developing Specifications***

Workgroup Member grants to other Workgroup Members a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free copyright license to reproduce, create derivative works, publish, distribute, display, and perform its Contributions solely for the purposes of developing, publishing and distributing Draft Specifications of this Workgroup. For clarity, each Workgroup Member hereby consents to other Workgroup Members modifying such Workgroup Member’s Contributions for the sole purpose of developing Specifications for this Workgroup.

### ***B. Final Specifications***

Workgroup Member grants to OSLC a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free copyright license to reproduce, create derivative works, publish, distribute, display, and

perform its Contributions solely as part of Final Specifications of this Workgroup.

Workgroup Member grants to OSLC the right to publish Final Specifications on the OSLC Website and to grant to all third parties the an appropriate fully paidup, royalty-free copyright license to copy and distribute the Final Specification for the sole purpose of evaluating and/or implementing the Final Specification.

### ***C. Other Materials***

For any of its Contributions to this Workgroup that are not Contributions to a Specification, Workgroup Member makes such Contributions available to all parties under the terms and conditions of the OSLC Terms of Use ([hyperlink](#)).

### ***D. Copyright Notice***

OSLC shall include the following notice on Final Specifications and any other Material produced by the Workgroup Members for publication:

“© Copyright [insert year] by the following authors of the OSLC [Insert name of Workgroup]: [list of Entities represented by authors] ..

THIS DOCUMENT IS PROVIDED "AS IS," AND OSLC , OSLC AND ITS MEMBERS, THE STEERING COMMITTEE AND ITS MEMBERS, THE OSLC WORKGROUP THAT CREATED THIS DOCUMENT AND ITS MEMBERS ("THE OSLC PARTIES") MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR TITLE; THAT THE CONTENTS OF THIS DOCUMENT ARE SUITABLE FOR ANY PURPOSE; OR THAT THE IMPLEMENTATION OF SUCH CONTENTS WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. NONE OF THE OSLC PARTIES WILL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO ANY USE OR DISTRIBUTION OF THIS DOCUMENT UNLESS SUCH DAMAGES ARE CAUSED BY WILFUL MISCONDUCT OR GROSS NEGLIGENCE. THE FOREGOING DISCLAIMER AND LIMITATION ON LIABILITY DO NOT APPLY TO, INVALIDATE, OR LIMIT REPRESENTATIONS AND WARRANTIES MADE BY OSLC MEMBERS TO OSLC AND OTHER OSLC MEMBERS IN CERTAIN WRITTEN POLICIES OF OSLC.”

## **Article V. Trademarks, Certification Marks and Logos.**

In the event that OSLC proposes to adopt any name, logo, trademark, certification mark or trade name (collectively, "OSLC Marks") for use with any of the Specifications, or with any other documentation, processes or services that implement and conform to the requirements of the Final Specifications, the Steering Committee shall notify the Workgroup Members at least forty five (45) days in advance. OSLC shall take any steps that the Steering Committee deems necessary and proper to protect its rights under such OSLC Marks. Workgroup Member agrees that, unless it provides written Notice to the Steering Committee challenging the use of the proposed Mark prior to its adoption by the Steering Committee, the Member and its Affiliates shall not bring a legal claim against OSLC, any OSLC Member or its Affiliates for their use of such OSLC Marks.

## **Article VI. No Confidential Information**

No Contributions made to this Workgroup shall be subject to any confidentiality restrictions by OSLC or this Workgroup, but will be open for review on the OSLC Website by any party. Accordingly, Workgroup Member shall not submit any Contribution or feedback subject to any requirement of confidentiality, and all Contributions and feedback shall be deemed non-confidential, notwithstanding any markings or representations to the contrary, and OSLC nor its Members shall have no obligation to treat any such material as confidential.

## **Article VII. Disclaimers**

### ***A. Workgroup Member's Contributions***

Workgroup Member agrees that it shall use reasonable efforts with respect to its Contributions to ensure that their Workgroup Member representatives have the right and authority to submit its Contributions subject to this IPR Policy. Workgroup Member further agrees that it shall use reasonable efforts to ensure that, subject to the actual knowledge of the Workgroup Member's representative (i) Workgroup Member's Contributions do not violate or incorporate the copyright or trade secret interests of another party, (ii) Workgroup Member's Contributions contain no source code, (iii) neither providing nor using Workgroup Member's Contributions are conditioned upon additional agreements other than the licenses granted herein, (iv) no claim has been asserted against the

Workgroup Member in writing that Workgroup Member's Contribution would violate any intellectual property rights, including patent rights, of another party, and (v). Workgroup Member shall not intentionally shield its representatives from access to any information for the purpose of evading this obligation.

### ***B. Member Obligations***

Member agrees to include the notice specified in Article IV.D on all Draft Specifications and other documentation, and further agrees to retain such notice in any Specification or other documentation that the Member reproduces.

### ***C. Transfer of Necessary Claims***

Workgroup Member agrees that any transfer of its Necessary Claims shall be subject to the licensing grant under Article III of this Agreement or shall otherwise provide in some other way that the license grant shall continue after such transfer. Workgroup Member further agrees that (i) neither Member nor any of its Affiliates has transferred or licensed any Necessary Claims for the purpose of avoiding its obligations under this IPR Policy, and (ii) Workgroup Member shall not transfer or license any Necessary Claims for such purpose.

## **Article VIII. Termination and Survival**

### ***A. Patents***

Notwithstanding a Workgroup Member's withdrawal from this Workgroup, or termination or withdrawal of its membership in OSLC, a Workgroup Member's obligation to grant licenses under Article III shall remain in full force and effect Claim for any Final Specification of this Workgroup for which a Draft Specification for such version was posted on the OSLC Website prior to such withdrawal or termination ("Participated Version").

For any Final Specification for which a first Draft Specification was posted on the OSLC Website after such withdrawal or termination ("Future Version"), a Workgroup Member's license grants under Article III shall remain in full force and effect for a given Necessary Claim only if: (i) such Necessary Claim also was a Necessary Claim in a Participated Version; and (ii) the Future Version has not materially deviated from the Scope of the Workgroup Charter.

B. Copyrights. All obligations pursuant to Article IV shall survive a Member's withdrawal from this Workgroup or withdrawal or termination of its membership in OSLC.

### **Article IX. Target SDOs**

If a Final Specification is submitted to a Target SDO set forth in the Workgroup Charter of this Workgroup, Workgroup Member agree to be bound by the terms and conditions of any patent commitments of the Target SDO with respect to the Final Specification, except that Workgroup Member does not agree to any terms and conditions that require specifying Necessary Claims or the like with respect to any specification of the target SDO, or to conduct an investigation to determine whether Workgroup Member owns or controls the any Necessary Claims or the like with respect to any specification of the target SDO.

### **Article X. OSLC Core Workgroup**

In addition to this Workgroup, Workgroup Member agrees to the terms and conditions set forth in this IP Policy for the OSLC Core Workgroup. For the avoidance of doubt, any Contribution of a Workgroup Member to a Specification of this Workgroup may be used as part of a Specification of the OSLC Core Workgroup ("Core Workgroup Specification") under the terms and conditions of this IP Policy as if such Core Workgroup Specification was a Specification of this Workgroup.

### **Article XI. Conflicts**

To the extent any terms and conditions of this IP Policy conflict with the terms and conditions of the WPA or the Bylaws, the terms and conditions of this IP Policy shall control.

### **Article XII. Interpretation of this IP Policy**

This IP Policy shall be construed under and governed by the laws of the State of New York, USA, without reference to conflict-of-laws principles.