

## Cover Page to: **Web3D Consortium Membership Agreement**

Completed by Signatory:

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## Guidelines to completing this agreement

To Signatory: This agreement is made to enable a company, academic institution, government institution or individual to join the Web3D Consortium.

You should enter the name of your company or institute, or your own name if you are applying to be a Professional Member, on this cover page and complete and sign the signature page on two complete copies of this agreement and mail those agreements to the contact below. One countersigned copy of the agreement will be returned to you for your records. If you wish, you may omit attachments A and B from the mailed copies of the Agreement.

Your membership privileges shall commence once we have received both signed agreements and your membership dues.

Organizational Members have the option of applying for Directing Membership of the Consortium. If approved by the Web3D Board of Directors, Directing Membership gives you the right to designate a Director to the Board. If you wish to be considered for a Directing Membership please check and sign the appropriate box on the signature page.

Mailing address for signed agreements:

Web3D Consortium,  
133 Lorimer Street  
Salinas, CA. 93901 USA

# WEB3D CONSORTIUM MEMBERSHIP AGREEMENT

This Web3D Consortium Membership Agreement (“Agreement”) is entered on the last of the dates on the signature page below (“Effective Date”) between the Web3D Consortium Inc. (“Consortium”) having a place of business at 225 Bush Street, 16th Floor, San Francisco, CA 94104 USA and signing party on signature page (“Signatory”).

## 1. DEFINITIONS

### **Board**

means the Board of Directors of the Consortium.

### **Member**

means any Professional or Organizational Member of the Consortium.

### **Secretary**

means the Secretary of the Consortium.

### **Specification**

means a specification produced by a Consortium working group.

## 2. PURPOSE AND SCOPE

Signatory hereby agrees to become a Member of the Consortium, and agrees to conform to all of the applicable terms and conditions set forth in this Agreement and Attachment A (Web3D Consortium Intellectual Property Rights Policy), and Attachment B (Web3D Consortium Bylaws) each of which is incorporated herein and made a part hereof.

## 3. CONSORTIUM MEMBERSHIP

### 1. Membership and Dues

Signatory’s membership rights and responsibilities as defined herein shall commence on Effective Date and receipt of Signatory’s membership dues. Dues shall be for the twelve months from the Effective Date and shall be due and payable each successive year on the same date provided membership is retained by Signatory. If Signatory is delinquent in the payment of dues, membership rights, including all voting rights (if any), shall be deemed revoked upon written notice from the Corporation until all delinquent dues are paid. No refund of dues shall apply in the event of termination, suspension or withdrawal of membership.

The Board and Signatory may mutually agree to bring forward the date that dues are payable for Signatory together with a one-off, pro-rata reduction in payable dues for the

number of months the due date is brought forward, together with a one-off reduction in membership dues at the Board's sole discretion.

## 2. Membership Requirements

Membership requires your agreement to adhere to the policies of the Web Consortium, its Code of Conduct and By-laws.

## 3. Directing Membership

If Signatory is an Organizational Member, Signatory may apply to become a Directing Member by signing the appropriate box on signature page below or by sending a written request to the Secretary at any time during Signatory's membership. If the Board approves the application then the Signatory shall be notified in writing that they are accepted as a Directing Member and ensuing rights shall commence on receipt of the appropriate dues. If Signatory's Directing Member status is approved at a time different to the Effective Date or an anniversary of the Effective Date then the increased dues payable is the difference between Organizational and Directing Membership dues multiplied by the number of whole or partial months until the Signatory's renewal date divided by twelve (12). If the Signatory's application to become a Directing Member is declined this in no way affects Signatory's Organizational Membership.

## 4. Term of Membership in the Consortium

Signatory's membership in the Consortium may, at Signatory's discretion, continue for as long as the Consortium remains active, unless terminated pursuant to this section below; upon termination of membership of any particular Member pursuant to this section below, this Agreement, together with Attachments A and B, shall be considered terminated with respect to that Member.

## 5. Non-Voluntary Termination of Membership in the Consortium

In the event of a material default or breach of this Agreement by Signatory, Signatory's membership in the Consortium may be terminated at any time thereafter as defined in the Bylaws.

In the event of a material default or breach of this Agreement by Signatory, if Signatory does not cure such default or breach within thirty (30) days after its receipt of written notice thereof from the Secretary, such Signatory's membership in the Consortium may be terminated at any time thereafter as defined in the Bylaws.

## 6. Voluntary Termination of Membership

Signatory may resign from the Consortium and terminate its membership in the Consortium at any time by providing written notice thereof to the Secretary. Such resignation and termination is effective on the date such notice is received by the Secretary.

## 7. Obligations on Termination

After Signatory's membership in the Consortium has terminated, Signatory shall have no further obligations under this Agreement; provided that a) any obligation to pay unpaid dues shall survive and; b) all rights and licenses granted by Signatory under Attachments hereto and all confidentiality and non-disclosure obligations of Signatory hereunder shall survive. All rights and licenses granted to Signatory, in its capacity as a Member of the Consortium, shall survive Signatory's departure from the Consortium.

## 8. Costs and Expenses

Signatory will be responsible only for its own costs and expenses incurred in matters and activities arising out of this Agreement.

## 4. CONFIDENTIAL INFORMATION

### 1. Confidential Information

Information that is confidential to the Consortium Membership ("Confidential Information") shall include: a) all materials generated by the Consortium and by Members on behalf of the Consortium, and not specifically designated as non-Confidential by the Board, including any draft specifications, working group mailing lists and minutes; and b) any information submitted by any Member to the Consortium. Each Member waives confidentiality interests that the Member has with respect to any Contribution submitted by any Member to the Consortium, upon that Contribution being incorporated into a Draft Specification or Ratified Specification that releases publicly. Notwithstanding the above, Confidential Information will not include any information that is (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; (e) generally made available to third parties by the disclosing party without restriction on disclosure; or (f) disclosed in furtherance of an order to disclose issued by a court of proper jurisdiction; provided, however, in such instance, the Signatory having received the Confidential Information will provide prompt notice to Consortium in order to facilitate Consortium's legal intercession.

### 2. Use of Confidential Information

Members may use Confidential Information in any Consortium-related activities and disclose such Confidential Information to any other Member in connection with activities related to this Agreement.

### 3. Confidentiality Obligation

Signatory will maintain all Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances and will not use, disclose

or copy the Confidential Information (other than that party's Contributions) except as necessary for its employees with a need to know to evaluate and comment thereon. Signatory will mark any copies it makes of such Confidential Information "Web3D Confidential," "Web3D Proprietary" or with a similar legend and shall reproduce all copyright notices and disclaimers contained in the Confidential Information. Unless the parties agree otherwise, this obligation of confidentiality will expire two (2) years from the date of disclosure to Signatory.

#### 4. **Return of Confidential Information**

Upon its withdrawal, Signatory will return to the Consortium all tangible copies of the Confidential Information that are in its possession, and destroy all intangible copies of the Confidential Information that are in its possession. Within twenty (20) days of the Withdrawal Date Contributor will certify in writing to the Secretary that these actions have been taken.

### 5. **TRADEMARKS**

#### 1. **Non-assertion of Rights in Marks**

Signatory agrees not to assert against Consortium or any Member any trademark, trade name, or similar rights it may have now or may obtain in the future in the names Web3D, Web3D Consortium and X3D and any other marks obtained by the Consortium in the future ("Marks"). Member will not use or adopt any trademarks for any product, service, or specification likely to cause confusion with the Marks.

#### 2. **Use of Trademarks**

Member agrees that it will only use the Marks to promote its membership and label and promote products in which all included features and functions of Final Specification reasonably capable of being implemented have been so implemented. Signatory agrees to comply with any trademark usage guidelines that the Consortium may issue from time to time, including restrictions of use of Marks for products to be tested for compliance with Final Specifications with conformance tests defined by the Consortium.

#### 3. **No Obligation to Use Marks**

Member is not obligated to use any of the Marks on any product, advertising, or on any other material.

### 6. **GENERAL**

#### 1. **Assignment**

Neither this Agreement nor any rights or obligations under this Agreement, in whole or in part, are assignable or otherwise transferable by the Signatory without the prior written approval of Consortium, provided however, that this Agreement may be assigned by the Signatory to a purchaser of all, or substantially all, of that Signatory's business or assets,

whether by merger, sale of assets, sale of stock, or otherwise without such approval.

## 2. **No Other Rights**

No license, rights or title in or to any software or any intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise, except as may be expressly provided in this Agreement or in Attachment A.

## 3. **No Agency**

The parties hereto are independent parties, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between the parties hereto.

## 4. **Notices**

Any notices under this Agreement shall be sent by: a) registered mail; b) tracked overnight carrier or c) email transmission where the recipient specifically replies to acknowledge receipt.

## 5. **Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of laws rules. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement shall be subject to the exclusive jurisdiction of the California state courts of Santa Clara County, California (or, if there is federal jurisdiction, the United States District Court for the Northern District of California, San Jose), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

## 6. **Complete Agreement**

This Agreement and its Attachments constitute the complete and exclusive statement of the agreement between the parties, and supersedes all previous proposals, oral or written, and all other communications or understandings between the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not relied upon any representation or statement not contained herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by the Signatory and the Consortium hereto. Notwithstanding the preceding sentence, changes to the Attachments A and B adopted in accordance with the voting policies of the Consortium are effective as to all Members upon such adoption.

## 7. **No Warranty**

All parties acknowledge that all information provided under this Agreement, including any Specifications and Contributions, are provided "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR

OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SECURITY, SATISFACTORY QUALITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, ERROR-FREE OPERATION, OR ANY WARRANTY OR CONDITION OTHERWISE ARISING OUT OF ANY PROPOSAL, CONTRIBUTION, SPECIFICATION, OR SAMPLE.

**8. Limitation of Liability**

IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY, CONDITION OR OTHERWISE, ARISING IN ANY WAY IN RELATION TO THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

**9. Authority to Sign**

The person signing on behalf of Signatory hereby represents and warrants that he/she has the appropriate authorization to bind the Signatory in this Agreement.

# WEB3D MEMBERSHIP AGREEMENT SIGNATURE PAGE

Web3D Consortium, Inc.

133 Lorimer Street

Salinas, CA. 93901 USA

\_\_\_\_\_  
Signatory

\_\_\_\_\_  
Street address of Signatory

\_\_\_\_\_  
City, State, ZIP, of Signatory

\_\_\_\_\_  
Authorized signature in behalf of Web3D

\_\_\_\_\_  
Authorized signature in behalf of Signatory

\_\_\_\_\_  
Printed name of Web3D signature

\_\_\_\_\_  
Printed name of signatory

\_\_\_\_\_  
Title of Web3D signature

\_\_\_\_\_  
Title of signatory

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature

Signatory wishes to apply for Directing  
Membership  
(Organizational Members Only)

\_\_\_\_\_  
Authorized signature in behalf of Signatory