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4 **IPR AGREEMENT FOR**
5 **WEB SERVICES-INTEROPERABILITY ORGANIZATION**
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8 **THIS IPR AGREEMENT FOR WEB SERVICES-INTEROPERABILITY ORGANIZATION**
9 ("AGREEMENT"), effective as of February 27, 2002 ("Effective Date"), is entered into by and
10 among Accenture ("Accenture") with offices at 161 North Clark Street, Chicago, IL 60601; BEA
11 Systems, Inc. ("BEA Systems") with offices at 2315 North First Street, San Jose, CA 95131;
12 Fujitsu Limited ("Fujitsu") with offices at 3055 Orchard Drive, San Jose, CA 95134; Hewlett-
13 Packard Company ("Hewlett-Packard") with offices at 19111 Pruneridge Avenue, Cupertino, CA
14 95014; Intel Corporation ("Intel") with offices at 2111 N.E. 25th Avenue, Hillsboro OR 97124;
15 International Business Machines Corporation ("IBM") with offices at Route 100, Somers NY
16 10589; Microsoft Corporation ("Microsoft") with offices at One Microsoft Way, Redmond, WA
17 98052; Oracle Corporation ("Oracle") with offices at 500 Oracle Parkway, Redwood Shores, CA
18 94065; and SAP AG ("SAP") with offices at 69190 Walldorf, GERMANY; and Web Services-
19 Interoperability Organization ("WS-I"), c/o Brown Raysman Millstein Felder & Steiner LLP, 900
20 Third Avenue, New York, NY 10022; and each of the other companies that has executed a
21 Signature Page to this Agreement.
22

23 **RECITALS**
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- 25 A. Accenture, BEA Systems, Fujitsu, Hewlett-Packard, Intel, IBM, Microsoft, Oracle,
26 and SAP and their Affiliates (collectively, the "Initial Founders"), as well as any other
27 entities that may be designated as Founding Members in accordance with the Bylaws
28 of WS-I, are hereinafter referred to collectively as the "Founding Members".
29
- 30 B. The Founding Members wish to set forth their agreement regarding IPR (as hereinafter
31 defined) with respect to the Web Services-Interoperability Organization ("WS-I").
32
- 33 C. WS-I shall be open to other parties who wish to join as Contributing or Associate
34 Members. The Founding Members intend that the terms of this IPR Agreement be the
35 terms and conditions under which WS-I and all members of WS-I are bound
36 (collectively, the Contributing Members and their Affiliates, the Associate Members
37 and their Affiliates, and the Founding Members and their Affiliates are referred to as
38 the "Parties").
39

40 **AGREEMENT**
41

42 **NOW THEREFORE**, in consideration of the mutual promises and covenants contained
43 herein, and other good and valuable consideration, the receipt and sufficiency of which are
44 hereby acknowledged, the Parties hereto agree to the following:
45

46 **1. Definitions**
47

48 In addition to the terms defined elsewhere in this Agreement, the following terms, when used
49 herein, shall have the following meanings:

- 50
- 51 a. "Adopter" means any entity that has executed a copy of the Adopter Agreement in the
52 form attached as Exhibit D ("Adopter Agreement") and delivered it to the Secretary.
53
- 54 b. "Affiliate" means any entity that is directly or indirectly controlled by, under common
55 control with or that controls the subject party. For purposes of this definition control
56 means direct or indirect ownership of or the right to exercise (a) greater than fifty
57 percent (50%) of the outstanding shares or securities entitled to vote for the election of
58 directors or similar managing authority of the subject entity; or (b) greater than fifty
59 percent (50%) of the ownership interest representing the right to make the decisions for
60 the subject entity.
61
- 62 c. "Associate Member" means any entity that has entered into and has in effect the
63 standard agreement setting forth an Associate Member's rights and obligations in
64 connection with WS-I ("Membership Agreement").
65
- 66 d. "Contributing Member" means any entity other than a Founding Member that has
67 entered into and has in effect the standard agreement setting forth a Contributing
68 Member's rights and obligations in connection with WS-I ("Membership Agreement").
69
- 70 e. "Contribution" is material, including Draft Material, Material text, and modifications to
71 other Contributions, in a tangible form of expression (including in electronic media)
72 which is provided by a Party in the process of developing Material for the purpose of
73 incorporating such material into a Material and which is ultimately incorporated into
74 Final Material.
75
- 76 f. "Draft Material" are any Draft Test Material, Draft Sample Application, or Draft
77 Specification.
78
- 79 g. "Draft Sample Applications" are versions of the Sample Applications that are not Final
80 Sample Applications.
81
- 82 h. "Draft Specifications" are versions of the Specifications that are not Final
83 Specifications.
84
- 85 i. "Draft Test Material" are versions of the Test Material that are not Final Test Material.
86
- 87 j. "Final Material" are any Final Test Material, Final Sample Application, or Final
88 Specification.
89
- 90 k. "Final Sample Applications" are any version of the Sample Applications, or portion
91 thereof, that have been finalized and adopted in accordance with the WS-I Operating
92 Procedures.
93

- 94 l. "Final Specifications" are any version of the Specifications, or portion thereof, that
95 have been finalized and adopted in accordance with the WS-I Operating Procedures.
96
- 97 m. "Final Test Material" are any version of the Test Material, or portion thereof, that have
98 been finalized and adopted in accordance with the WS-I Operating Procedures.
99
- 100 n. "IPR" are intellectual property rights, including without limitation, copyrights, trade
101 secrets, trademarks and patent claims.
102
- 103 o. "Licensed Claims" are those claims of a patent or patent application, throughout the
104 world, excluding design patents and design registrations, owned, controlled or that can
105 be sublicensed in compliance with the requirements of this Agreement by a Party now
106 or at any future time and which would necessarily be infringed by implementation of
107 the Final Specification. A claim is necessarily infringed hereunder only when it is not
108 possible to avoid infringing it because there is no plausible non-infringing alternative
109 for implementing the required portions of the Final Specification. Notwithstanding the
110 foregoing, Licensed Claims shall not include any claims other than as set forth above
111 even if contained in the same patent as Licensed Claims; or that read solely on any
112 implementations of any portion of the Final Specification that are not required by the
113 Final Specification. Moreover, Licensed Claims shall not include (i) any enabling
114 technologies that may be necessary to make or use any Licensed Product but are not
115 themselves expressly set forth in the Final Specification (e.g., semiconductor
116 manufacturing technology, compiler technology, object oriented technology, basic
117 operating system technology, and the like); or (ii) the implementation of other
118 published standards developed elsewhere and merely referred to in the body of the
119 Final Specification; or (iii) any Licensed Product and any combinations thereof the
120 purpose or function of which is not required for compliance with the Final
121 Specification. For purposes of this definition, the Final Specification shall be deemed
122 to include only architectural and interconnection requirements essential for
123 interoperability, within the Scope Of The Organization, and shall not include any
124 implementation examples unless such implementation examples are expressly
125 identified as being required for compliance with the Final Specification.
126
- 127 p. "Licensed Products" means only those specific portions of products (hardware,
128 software or combinations thereof) that implement and are compliant with all relevant
129 portions of the Final Specification.
130
- 131 q. "Licensed Technology" means the copyrights and Licensed Claims applicable to any
132 version of the Final Specifications.
133

- 134 r. "Licensed Test Material Claims" are those claims of a patent or patent application,
135 throughout the world, excluding design patents and design registrations, owned,
136 controlled or subject to sublicensing in compliance with the requirements of this
137 Agreement by a Party now or at any future time and which are infringed by the relevant
138 Final Test Material as it is distributed by WS-I without combination with any other
139 software. Notwithstanding the foregoing, Licensed Test Material Claims shall not
140 include any claims other than as set forth above even if contained in the same patent as
141 Licensed Test Material Claims.
142
- 143 s. "Material" are any Test Material, Sample Application, or Specification.
144
- 145 t. "Operating Procedures" means the procedures set out in the Bylaws of WS-I, as it may
146 be amended in accordance with its terms.
147
- 148 u. "Party" means a Founding Member and its Affiliates, a Contributing Member and its
149 Affiliates, or an Associate Member and its Affiliates..
150
- 151 v. "Sample Application" means source or object code and related documentation
152 designated by the Board, or by the Working Group subject to procedures adopted by
153 the Board, as a Sample Application that is being developed (in the case of Draft
154 Sample Applications) or has been adopted (in the case of Final Sample Applications)
155 within the procedures of WS-I and within the Scope Of The Organization.
156
- 157 w. "Sample Application License Agreement" means the license agreement for Sample
158 Applications included in Exhibit C.
159
- 160 x. "Scope Of The Organization" means the creation, promotion, or support of Generic
161 Protocols for Interoperable exchange of messages between services. As used in this
162 definition, "Generic Protocols" means protocols that are independent of any specific
163 action indicated by the message beyond actions necessary for the secure, reliable, or
164 efficient delivery of messages; "Interoperable" means suitable for and capable of being
165 implemented in a neutral manner on multiple operating systems and in multiple
166 programming languages.
167
- 168 y. "Specification" means a document that is being developed (in the case of Draft
169 Specifications) or has been adopted (in the case of Final Specifications) within the
170 procedures of WS-I which, within the Scope Of The Organization, (1) is the technical
171 description of the protocols for the exchange of messages or (2) is the technical
172 description of the steps required to implement existing standards alone or in
173 combination with Specifications or existing standards in such a way as to promote
174 interoperability.
175
- 176 z. "Test Material" means examples, programs, procedures, or other material that is being
177 developed (in the case of Draft Test Material) or has been adopted (in the case of Final
178 Test Material), the purpose of which is to determine whether a web service satisfies
179 selected requirements of a Specification, within the Scope Of The Organization.
180

- 181 aa. "Test License Agreement" means the license agreement for Test Material included in
182 Exhibit B.
183

184 **2. Licenses, Ownership and Attribution for Material.**
185

186 a. Ownership Of Copyrights.
187

- 188 (1) Final Specifications. The Parties agree that the WS-I shall own,
189 notwithstanding the retention by each Party of its ownership interest in its
190 Contributions in accordance with section 2a(4) below, the copyright in any Final
191 Specifications.
192
- 193 (2) Final Test Material and Final Sample Applications. With respect to any Final
194 Test Material and Final Sample Applications that are collective works, the
195 Parties agree that the WS-I shall own, notwithstanding the retention by each
196 Party of its ownership interest in its Contributions in accordance with section
197 2a(4) below, the copyright in the collective work.
198
- 199 (3) Further Assurances. The Parties agree that, where required by the Board, they
200 will sign such documents as reasonably necessary to effectuate the intent of
201 Sections 2a(1) and 2a(2).
202
- 203 (4) Ownership of Contributions. Each Party shall retain ownership (including, but
204 not limited to, the right to publish or distribute without any obligation of
205 confidentiality, notwithstanding any terms of this Agreement to the contrary) of
206 its IPR in its respective Contributions to WS-I, any modifications that it makes
207 to the Material that are not part of the work of WS-I, and its implementations of
208 the technologies described in the Specifications. Notwithstanding the above, no
209 Party may claim that any Final Specification is subject to trade secret protection
210 or any obligation of confidentiality.
211

212 b. Copyright Licenses.
213

- 214 (1) Licenses For Purposes Of Developing Materials. Each Party hereby grants to
215 each other Party an irrevocable, worldwide, perpetual, royalty-free,
216 nontransferable, nonexclusive, nonsublicenseable license under its copyrights in
217 its Contributions to reproduce, modify, and distribute (in any and all print,
218 electronic or other means of reproduction, storage or transmission) its
219 Contributions and derivative works thereof for the purpose of developing
220 Materials. Notwithstanding the above, no Party may distribute any Draft
221 Material to third parties except as expressly permitted by Section 6b hereof.
222
- 223 (2) Final Specifications. WS-I hereby grants to each Party an irrevocable,
224 worldwide, perpetual, royalty-free, nontransferable, nonexclusive,
225 nonsublicenseable license under its copyrights in any Final Specifications to
226 reproduce and distribute (in any and all print, electronic or other means of
227 reproduction, storage or transmission) Final Specifications.

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- (3) Final Test Material. WS-I hereby grants to each Party, and each Party hereby grants to each other Party and WS-I, an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive nonsublicenseable license under their copyrights, if any, in any Final Test Materials to (i) modify a Final Test Material solely for the purpose of integrating such Final Test Material into a Party's products and in such a way as to not affect the integrity of the Final Test Material, in conformance with the criteria, if any, determined by the Board, or by the Working Group subject to procedures adopted by the Board, (ii) reproduce and distribute, directly or indirectly, under the terms of the Test License Agreement unmodified Final Test Material, and (iii) reproduce and distribute, directly or indirectly, under the terms of the Test License Agreement Final Test Material that had been modified in accordance with clause (i) above.

 - (4) Final Sample Applications. WS-I hereby grants to each Party and each Party hereby grants to each other Party and WS-I, an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive, nonsublicenseable license under their copyrights, if any, in any Final Sample Applications to (i) modify a Final Sample Application, (ii) reproduce modified or unmodified Final Sample Applications, and (iii) distribute, directly or indirectly, modified or unmodified Final Sample Applications under the terms of the Sample Applications License Agreement.

 - (5) WS-I may grant third parties the rights set forth in Exhibit A-1 (for standards organizations) and Exhibit A-2 (for other third parties), as applicable, with respect to Final Specifications.
- c. Copyright Enforcement. WS-I and any Party (the "Enforcing Entity") shall each have the right, but not the obligation, to enforce its copyright interest in Material against an infringer. WS-I and each Party, as applicable, shall take such actions as it deems appropriate, consistent with the terms of this Agreement, to reasonably cooperate with the Enforcing Entity in its efforts to enforce such copyright interest. For the avoidance of doubt, neither WS-I nor any Party shall be required to participate as a Plaintiff in an action to enforce the copyright in any Material.
- d. Limited Patent License. Except where a Party has a separate, signed agreement under which the Licensed Claims are licensed to such Party on more favorable terms and conditions than set forth in this Section 2d (in which case such separate signed agreement shall supersede this Limited Patent License):
- (1) effective upon finalization of a Specification, each Party hereby covenants to grant to each other Party and Adopters a nonexclusive, non-transferable, non-sublicenseable, worldwide, perpetual license on fair, reasonable and non-discriminatory terms under its Licensed Claims to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute Licensed Products, provided that such license shall not extend to features of a product which are not required to comply with the Final Specifications;

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276 (2) effective upon finalization of Test Material, each Party hereby covenants
277 to grant to each other Party a nonexclusive, non-transferable, non-
278 sublicensable, worldwide, perpetual license on fair, reasonable and non-
279 discriminatory terms under its Licensed Test Material Claims to modify and
280 distribute, directly or indirectly, the Final Test Material pursuant to the terms in
281 section 2b(3) above, provided that such license shall only extend to portions of
282 a product that are modified or unmodified versions of the Final Test Materials.
283

- 284 e. Test License Agreement; Covenant Not To Sue. Each Party covenants that it will not
285 assert patents against any person for the licensed use of Final Test Material if such
286 party acquired such Final Test Material from WS-I in accordance with WS-I
287 procedures and complies with all of the terms and conditions of the Test License
288 Agreement.
289
- 290 f. No Other Rights. Except as expressly set forth above, this Agreement shall not be
291 construed as granting any rights or interests in or to (i) Licensed Claims or Licensed
292 Technology, (ii) any improvements thereto, (iii) any particular design, mode or method,
293 or (iv) the proprietary rights of any Party to this Agreement or any third party. For
294 clarification purposes, no patent rights or immunities are provided for Sample
295 Applications.
296
- 297 g. Ownership of Inventions. Parties jointly creating inventions will jointly own, without
298 any obligation to account, any patent rights to such inventions. All the foregoing
299 ownership rights are subject to any underlying licenses granted in this Agreement. For
300 jointly owned inventions, pre-approved expenses incurred in obtaining and maintaining
301 jointly owned patents shall be jointly shared. If one or more of the Parties elects not to
302 share in such expenses, the remaining jointly inventing Parties shall have full control
303 over the prosecution and maintenance of such patents.
304
- 305 h. Attribution. The Parties shall include the following copyright notice on all copies of
306 Materials or other documents created by WS-I, or such other additional attribution as
307 the Parties may determine:
308

309 © Copyright [Insert year] by [Insert names of copyright owner(s)]. All rights reserved.
310

311 **3. Disclosure.**

312

- 313 a. Obligation. Each Party shall disclose to the other Parties, in writing, the existence of
314 any Licensed Claims of any of its patents or published patent applications (or claims
315 that would become Licensed Claims upon finalization of a Draft Specification, as such
316 document then exists) that are personally known to the individuals directly
317 participating on behalf of such Party with respect to the Specification (collectively,
318 "Disclosed Claims"), provided that it is understood and agreed that such individuals
319 do not represent that they personally know of all potentially pertinent claims of patents
320 and patent applications owned or claimed by the Party they represent or any third
321 parties.

- 322
323 b. Limitations. The obligation set forth in Section 3a above does not, however, imply
324 any obligations on the Parties (collectively or individually) to perform or conduct
325 patent searches. Further, nothing in this Agreement nor the act of a Party submitting,
326 supporting, or approving a proposal for a Specification shall be construed or otherwise
327 interpreted as any kind of express or implied representation that such Party does or
328 does not hold any patents or patent applications which contain claims that cover such
329 Specifications.
330
- 331 c. Information. Any disclosure of Disclosed Claims shall include the patent or published
332 patent application publication number, the associated country, identification of the
333 Licensed Claims and a reference to the applicable Specification, and, as reasonably
334 practicable, the relevant portions thereof.
335
- 336 d. Disclosures. Disclosures should be made in writing and submitted to the WS-I legal
337 counsel who shall make them immediately available to the Board.
338

339 **4. Representations and Disclaimer.**

340

- 341 a. Representation. Except as otherwise disclosed in writing by such Party at the time it
342 makes a Contribution, each Party represents and warrants at the time of any such
343 Contribution by it that, to the best knowledge of the employee actually making the
344 Contribution, (i) making the Contribution subject to the terms of this Agreement does
345 not violate the copyright or trade secret interests of another, and (ii) nothing
346 contained in the Contribution is subject to any third party software license agreement
347 that is inconsistent with this Agreement or that could impose an additional obligation
348 on any party using the Material as contemplated by WS-I (e.g., an open source license
349 with on-going obligations to distribute source code or license additional IPR on a
350 royalty-free basis).
351
- 352 b. Disclaimer of Warranties. WS-I and the Parties disclaim all other warranties, express
353 or implied, including, but not limited to, (1) except as set forth in Section 4(a), any
354 warranty of title or that any Contribution does not infringe the IPR of any other person
355 or entity, (2) any warranty that any claims of any patents or patent applications
356 included in the Licensed Claims are valid or enforceable, (3) any implied warranties
357 of merchantability and fitness for a particular purpose, or (4) that the rights and
358 licenses granted hereunder comprise all the rights and licenses necessary or desirable
359 to practice, develop, make or sell Licensed Products or to use the Test Material or
360 Sample Applications.
361

362 **5. Termination And Withdrawal.**

363

- 364 a. Term. The term of this Agreement shall begin on the Effective Date and, except as
365 provided in the bylaws of WS-I, shall continue indefinitely subject to each Party's
366 right to withdraw pursuant to Section 5b.
367

- 368 b. Withdrawal. A Party automatically withdraws from this Agreement by withdrawing
369 from the Membership Agreement or having the Membership Agreement terminated in
370 accordance with its terms.
371
- 372 c. Effect of Expiration, Termination and Withdrawal. Termination of a Party's
373 participation in this Agreement shall not affect the existence or enforceability of the
374 terms of this Agreement as to the remaining Parties, except that any termination
375 which leaves just one Party terminates this Agreement in its entirety. In the event of
376 expiration or termination of a Party's participation in this Agreement or of this
377 Agreement in its entirety, Sections 2, 4, 5, 6, 7, 8 and 9 shall survive; provided,
378 however, that a terminated Party's rights and obligations under Sections 2a, 2b, 2d and
379 2e shall only apply to the Material that on the notice date, (i) was in existence, with
380 respect to Section 2a and 2b(1), or (ii) was a Final Material, with respect to the
381 remainder of Section 2b and Sections 2d and 2e; further provided, however, a Party's
382 obligations under all of Section 2 shall survive with respect to any Contributions
383 made by such party even if not incorporated into Material as of the notice date. When
384 used in this section, the "notice date" is the date on which the Party has provided
385 notice of its intent to withdraw, if the Party's participation in this Agreement is
386 terminating because the Party has withdrawn, or if the Party's participation in this
387 Agreement is terminating for any other reason, the effective date of such termination.
388
- 389 d. Obligation to License. Unless a Party withdraws from this Agreement, the obligation
390 to license the IPR under this Agreement applies regardless of whether the Party
391 approved or disapproved the development or finalization of the Material.
392

393 **6. Publicity/Disclosure.**

- 394
- 395 a. Draft Material. The Parties do not intend to exchange confidential information.
396 Notwithstanding the foregoing, the Parties intend that Draft Material and
397 Contributions shall not be distributed or made available to any third party, except as
398 authorized by WS-I procedures or as expressly provided in this Agreement.
399
- 400 b. Disclosure. A Party may disclose Draft Material (a) in accordance with the procedures
401 of WS-I; (b) as otherwise may be required by law or legal process; (c) during the
402 course of litigation; or (d) in confidence to its legal counsel, accountants, banks and
403 financing sources and their advisors.
404
- 405 c. Residuals and Independent Development. The terms of this Section 6 shall not be
406 construed to limit any Party's right to independently develop or acquire products.
407 Further, each Party shall be free to use and disclose for any purpose the residuals
408 resulting from access to or work with Draft Material. The Parties shall have no
409 obligation to limit or restrict the assignment of persons or to pay royalties for any
410 work resulting from the use of residuals.
411
- 412 d. Product Implementation. Notwithstanding the foregoing, and regardless of any
413 restrictive legend on a Draft Specification, each Party is free to implement or
414 incorporate the contents of any Draft Specification in any of its products, and the

415 marketing, sale or distribution of such products shall not be a violation of the
416 obligations herein.

417
418 e. No Licenses. Nothing in this Section 6 shall be deemed to grant any Party a license
419 under another Party's copyrights or patents.
420

421 **7. Limitation of Liability.**

422
423 IN NO EVENT WILL WS-I BE LIABLE TO ANY PARTY OR ANY THIRD PARTY, OR
424 WILL ANY PARTY BE LIABLE TO WS-I, ANY OTHER PARTY OR TO ANY THIRD
425 PARTY, FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST
426 PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL,
427 DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, WHETHER UNDER
428 CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF
429 THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT WS-I OR SUCH
430 PARTY, AS APPLICABLE, HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH
431 DAMAGES.
432

433 **8. Infringement.**

- 434
435 a. Notification of Infringement. Each Party shall use reasonable efforts to notify the
436 WS-I counsel of any suits or credible threats of litigation related to any Material
437 which may come to its attention, which counsel will immediately convey such
438 information to the Board.
439
440 b. Enforcement of Rights. WS-I and each Party, at its sole expense, shall each have the
441 right to determine the appropriate course of action to enforce its rights in its Licensed
442 Technology or otherwise abate the infringement thereof, to take (or refrain from
443 taking) appropriate action to enforce its Licensed Technology, to control any litigation
444 or other enforcement action and to enter into, or permit, the settlement of any such
445 litigation or other enforcement action with respect to its Licensed Technology.
446

447 **9. General.**

- 448
449 a. No Other Licenses. Except for the rights expressly provided herein, neither WS-I nor
450 any Party grants or receives, by implication, or estoppel, or otherwise, any rights
451 under any patents or other intellectual property rights.
452
453 b. No Other Warranty. WS-I and all parties acknowledge that except as set forth in
454 Section 4(a), all information provided as part of the process for developing Material,
455 including the Material itself, is provided "AS IS" WITH NO WARRANTIES
456 WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR
457 OTHERWISE, AND WS-I AND THE PARTIES EACH EXPRESSLY DISCLAIMS
458 ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS
459 FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE
ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.

- 460 c. Governing Law. This Agreement shall be construed and controlled by the laws of the
461 State of New York without reference to conflict of laws principles.
- 462 d. Jurisdiction. WS-I and the Parties agree that all disputes arising in any way out of this
463 Agreement shall be heard exclusively in, and WS-I and all Parties irrevocably consent
464 to jurisdiction and venue in, the state and Federal courts of the State of New York.
465 The proceedings shall be conducted in the English language. WS-I and the Parties
466 hereby waive any right to trial by jury.
- 467 e. Notices. All notices hereunder shall be electronic or written and sent to WS-I and the
468 Parties at the addresses indicated below or on their signature page or at such other
469 address as WS-I or a Party may later specify by written notice. For purposes of this
470 Section, notice can include notice by written mail, electronic mail or by facsimile.
- 471 WS-I or any Party may give written notice of a change of address and, after notice of
472 such change has been received, any notice or request shall thereafter be given to WS-I
473 or such Party, as applicable, at such changed address.
- 474 f. Affiliates. Each Party (excluding its Affiliates) hereby represents and warrants that it
475 has power to cause all patents owned or controlled by it and all of its Affiliates to be
476 licensed as set forth in this Agreement and that it and its Affiliates have ownership
477 rights in all patents and patent applications covering inventions made by their
478 employees in the course of their employment. No rights will flow under this
479 Agreement to any Affiliate of a Party which is not granting rights under this
480 Agreement.
- 481 g. Complete Agreement; No Waiver. This Agreement, in conjunction with the
482 Membership Agreements, sets forth the entire understanding of WS-I and the Parties
483 and supersedes all prior agreements and understandings relating hereto, unless
484 otherwise stated in this Agreement. This Agreement may be amended by unanimous
485 agreement of the Founding Members. Before any such amendment takes effect notice
486 shall be provided to all Members. The waiver of any breach or default will not
487 constitute a waiver of any other right hereunder or any subsequent breach or default.
- 488 h. No Rule of Strict Construction. Regardless of which Party may have drafted this
489 Agreement, no rule of strict construction shall be applied against WS-I or any Party.
490 If any provision of this Agreement is determined by a court to be unenforceable, WS-I
491 and the Parties shall deem the provision to be modified to the extent necessary to
492 allow it to be enforced to the extent permitted by law, or if it cannot be modified, the
493 provision will be severed and deleted from this Agreement, and the remainder of the
494 Agreement will continue in effect.
- 495 i. Counterparts. This Agreement may be executed in one or more counterparts, each of
496 which shall be deemed an original, but collectively shall constitute one and the same
497 instrument. Notwithstanding anything to the contrary contained herein, if WS-I enters
498 into any additional Membership Agreements, any prospective Member shall become a
499 party to this Agreement by executing a copy of the signature page and delivering it to
500 the Secretary of WS-I.
- 501 j. Compliance with Laws. Anything contained in this Agreement to the contrary
502 notwithstanding, the obligations of WS-I and the Parties shall be subject to all laws,

503 present and future, of any government having jurisdiction over WS-I and the Parties,
504 and to orders, regulations, directions or requests of any such government. It is the
505 intention of WS-I and the Parties that this Agreement and all referenced documents
506 shall comply with all applicable laws and regulations.

507 k. Antitrust Compliance. WS-I and the Parties are committed to fostering open
508 competition in the development of web-based products and services. WS-I and the
509 Parties acknowledge that the Parties may compete with one another in various lines of
510 business and that it is therefore imperative that they and their representatives act in a
511 manner that does not violate any applicable antitrust laws and regulations. Each Party
512 may have similar agreements with others. Each Party may design, develop,
513 manufacture, acquire or market competitive specifications, products and services, and
514 conduct its business in whatever way it chooses. No Party is obligated to announce or
515 market any products or services. Without limiting the generality of the foregoing, the
516 Parties agree not to engage in discussions that would violate the antitrust laws and
517 agree to abide by the antitrust guidelines adopted by WS-I. Accordingly, each Party
518 hereby assumes responsibility to provide appropriate legal counsel to its
519 representatives regarding the importance of limiting their discussions to subjects that
520 relate to the purposes of WS-I, whether or not such discussions take place during
521 formal meetings, informal gatherings, or otherwise.
522

523 l. Headings. WS-I and the Parties acknowledge that the headings to the sections hereof
524 are for reference purposes only and shall not be used in the interpretation of this
525 Agreement.
526

527 m. Assignment. No Party shall assign its rights or obligations under this Agreement
528 without the prior written consent of WS-I. For purposes of this Agreement, an
529 assignment shall be deemed to include a transfer or sale of all or substantially all of
530 the business of a Party, or a merger, consolidation or other transaction that results in a
531 change in control of the Party. Any purported assignment in violation of this Section
532 shall be void.
533

534 n. Force Majeure. Neither WS-I nor any Party shall be liable hereunder by reason of any
535 failure or delay in the performance of its obligations hereunder on account of strikes,
536 shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war,
537 governmental action, labor conditions, earthquakes or any other cause which is
538 beyond its reasonable control.
539

540 o. General Construction. As used in this Agreement, the plural form and singular form
541 each shall be deemed to include the other in all cases where such form would apply.
542 "Includes" and "including" are not limiting, and "or" is not exclusive.
543

544 p. Independent Contractors. The relationship of WS-I and the Parties established by this
545 Agreement is that of independent contractors. This Agreement does not give WS-I or
546 any Party the power to direct and control the day to day activities of another,
547 constitute WS-I or any of the Parties as partners, joint venturers, co-owners, principal-
548 agent, or otherwise participants in a joint or common undertaking, or allow WS-I or

549 any Party to create or assume any obligation on behalf of another for any purpose
550 whatsoever.

551
552 q. Import and Export Controls. In connection with this Agreement, WS-I and the Parties
553 shall comply with all applicable laws, including export, re-export and foreign policy
554 controls and restrictions that may be imposed by any government.

555
556 r. Order of Precedence. Notwithstanding anything else to the contrary in this
557 Agreement, the Membership Agreements, and notwithstanding the order of their
558 execution, in the case of a conflict between the terms of this Agreement and the terms
559 of the Membership Agreements, the terms of this Agreement shall control.

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576 **IPR AGREEMENT FOR**
577 **WEB SERVICES-INTEROPERABILITY ORGANIZATION**

578
579
580 **Signature Page**
581 **(signed copy must be provided by each Party)**
582

583
584 Name of Party: _____

585
586 Address: _____

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588 Contact Name: _____

589
590 Telephone: _____

591
592 Facsimile: _____

593
594 The signature below by a duly authorized representative of the Party signifies acceptance of and
595 agreement to the terms and conditions of this IPR Agreement for the Web Services-
596 Interoperability Organization:

597
598 By: _____

599
600 Name: _____

601
602 Title: _____

603
604 Date: _____

607 **Exhibit A-1 (for Standards Organizations)**

608
609 Permission to copy, display, perform, modify and distribute the " _____ " Specification, and to
610 authorize others to do the foregoing, in any medium without fee or royalty is hereby granted for
611 the purpose of developing and evaluating the " _____ " Specification.

612
613 **DISCLAIMERS:**

614
615 Except for the limited copyright license granted above, the material contained herein is not a
616 license, either expressly or impliedly, to any intellectual property owned or controlled by any of
617 the authors or developers of this material or WS-I. The material contained herein is provided on
618 an "AS IS" basis and to the maximum extent permitted by applicable law, this material is
619 provided *AS IS AND WITH ALL FAULTS*, and the authors and developers of this material and
620 WS-I hereby disclaim all other warranties and conditions, either express, implied or statutory,
621 including, but not limited to, any (if any) implied warranties, duties or conditions of
622 merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of
623 results, of workmanlike effort, of lack of viruses, and of lack of negligence. ALSO, THERE IS
624 NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION,
625 CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO
626 THIS MATERIAL.

627
628 IN NO EVENT WILL ANY AUTHOR OR DEVELOPER OF THIS MATERIAL OR WS-I BE
629 LIABLE TO ANY OTHER PARTY FOR THE COST OF PROCURING SUBSTITUTE
630 GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY
631 INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, OR SPECIAL DAMAGES
632 WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING IN
633 ANY WAY OUT OF THIS OR ANY OTHER AGREEMENT RELATING TO THIS
634 MATERIAL, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE
635 POSSIBILITY OF SUCH DAMAGES.

636
637 You may remove these disclaimers from your modified versions of the " _____ " Specification
638 provided that you effectively disclaim all warranties and liabilities on behalf of all copyright
639 holders in the copies of any such modified versions you distribute.

640
641 The name and trademarks of the Authors may NOT be used in any manner, including advertising
642 or publicity pertaining to the " _____ " Specification or its contents without specific, written
643 prior permission. Title to copyright in the " _____ " Specification will at all times remain with
644 the Authors.

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646 No other rights are granted by implication, estoppel or otherwise.

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648 Acknowledged:

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Exhibit A-2 (for Third Parties other than Standards Organizations)

Permission to copy and display the " _____ " Specification, in any medium without fee or royalty is hereby granted, provided that you include the following on ALL copies of the " _____ " Specification, or portions thereof, that you make:

1. A link or URL to the " _____ " Specification at this location: _____.
2. The copyright notice as shown in the " _____ " Specification.

Except for the limited copyright license granted above, the material contained herein is not a license, either expressly or impliedly, to any intellectual property owned or controlled by any of the authors or developers of this material or WS-I. The material contained herein is provided on an "AS IS" basis and to the maximum extent permitted by applicable law, this material is provided *AS IS AND WITH ALL FAULTS*, and the authors and developers of this material and WS-I hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence. **ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THIS MATERIAL.**

IN NO EVENT WILL ANY AUTHOR OR DEVELOPER OF THIS MATERIAL OR WS-I BE LIABLE TO ANY OTHER PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, OR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, OR SPECIAL DAMAGES WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER AGREEMENT RELATING TO THIS MATERIAL, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

The name and trademarks of the Authors may NOT be used in any manner, including advertising or publicity pertaining to the " _____ " Specification or its contents without specific, written prior permission. Title to copyright in the " _____ " Specification will at all times remain with the Authors.

No other rights are granted by implication, estoppel or otherwise.

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Exhibit B

Test License Agreement

By downloading or using this software or accompanying documentation you agree to the following terms and conditions.

License Grant. You are hereby granted a personal, non-transferable and non-sublicenseable, nonexclusive, world-wide, royalty free license to use the WS-I Test Material (including software and documentation) solely for the purpose of testing compliance with the relevant portions of specifications or standards. You may not modify or create derivative works of any of the Test Material except as is necessary to fulfill the purpose described above. You may not distribute copies of the Test Material to other parties for any purpose, including for the purpose of allowing such other party to use the Test Material. Nor may you modify or incorporate the Test Material into any other software.

No Warranties. The Test Material contained herein is provided on an "AS IS" basis and to the maximum extent permitted by applicable law, this material is provided *AS IS AND WITH ALL FAULTS*, and the authors and developers of this material and WS-I hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THIS MATERIAL.

Limitation of Liability. IN NO EVENT WILL ANY AUTHOR, DEVELOPER, LICENSOR, OR DISTRIBUTOR OF THIS MATERIAL OR WS-I BE LIABLE TO ANY OTHER 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 AGREEMENT RELATING TO THIS MATERIAL, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

Covenant Not to Assert. To the extent that you have any patents which cover the use of the Test Material in any manner permitted under this License, you hereby agree not to assert any such patents against WS-I or its Members or any other parties who have entered into a license substantially similar to this License for the licensed use of the WS-I Test Material.

Use of WS-I Name. WS-I rules, if any, regarding the use of its name and your ability to make claims regarding WS-I or your use of the Test Material or any result therefrom can be found at _____ . As a condition to your license, you agree to abide by all such rules.

General.
No other rights are granted by implication, estoppel or otherwise.

741
742 If any provision of this Agreement is invalid or unenforceable under applicable law, it shall not
743 affect the validity or enforceability of the remainder of the terms of this Agreement, and without
744 further action by the parties hereto, such provision shall be reformed to the minimum extent
745 necessary to make such provision valid and enforceable.

746
747 Your rights under this Agreement shall terminate if you fail to comply with any of the material
748 terms or conditions of this Agreement and do not cure such failure in a reasonable period of time
749 after becoming aware of such noncompliance. If all your rights under this Agreement terminate,
750 you agree to cease use of the Test Material immediately.

751
752 This Agreement is governed by the laws of the State of New York and the intellectual property
753 laws of the United States of America. No party to this Agreement will bring a legal action under
754 this Agreement more than one year after the cause of action arose. Each party waives its rights to
755 a jury trial in any resulting litigation.

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Exhibit C

Sample Application License Agreement

By downloading or using this software or accompanying documentation you agree to the following terms and conditions.

License Grant. You are hereby granted a personal, non-transferable and non-sublicenseable, nonexclusive, world-wide, royalty free copyright license to reproduce, prepare derivative works of, publicly display, publicly perform, distribute and sublicense the program examples and sample applications ("Sample Applications") and any such derivative works, in source code and object code form. Except for the copyright license above, you are granted no other rights or licenses, by implication, or estoppel, or otherwise, under any patents or other intellectual property rights.

No Warranties. The Sample Applications contained herein are provided on an "AS IS" basis and to the maximum extent permitted by applicable law, this material is provided *AS IS AND WITH ALL FAULTS*, and the authors and developers of this material and WS-I hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence. **ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THIS MATERIAL.**

Limitation of Liability. **IN NO EVENT WILL ANY AUTHOR, DEVELOPER, LICENSOR, OR DISTRIBUTOR OF THIS MATERIAL OR WS-I BE LIABLE TO ANY OTHER 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 AGREEMENT RELATING TO THIS MATERIAL, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.**

Redistribution. If you choose to distribute these Sample Applications or any derivative works thereof in a commercial product, you must defend and indemnify all authors, developers, licensors, and distributors (the "Indemnified Parties") of the Sample Applications against any losses, damages and costs arising from claims, lawsuits and other legal actions (excluding actions based on intellectual property infringement claims) brought by a third party against the Indemnified Parties to the extent caused by your acts or omissions in connection with your distribution. Regardless of whether your distribution is a commercial product or not, the license under which you redistribute the Sample Applications or any derivative works thereof must:

1. effectively disclaim on behalf of all authors, developers, licensors, and distributors all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose;

- 802 2. effectively exclude on behalf of all authors, developers, licensors, and distributors all liability
803 for damages, including direct, indirect, special, punitive, incidental and consequential
804 damages, such as lost profits;
805 3. state that any provisions which differ from this license are offered by you alone and not by
806 any other party; and
807 4. require that the license under which any subsequent distribution of the Sample Applications
808 or derivative works thereof is made satisfy the terms of this section.
809

810 Use of WS-I Name. WS-I rules, if any, regarding the use of its name and your ability to make
811 claims regarding WS-I or your use of the Sample Applications can be found at
812 _____ . As a condition to your license, you agree to abide by all such rules.
813

814 General.

815 No other rights are granted by implication, estoppel or otherwise.
816

817 If any provision of this Agreement is invalid or unenforceable under applicable law, it shall not
818 affect the validity or enforceability of the remainder of the terms of this Agreement, and without
819 further action by the parties hereto, such provision shall be reformed to the minimum extent
820 necessary to make such provision valid and enforceable.
821

822 Your rights under this Agreement shall terminate if you fail to comply with any of the material
823 terms or conditions of this Agreement and do not cure such failure in a reasonable period of time
824 after becoming aware of such noncompliance. If all your rights under this Agreement terminate,
825 you agree to cease use of the Sample Applications and any derivative works thereof immediately.
826

827 This Agreement is governed by the laws of the State of New York and the intellectual property
828 laws of the United States of America. No party to this Agreement will bring a legal action under
829 this Agreement more than one year after the cause of action arose. Each party waives its rights to
830 a jury trial in any resulting litigation.
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Exhibit D

**ADOPTER AGREEMENT FOR THE
WEB SERVICES-INTEROPERABILITY ORGANIZATION**

838 This Adopter Agreement For The Web Services-Interoperability Organization ("WS-I")
839 ("Agreement") is entered into by and between WS-I and the adopting party set forth below and its
840 Affiliates ("Adopter").

841 _____
842 Adopter

843 _____
844 City State Country Zip

845 _____
846 Contact Name Telephone Fax

847 The parties hereto hereby agree as follows.

848
849 **RECITALS**

850
851 Whereas, WS-I is developing material that will facilitate interoperability of web services
852 across multiple platforms, development languages, and applications and accelerate the adoption
853 and deployment of web services;

854 Whereas, the Adopter wishes to enter into an agreement pursuant to which it will give
855 and receive certain licenses with respect to such materials; and

856 Whereas, WS-I and the Adopter desire to have the following conditions apply to this
857 Agreement;

858 Now, therefore, in consideration of the mutual promises and conditions contained herein,
859 WS-I and the Adopter agree as follows:

860 **Agreement**

861 **1. DEFINITIONS**

862 a. "Adopters" means this Adopter and any other parties that have executed an Adopter
863 Agreement for the WS-I Organization in substantially the same form as this
864 Agreement.

865 b. "Affiliate" means any entity that is directly or indirectly controlled by, under common
866 control with or that controls the subject party. For purposes of this definition control
867 means direct or indirect ownership of or the right to exercise (a) greater than fifty
868 percent (50%) of the outstanding shares or securities entitled to vote for the election

- 869 of directors or similar managing authority of the subject entity; or (b) greater than fifty
870 percent (50%) of the ownership interest representing the right to make the decisions
871 for the subject entity.
- 872 c. "Final Specifications" are the documents of WS-I published by WS-I and described as
873 Final Specifications.
- 874 d. "Licensed Claims" are those claims of a patent or patent application, throughout the
875 world, excluding design patents and design registrations, owned, controlled or that
876 can be sublicensed in compliance with the requirements of this Agreement by a party
877 or its Affiliates now or at any future time and which would necessarily be infringed by
878 implementation of the Final Specification. A claim is necessarily infringed hereunder
879 only when it is not possible to avoid infringing it because there is no plausible non-
880 infringing alternative for implementing the required portions of the Final
881 Specification. Notwithstanding the foregoing, Licensed Claims shall not include any
882 claims other than as set forth above even if contained in the same patent as Licensed
883 Claims; or that read solely on any implementations of any portion of the Final
884 Specification that are not required by the Final Specification. Moreover, Licensed
885 Claims shall not include (i) any enabling technologies that may be necessary to make
886 or use any Licensed Product but are not themselves expressly set forth in the Final
887 Specification (e.g., semiconductor manufacturing technology, compiler technology,
888 object oriented technology, basic operating system technology, and the like); or (ii)
889 the implementation of other published standards developed elsewhere and merely
890 referred to in the body of the Final Specification; or (iii) any Licensed Product and
891 any combinations thereof the purpose or function of which is not required for
892 compliance with the Final Specification. For purposes of this definition, the Final
893 Specification shall be deemed to include only architectural and interconnection
894 requirements essential for interoperability, within the Scope Of The Organization, and
895 shall not include any implementation examples unless such implementation examples
896 are expressly identified as being required for compliance with the Final Specification.
- 897 e. "Licensed Products" means only those specific portions of products (hardware,
898 software or combinations thereof) that implement and are compliant with all relevant
899 portions of the Final Specification.
- 900 f. "Licensed Technology" means the copyrights and Licensed Claims applicable to any
901 version of the Final Specifications.
- 902 g. "Name" means "Web Services-Interoperability Organization" or "WS-I".
- 903 h. "Scope Of The Organization" means the creation, promotion, or support of Generic
904 Protocols for Interoperable exchange of messages between services. As used in this
905 definition, "Generic Protocols" means protocols that are independent of any specific
906 action indicated by the message beyond actions necessary for the secure, reliable, or
907 efficient delivery of messages; "Interoperable" means suitable for and capable of
908 being implemented in a neutral manner on multiple operating systems and in multiple
909 programming languages.

910 **2. PATENT AND COPYRIGHT LICENSES WITH RESPECT TO THE WS-I SPECIFICATIONS**

- 911 a. Copyright License. WS-I hereby grants to Adopter an irrevocable, worldwide,
912 perpetual, royalty-free, nontransferable, nonexclusive, nonsublicenseable license
913 under its copyrights in any Final Specifications to reproduce and distribute (in any and
914 all print, electronic or other means of reproduction, storage or transmission) Final
915 Specifications.
- 916 b. Limited Patent License. It is the policy of WS-I to require all Members of WS-I to
917 covenant to grant to Adopters a nonexclusive, non-transferable, non-sublicensable,
918 worldwide, perpetual license on fair, reasonable and non-discriminatory terms under
919 their Licensed Claims to make, have made, use, reproduce, market, import, offer to
920 sell and sell, and to otherwise distribute Licensed Products, provided that such license
921 shall not extend to features of a product which are not required to comply with the
922 Final Specifications. Adopter hereby covenants to grant to WS-I, its Members, and
923 all other Adopters a nonexclusive, non-transferable, non-sublicensable, worldwide,
924 perpetual license on fair, reasonable and non-discriminatory terms under its Licensed
925 Claims to make, have made, use, reproduce, market, import, offer to sell and sell, and
926 to otherwise distribute Licensed Products, provided that such license shall not extend
927 to features of a product which are not required to comply with the Final
928 Specifications.
- 929 c. No Other Rights. Except as expressly set forth above, this Agreement shall not be
930 construed as granting any rights or interests in or to (i) Licensed Claims or Licensed
931 Technology, (ii) any improvements thereto, (iii) any particular design, mode or
932 method, or (iv) the proprietary rights of any party to this Agreement or any third party.

933 **3. USE OF THE WS-I ORGANIZATION NAME**

- 934 a. Prohibition on Registration of the Name. Adopter shall not register or attempt to
935 register the Name or any name, trademark, or service mark confusingly similar to the
936 Name, or register any second level domain name that uses the Name in a way likely to
937 create confusion regarding the ownership of the second level domain name, anywhere
938 in the world. If Adopter holds a second level domain name that uses the Name as
939 described above, Adopter will (1) redirect it to the official WS-I website and (2)
940 assign it to WS-I upon request of WS-I.
- 941 b. Prohibition on Assertion of Rights in the Name. Adopter agrees not to assert any
942 rights in the Name against WS-I, any Member of WS-I, any other adopters which
943 have signed an adopter's agreement substantially similar to this Agreement, or their
944 Affiliates or to object to the use of the Name by such parties.
- 945 c. Required Use of the Name. Adopter agrees that when it refers to Final Specifications,
946 it will use the Name or use some other means to accurately describe WS-I as the
947 origin of the Specifications. Except as provided in the previous sentence, Adopter
948 shall not be obligated to use the Name on any product, advertising, or other materials
949 in any manner. Adopter uses the Name at its own risk.

950 d. Limitations on the Use of the Name. Adopter agrees that it will use the Name only for
951 the limited purpose of promoting the WS-I organization and the use of Final
952 Specifications, and for labeling, promoting, and marketing products that comply with
953 a Final Specification. Adopter shall not use the Name or any name, trademark, or
954 service mark confusingly similar to the Name to promote, or refer to, other initiatives
955 or technologies.

956 **4. GENERAL**

957 a. Effective Date. This Agreement shall become effective when executed by the
958 Adopter and WS-I.

959 b. No Other Licenses. Except for the rights expressly provided by this Agreement, WS-I,
960 its Members and the Adopter neither grant nor receive, by implication, or estoppel, or
961 otherwise, any rights under any patents or other intellectual property rights.

962 c. No Warranty. The parties acknowledge that all information provided as part of the
963 Specification is provided "AS IS" WITH NO WARRANTIES WHATSOEVER,
964 WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH
965 OF THE PARTIES EXPRESSLY DISCLAIMS ANY WARRANTY OF
966 MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY
967 PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT
968 OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.

969 d. Limitation of Liability. IN NO EVENT WILL WS-I, ANY OF ITS MEMBERS OR
970 THE ADOPTER BE LIABLE TO EACH OTHER OR ANY OTHER PARTY FOR
971 THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST
972 PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL,
973 CONSEQUENTIAL, DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES,
974 WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE,
975 ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED
976 AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE
977 OF THE POSSIBILITY OF SUCH DAMAGES.

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

980 f. Jurisdiction. The parties agree that all disputes arising in any way out of this
981 Agreement shall be heard exclusively in, and the parties irrevocably consent to
982 jurisdiction and venue in, the state and Federal courts of the State of New York. The
983 proceedings shall be conducted in the English language. The parties hereby waive
984 any right to trial by jury.

985 g. Notices. Unless otherwise advised in writing by the Secretary, all notices from the
986 Adopter hereunder shall be sent to the Secretary, at the address indicated below.
987 Unless otherwise advised in writing by the Adopter, all notices to the Adopter shall be
988 sent to the address for such Adopter indicated below. For purposes of this Section,
989 notice can include notice by written mail, electronic mail or by facsimile.

1032 Adopter may compete with WS-I's Members and other Adopters in various lines of
1033 business and that it is therefore imperative that they and their representatives act in a
1034 manner that does not violate any applicable antitrust laws and regulations. The
1035 Adopter may have similar agreements with others. The Adopter may design, develop,
1036 manufacture, acquire or market competitive specifications, products and services, and
1037 conduct its business in whatever way it chooses. The Adopter is not obligated to
1038 announce or market any products or services. Without limiting the generality of the
1039 foregoing, the Adopter agrees not to engage in discussions that would violate the
1040 antitrust laws and agrees to abide by the antitrust guidelines adopted by WS-I.
1041 Accordingly, the Adopter hereby assumes responsibility to provide appropriate legal
1042 counsel to its representatives regarding the importance of limiting their discussions to
1043 subjects that relate to the purposes of WS-I, whether or not such discussions take
1044 place during formal meetings, informal gatherings, or otherwise.

1045 n. Headings. The parties acknowledge that the headings to the sections hereof are for
1046 reference purposes only and shall not be used in the interpretation of this Agreement.

1047 o. Assignment. The Adopter may not assign its rights or obligations under this
1048 Agreement without the prior written consent of WS-I. For purposes of this
1049 Agreement, an assignment shall be deemed to include a transfer or sale of all or
1050 substantially all of the business of the Adopter, or a merger, consolidation or other
1051 transaction that results in a change in control of the Adopter. Any purported
1052 assignment in violation of this Section shall be void.

1053 p. Force Majeure. No party shall be liable hereunder by reason of any failure or delay in
1054 the performance of its obligations hereunder on account of strikes, shortages, riots,
1055 insurrection, fires, flood, storm, explosions, acts of God, war, governmental action,
1056 labor conditions, earthquakes or any other cause which is beyond the reasonable
1057 control of such party.

1058 q. General Construction. As used in this Agreement, the plural form and singular form
1059 each shall be deemed to include the other in all cases where such form would apply.
1060 "Includes" and "including" are not limiting, and "or" is not exclusive.

1061 r. Independent Contractors. The relationship of the parties established by this
1062 Agreement is that of independent contractors. Nothing in this Agreement shall be
1063 construed as requiring the Adopter to use or implement Final Specifications, or limit
1064 the Adopter from competing in any way, including engaging in activities,
1065 independently or with others, that may be deemed competitive with Final
1066 Specifications. This Agreement does not give either party the power to direct and
1067 control the day to day activities of the other, constitute the parties as partners, joint
1068 venturers, co-owners, principal-agent, or otherwise participants in a joint or common
1069 undertaking, or, except as expressly provided herein, allow either party to create or
1070 assume any obligation on behalf of the other for any purpose whatsoever.

1071 s. Import and Export Controls. In connection with this Agreement, the parties shall
1072 comply with all applicable laws, including export, re-export and foreign policy
1073 controls and restrictions that may be imposed by any government.

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- t. Name Change. WS-I may change the name of the WS-I Specification or the name by which this Agreement is identified. However, no such name change shall have any effect on the rights and obligations of the parties under this Agreement.

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WS-I:

Web Services-Interoperability Organization

By: _____

Name: _____

Title: _____

Date: _____

Adopter:

Company: _____

By: _____

Name: _____

Title: _____

Date: _____

Notice Information:

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