

ATTACHMENT A WEB3D CONSORTIUM INTELLECTUAL PROPERTY (“IP”) RIGHTS POLICY

1. DEFINITIONS

“Affiliate” means any entity that is directly or indirectly controlled by a party to this Agreement. For purposes of this definition, control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of an entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for such entity.

“Consortium” means the Web3D Consortium Inc.

“Contribution” means written information submitted to the Consortium for the purpose of consideration and adoption by the Consortium for inclusion in a specification.

“Encumbered Technology” means technology with respect to which a patent holder is unwilling to grant the Reciprocal License.

“Exclusion Certificate” means a written communication delivered to the Secretary that; (i) certifies that a Member does not grant the Reciprocal License with respect to specific Necessary Patent Claims for a Draft Specification; and (ii) optionally, includes Specific License Terms if the Member desires to grant a license to the specifically excluded Necessary Patent Claims.

“Final Draft” means a final draft of a Specification produced by a Consortium Working Group that will be forwarded to the Board for Ratification and subsequent public release.

“Member” means any Professional or Organizational Member of the Consortium.

“Membership Agreement” means the agreement signed by a Member to join the Consortium and to which this Attachment A is attached.

“Necessary Patent Claims” means claims of a patent or patent application, other than design patents and design registrations, issued or filed in any country which a Member or its Affiliates has the right to grant licenses, at any time during the term of the Agreement, and which are necessarily infringed by all fully compliant implementations of a Ratified Specification and all subsequent specifications to the extent that the subsequent specifications incorporate that Ratified Specification. Necessary Patent Claims do not include any claims (i) other than those set forth above even if contained in the same patent as Necessary Patent Claims; (ii) that read solely on any implementations of any portion of the Ratified Specification that are not within the bounds of the Scope; (iii) that it is possible to avoid infringing because there is a commercially plausible non-infringing alternative for implementing such portions of the Ratified Specification or (iv) that, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

“Notice of Exclusion Period” means a notice clearly and conspicuously titled and clearly indicating the specific dates on which an Exclusion Period commences and terminates.

“Ratification” means the Board approving a Final Draft specification for public release.

“Ratified Specification” means a specification ratified by the Board for public release.

“Reciprocal License” means the perpetual, royalty-free, fully paid, worldwide, nonexclusive license under any Necessary Patent Claims (including pending applications upon issuance of a patent thereon) owned or controlled by Member (or hereafter acquired) that read on a Final Ratified Specification to make, have made, use, import, offer to sell and sell implementations of the Final Ratified Specification or portions thereof, together with the right without royalty or fee to sublicense third parties under this license for the distribution of implementations through the normal tiers of distribution to end users or to resellers, distributors, dealers and authorized manufacturers and others in the distribution channel and to permit such entities to reproduce and distribute such implementations or portions thereof.

“Secretary” means the Secretary of the Consortium.

“Scope” means the protocols, register models, application program interfaces, service provider interfaces, and data structures solely to the extent disclosed with particularity in a Ratified Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect, or communicate as defined within a Ratified Specification. Notwithstanding the foregoing, the Scope does not include: (a) any enabling technologies that may be necessary to make or use any product or portion of any product that complies with the Ratified Specification, but are not themselves expressly set forth in the Ratified Specification (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and so on); or (b) the implementation of other published specifications developed elsewhere but referred to in the body of the Ratified Specification; or (c) any portions or combinations of any product whose purpose is not required for compliance with the Ratified Specification. For purposes of this definition, the Ratified Specification will include only architectural and interconnection requirements and will not include any implementation examples unless such implementation examples are expressly identified as being included as part of the Ratified Specification.

“Specific License Terms” means a minimal set of terms and conditions that a license must address in order for the Consortium to consider incorporating Encumbered Technology into a Ratified Specification. The minimal set of terms shall include: price (fees and royalties), geographical scope, revocability, whether license is perpetual, definition of licensed patents, sublicense conditions (if any), term of license agreement, termination conditions, whether licensor can defensively terminate license upon suit against them by licensees, and reciprocity. Notwithstanding any of the foregoing, however, in all instances the Limited Patent License shall otherwise be under reasonable and non-discriminatory terms.

“Working Group” means a committee of Members to create a Draft Specification as defined in the Bylaws in Attachment B.

2. LICENSES

2.1 Copyright License

Each Member grants to the Consortium a worldwide, irrevocable, non-exclusive, non-transferable copyright license for any Ratified Specification on the date of Ratification to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing Ratified Specifications and related materials, as well as products based on such documents.

2.2 Reciprocal License Grant

Each Member agrees to grant a Reciprocal License under any of its Necessary Patent Claims not excluded in accordance with the following sections for any Ratified Specification on the date of Ratification in reciprocity to all other Members that also grant a Reciprocal License to Member. Such Reciprocal License is granted whether or not the Member ever had any knowledge of the existence of such Necessary Patent Claims. Further, any Member shall have the right to suspend any Reciprocal License granted by that Member to any other Member ("Plaintiff") in case the Plaintiff initiates any lawsuit or other legal proceeding against the Member.

3. DISCLOSURE OF NECESSARY PATENT CLAIMS

3.1 Consortium Responsibility

The Consortium shall not be responsible for identifying patent rights for which a license may be required, or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

3.2 No Member Disclosure Necessary

A Member is not required to disclose a Necessary Patent Claim owned or controlled by that Member if the Member commits to license such Necessary Patent Claim according to the terms and conditions of the Reciprocal License.

3.3 IP Disclosures for Draft Specifications

If any Consortium representative of a Member organization has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to that Member's Contributions or any other aspect of a draft specification that will not be licensed under the Reciprocal License, the Consortium representative of such Member must disclose those known Necessary Patent Claims ("IP Disclosure") together with the submission of a Contribution or as soon as is reasonably possible to both the Secretary and the Working Group chair. In satisfying the disclosure obligation set forth herein, Members are not required to conduct searches of their patent portfolios, nor are they required to disclose Necessary Patent Claims of other Members or other third-party patents.

3.4 Content of IP Disclosures

An IP Disclosure must identify in writing: a) the patent holder(s); b) for each issued patent and published patent application containing a Necessary Patent Claim the patent number or publication number, respectively; c) for a pending unpublished patent application containing a Necessary Patent Claim, the technology covered by the application; d) reasonable identification of the specific parts of specifications whose implementation may be covered by the Necessary Patent Claims; e) a statement as to whether the identified Necessary Patent Claims will be made available under the Reciprocal License. If the Necessary Claims are not to be made available under the Reciprocal License then the IP Disclosure must contain reasonably sufficient detail so as to enable the Consortium and Members either to exclude the subject inventions from the specification or to develop a commercially reasonable non-infringing implementation. This disclosure requirement may be accompanied by submitting any of the following, in the Member's sole discretion: (i) Specific License Terms for any Necessary Patent Claims not to be made available under the Reciprocal License; (ii) the entire patent application including amended and newly added claims, as well as the effective filing date.

3.5 Waiver of Disclosure Obligation

The disclosure obligation set forth in the previous sections shall not apply if both: (1) confidentiality obligations in a joint development agreement between a Member and a third party prohibit disclosure of the unpublished application, and (2) the joint development agreement was executed prior to the Member's execution of the Agreement; provided, however, the unpublished application must be disclosed upon publication, upon issuance or to the extent that other circumstances render it non-confidential.

3.6 IP Disclosure Binding

If the Member proposes Specific License Terms in the IP Disclosure that are subsequently accepted by the Consortium, and are required by the Final Draft, then the Member is irrevocably required to grant a license under such Specific License Terms for the Necessary Patent Claims.

3.7 Confidentiality of IP Disclosures

Prior to the date on which a Ratified Specification relating to an IP Disclosure is made public, Members and the Consortium shall not make public the content of any Member's IP Disclosure outside of the Consortium. IP Disclosures received with respect to a particular Specification shall be made public when the Specification is made public. Each Specification shall include suitable Consortium approved disclaimer language.

3.8 Procedures for Patent Disclosures

Any IP Disclosure must be submitted in writing addressed to the Consortium Board and the Working Group chair and the Consortium shall post IP Disclosures on a Member-only accessible Consortium website promptly upon receipt.

3.9 Termination of Disclosure Obligations

The disclosure obligations described in this section for a Draft Specification terminate upon Ratification of the Specification by the Consortium or when a Working Group or the Consortium formally indicates in writing that work on the Draft Specification has terminated without adoption by the Consortium.

4. EXCLUSION PERIODS AND CERTIFICATES

4.1 Notice of Exclusion Period

Promptly upon a Working Group's issuance of a Final Draft, the Working Group chair shall request that the Board issue a Notice of Exclusion Period to all Members notifying that a thirty (30) day period (the "Exclusion Period") has commenced. The Notice of Exclusion Period shall clearly indicate the location of the Final Draft on the Consortium web-site and the deadline for the receipt of Exclusions Certificates as defined below. At the end of the Exclusion Period the Board will vote for Ratification of the Specification or establish an IP Committee as defined below.

4.2 IP Exclusion Certificate

Prior to expiration of the Exclusion Period, any Member may submit an IP Disclosure accompanied by a signed IP Exclusion Certificate for the Final Draft to both the Secretary and the Working Group chair. An IP Exclusion Certificate effectively excludes any disclosed Necessary Patent Claims whether or not the IP Disclosure includes Specific License Terms under which the Member is willing to license the Necessary Patent Claims. If the Member proposes Specific License Terms that are accepted by the Consortium, then the Member is irrevocably required to grant a license under such Specific License Terms for the Necessary Patent Claims.

4.3 Failure to Submit IP Exclusion Certificate

If a Member fails to submit an Exclusion Certificate prior to the expiration of an applicable Exclusion Period, the Member shall be deemed to have granted the Reciprocal License for that Final Draft.

5. WORKING GROUP EXCLUSION CERTIFICATE

5.1 Working Group Exclusion Certificate

Any Member may deliver a written Working Group Exclusion Certificate to the Secretary notifying that the Member shall not grant a Reciprocal License for any Final Drafts produced by that Working Group following the date of the issuance of the certificate. Any previously granted licenses for any specifications shall not be affected. The Board shall accept said certificate if the Member has not attended any Working Group meetings since the last Final Specification was produced by the Working Group. On acceptance the Consortium shall notify the Member in writing and shall post the Working Group Exclusion Certificate on a Member-only accessible Consortium website.

5.2 Meeting Attendance

If the Member that has submitted a Working Group Exclusion Certificate attends, in person or by teleconference, any meeting of that Working Group then that Working Group Exclusion Certificate shall be rescinded at the date of the first attendance and that Member shall be subject to licensing requirements for any subsequent specifications produced by that Working Group and the Certificate removed from the Consortium web-site. After rescinding a Working Group Exclusion Certificate through attendance, the Member may re-submit a Working Group Exclusion Certificate after the Working Group has produced any subsequent Final Draft.

5.3 Ongoing Requirement for IP Disclosures

A Working Group Exclusion Certificate does not exclude a Consortium representative of a Member that has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to any aspect of any Consortium draft specification that will not be licensed under the Reciprocal License from making an IP Disclosure as specified above.

5.4 Failure to Submit Working Group Exclusion Certificate

If a Member fails to submit a Working Group Exclusion Certificate prior to the expiration of an applicable Exclusion Period, the Member shall be deemed to have granted the Reciprocal License for that Ratified Specification.

6. RECIPROCAL LICENSE CERTIFICATE

At any time during the creation of a draft specification or during the Exclusion Period for a Final Draft any Member may make an IP Disclosure accompanied by a signed certificate ("Reciprocal License Certificate") certifying Member's grant of the Reciprocal License for disclosed Necessary Patent Claims for, or expected to be for, a Final Draft. A Reciprocal License Certificate may be accompanied by, in the Member's sole discretion, the results of any IP searches conducted by the contributor, or any prior publicly available prior art, that indicate that the Necessary Patent Claims are not subject to third-party IP claims.

7. EXISTING SPECIFICATIONS

7.1 New Member Reciprocal License Grant

By signing and submitting a Membership Agreement, a new Member agrees to grant a Reciprocal License for the then-current version of all Ratified Consortium Specifications as of the joining date of the Member, unless, within sixty (60) days of the submission of the Agreement, the Member submits a Working Group Exclusion Certificate as set forth herein.

7.2 Member Patent Purchase

An existing Member purchasing a patent agrees to grant the Reciprocal License for the then-current version of Ratified Specifications as of the date of purchase, unless, within six (6) months after purchase of the patent the Member submits an Exclusion Certificate or Working Group Exclusion Certificate as set forth herein, that excludes the obligation to grant a Reciprocal License for the patent. After such period any non-excluded Necessary Patent Claims that shall be deemed to be licensed under the Reciprocal License.

8. MEMBER INITIATED DISCLOSURE REQUEST

8.1 Member Request

A Member may request in writing that the Secretary issue a written request from the Board delivered to another Member requesting that the other Member disclose in writing the relevance of a specific patent or patents to a draft specification being discussed in a Working Group ("Disclosure Request"). A Disclosure Request is subject to approval by the Board. If approved, the Disclosure Request shall be sent in writing by the Secretary on behalf of the Consortium to the applicable Member and shall include the Member's reasons for making the request, the draft specification in question, and any relevant meeting minutes and other documents.

8.2 Disclosure in Response to a Disclosure Request

Any Consortium representative in a Member organization who has received from the Secretary a Disclosure Request with respect to a draft specification, or any person in a Member organization who has received, either directly or indirectly, a Disclosure Request from the Consortium representative of that Member organization; and who has actual knowledge of claims that are Necessary Patent Claims owned or controlled by that Member organization must disclose the known Necessary Patent Claims in accordance with this policy as soon as reasonably possible after receipt of a Disclosure Request.

8.3 Failure to Comply to a Disclosure Request

A Member who does not comply with the disclosure obligations set forth in this section automatically grants the Reciprocal License for any Necessary Patent Claim(s) that the Member failed to disclose. Any attempt to exclude any such undisclosed Necessary Patent Claim(s) is ineffective and null and void.

9. WITHDRAWAL

9.1 No Withdrawal

Contributions, once accepted by the Consortium, may not be withdrawn.

9.2 Survival of License

A Member's obligations to license made prior to withdrawal from the Consortium shall survive such withdrawal, and shall extend to all Licensees, including Members that join the Consortium after the withdrawing Member's withdrawal.

9.3 Exclusion upon Withdrawal

If a Member withdraws from the Consortium prior to the expiration of the applicable Exclusion Period, then the Member may exclude patents the Member is not already obligated to license before the expiration of the applicable Exclusion Period. Failure to exclude will result in the former Member granting the Reciprocal License.

9.4 Rights after Withdrawal

Except as described above, a prior Member shall have no other obligations to the Consortium as to technologies or IP rights developed by the Member after its withdrawal from the Consortium.

10. THIRD-PARTY TECHNOLOGY

Nothing in the Consortium Membership Agreement shall compel nor prevent the Consortium from including in a draft specification or Ratified Specification a reference to, or suggestion to adopt or employ, a non-Member technology, whether or not such third-party technology must be licensed on a royalty-bearing or royalty-free basis in order to avoid infringement or intellectual and/or proprietary rights.

11. IP COMMITTEE FOR ENCUMBERED TECHNOLOGY

11.1 Formation and Purpose

The Board shall create a committee ("IP Committee") to investigate any IP issue including receipt by the Consortium of a notice in writing (an "IP Statement") in which a Member or third party ("IP Claimant") asserts, claims, or otherwise references an intellectual property right relative to any Draft or Ratified Specification, or a Member's delivery of an Exclusion Certificate. The IP Committee shall investigate the implications of any IP issues and report any recommendations to the Board.

11.2 Constraints

The IP Committee shall not investigate or discuss (orally or in writing) the validity or invalidity of any intellectual property claims or opinions as to infringement or non-infringement of the intellectual property in the Encumbered Technology.

11.3 Membership

Any Member may be represented on the IP Committee by legal and/or engineering personnel. A Member with an ownership interest in the patents or patent applications under investigation may be excluded from a meeting of the Committee at the discretion of the Committee. An IP Committee Member will serve as chair of the IP Committee.

11.4 Reporting

The IP Committee shall provide a report of its current status and/or results to the Board within ninety (90) days of the date of committee formation. The report may be presented to the Board orally or in writing and shall be the confidential information of the Consortium and shall be treated by Members accordingly. The report may include a request for Board approval of an extension of time to provide the report.

11.5 Term

The IP Committee shall have an initial term of ninety (90) days from the date of committee formation. The IP Committee shall terminate automatically unless: a) The Board terminates the IP Committee prior to the expiration of the initial term; or b) the Board extends the duration of the IP Committee beyond the initial term. An extension must indicate a specific duration, not to exceed ninety (90) days from the expiration of the immediately preceding term. Further extensions may be requested by the IP Committee and approved by the Board in a similar manner.