

## LIBERTY ALLIANCE MEMBERSHIP AGREEMENT

This Liberty Alliance Membership Agreement ("Agreement") is entered by and among \_\_\_\_\_, a \_\_\_\_\_ corporation, ("PARTICIPANT") and the Founders (as defined below), as well as by and among any other parties that subsequently enter into this Agreement as of the date on which they execute it.

### Background

WHEREAS

A. The SPONSORS (as defined below) have a goal of facilitating individual consumers and businesses to be able to maintain personal information securely, have formed the Liberty Alliance to achieve its MISSION; and

B. The SPONSORS have provided a means for additional parties to join the Liberty Alliance as SPONSORS, AFFILIATES or ASSOCIATES (as defined below).

NOW IT IS HEREBY AGREED

In consideration of their participation in development, definition and promotion of the SPECIFICATIONS, and in consideration of all other PARTICIPANTS entering into Agreements in identical form and all future parties who wish to participate as PARTICIPANTS entering into such an Agreement as a condition of becoming a PARTICIPANT (such that all PARTICIPANTS shall be regarded as parties to a single instance of this Agreement), each PARTICIPANT agrees to the following:

### Agreement

#### 1 Definitions

"AFFILIATE" shall mean a governmental agency or other not-for-profit entity that has completed the application forms, satisfied the objective membership criteria for participation in the Liberty Alliance for AFFILIATES and has executed a copy of this Agreement or a prior Affiliate Agreement.

"ALL PARTICIPANTS MEETING" shall have the meaning set forth in Section 2.6 of this Agreement.

"ASSOCIATE" shall mean an entity that has completed the application forms, satisfied the objective membership criteria for participation in the Liberty Alliance for ASSOCIATES and has executed a copy of this Agreement or a prior Associate Agreement.

"CIRCULATION DRAFT SPECIFICATION" shall mean a draft or release of a DRAFT SPECIFICATION circulated to the PARTICIPANTS after the INITIAL DRAFT SPECIFICATION and before the FINAL DRAFT SPECIFICATION. No IPR REVIEW PERIOD is associated with a CIRCULATION DRAFT SPECIFICATION.

"CONFIDENTIAL INFORMATION" shall mean: (i) those LICENSED MATERIALS that are provided in tangible form and are clearly marked as "Confidential"; or (ii) information concerning

the status of matters under consideration by the Liberty Alliance, including but not limited to DRAFT SPECIFICATIONS or documents concerning governance that are provided in tangible form and are clearly marked as "Confidential" or if disclosed orally that are clearly identified as "Confidential" at the time of disclosure.

"CONTRIBUTION" means a submission to or for an EXPERT GROUP, SERVICES GROUP or the MANAGEMENT BOARD proposing an addition to or modification of an existing SPECIFICATION or a new SPECIFICATION or portion thereof, or a submission proposing changes or modifications to reference design documents provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of an EXPERT GROUP or SERVICES GROUP, and attributed in the meeting minutes to the submitting PARTICIPANT, provided that the minutes are promptly provided to the individual representing the PARTICIPANT, unless the submitting PARTICIPANT withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

"DRAFT SPECIFICATION" shall mean a document in draft or non-final form being worked on by an EXPERT GROUP prior to adoption by the MANAGEMENT BOARD as a FINAL SPECIFICATION that contains a set of technical criteria (including reference to existing specifications and protocols) that support the MISSION.

"EXPERT GROUP" shall have the meaning set forth in Section 8 of this Agreement.

"FINAL DRAFT SPECIFICATION" shall mean a DRAFT SPECIFICATION formally submitted to the MANAGEMENT BOARD for adoption. An IPR REVIEW PERIOD is associated with a FINAL DRAFT SPECIFICATION.

"FINAL SPECIFICATION" shall mean a document recommended by an EXPERT GROUP and approved by the MANAGEMENT BOARD as a final release pursuant to Section 10 below that contains a set of technical criteria (including reference to existing specifications and protocols) that support the MISSION. The term "FINAL SPECIFICATION" shall also include any updates, revisions or new versions of the foregoing that are adopted by the MANAGEMENT BOARD pursuant to Section 10.3 below.

"FOUNDER" shall mean any company that (i) execute a Sponsor Agreement not later than noon, Pacific Standard Time on December 17, 2001, and (ii) does not subsequently voluntarily resign its status as a FOUNDER to join another membership category, and (iii) has not terminated its membership in Liberty Alliance, for whatever reason. FOUNDERS shall be SPONSORS under this Agreement.

"FULLY COMPLIANT IMPLEMENTATION" shall mean: (a) an implementation of a FINAL SPECIFICATION which supports or implements all of the portions of that FINAL SPECIFICATION defined by that FINAL SPECIFICATION as being "Required"; or (b) an implementation of an optional portion of a FINAL SPECIFICATION or optional FINAL SPECIFICATION which supports all portions defined by that optional portion of the FINAL SPECIFICATION or that optional FINAL SPECIFICATION as being "Required"; and, in each instance, (c) an implementation of all portions of a FINAL SPECIFICATION required for a specific type of product or component thereof.

“ID-SIS” shall mean Identity – Services Interface Specification.

“INITIAL DRAFT SPECIFICATION” shall mean the first draft or release of a DRAFT SPECIFICATION circulated to the PARTICIPANTS. An IPR REVIEW PERIOD is associated with an INITIAL DRAFT SPECIFICATION.

“IPR REVIEW PERIOD” shall have the meaning set forth in Section 12.1 of this Agreement.

"LICENSED MATERIALS" shall mean any literary work or other work of authorship, including but not limited to toolkits, software development kits (“SDK”), sample code, reference implementations, prototypes, software, software protocols, formats, interfaces and test tools, whether pre-existing or newly created or prepared under the auspices of an EXPERT GROUP, that is offered by one or more PARTICIPANTS for use in the development of or for inclusion in a SPECIFICATION.

“MANAGEMENT BOARD” shall have the meaning set forth in Section 2.1 of this Agreement.

“MISSION” shall mean the following: 1) to provide a universal open standard for single sign-on with decentralized authentication and open authorization from multiple providers; and 2) to provide an open standard for network identity spanning all network devices and 3) to encourage broad and open industry adoption of these specifications. These goals will be achieved by, among other activities and output, creating SPECIFICATIONS including architecture, protocols, formats, programming interfaces and logic flow.

"NECESSARY CLAIMS" shall mean those claims of all patents, pending patent applications and utility models, regardless of when issued or effective, under which a party, or its SUBSIDIARIES has the right to grant licenses of the scope contemplated herein, all to the extent and only to the extent that the party, or its SUBSIDIARIES, has the right to grant such licenses as of the date of any license to be entered into with the other party(ies) as contemplated in Section 3.5 of this Agreement, and which are necessarily infringed by a FULLY COMPLIANT IMPLEMENTATION of a specific FINAL SPECIFICATION approved by the MANAGEMENT BOARD pursuant to Section 10.2 or 10.3 below, where such infringement could not have been avoided by another technically feasible non-infringing implementation of such FINAL SPECIFICATION. Notwithstanding the foregoing sentence, NECESSARY CLAIMS do not include any claims other than those set forth above even if contained in the same patent as NECESSARY CLAIMS.

“NECESSARY CLAIMS CONFIDENTIAL INFORMATION” or “NCCI” shall have the meaning set forth in Section 7.5.

“NECESSARY CLAIMS DISCLOSURE NOTICE” shall have the meaning set forth in Section 12.1(a) of this Agreement.

"PARTICIPANT" shall mean any entity participating in the Liberty Alliance that is either a SPONSOR, AFFILIATE or ASSOCIATE.

“QUORUM” shall mean that more than fifty percent (50%) of the members of the applicable group (i.e. the MANAGEMENT BOARD or an EXPERT GROUP) are present at a meeting, either in person, by telephone or by such other means as may be prescribed by such group or by this Agreement.

“REVIEW DRAFT SPECIFICATION” shall mean a draft or release of a DRAFT SPECIFICATION circulated to the PARTICIPANTS after the INITIAL DRAFT SPECIFICATION and before the FINAL DRAFT SPECIFICATION. An IPR REVIEW PERIOD is associated with a REVIEW DRAFT SPECIFICATION.

“SERVICES GROUP” shall have the meaning set forth in Section 9 of this Agreement.

"SPONSORS" shall mean an entity that has completed the application forms, satisfied the objective membership criteria for participation in the Liberty Alliance for SPONSORS and has executed a copy of this Agreement or a prior Sponsor Agreement.

“SPECIFICATION” means a DRAFT SPECIFICATION and/or FINAL SPECIFICATION where, in the specific context in which the term is used in the Agreement, there is no need to distinguish whether the document in question is a DRAFT SPECIFICATION or a FINAL SPECIFICATION.

"SUBSIDIARY" of a party hereto or of a third party shall mean a corporation, company or other entity:

- (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a party hereto or such third party, but such corporation, company or other entity shall be deemed to be a SUBSIDIARY only so long as such ownership or control exists; or
- (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is now or hereafter, owned or controlled, directly or indirectly, by a party hereto or such third party, but such corporation, company or other entity shall be deemed to be a SUBSIDIARY only so long as such ownership or control exists.

## **2 Organization and Administration**

### **2.1 The MANAGEMENT BOARD**

- a. The MANAGEMENT BOARD shall be responsible for the governance and management of the Liberty Alliance, including but not limited to (i) establishing and overseeing EXPERT GROUP(S), the SERVICES GROUP and SERVICES GROUP SUBTEAMS and (ii) managing the day-to-day activities associated with developing and promoting SPECIFICATIONS, including the establishment of policies and procedures insofar as they are not inconsistent or in conflict with

this Agreement. The MANAGEMENT BOARD shall have the same number of members as there are FOUNDERS (even after the initial MANAGEMENT BOARD terms described in Section 2.1(b) expire).

- b. Each FOUNDER shall designate one (1) person to represent it on the initial MANAGEMENT BOARD, as well as one (1) alternate to represent such FOUNDER on those occasions when the primary representative is unable to participate. At the first meeting of the initial MANAGEMENT BOARD, one-half (rounded up to nearest whole number if there is an odd number of MANAGEMENT BOARD members) of the MANAGEMENT BOARD representatives shall be designated by lottery to serve a two (2) year term, and the other half shall be designated to serve a three (3) year term. Only SPONSORS may be represented on the MANAGEMENT BOARD.
- c. Upon the expiration of the initial MANAGEMENT BOARD terms established pursuant to the previous paragraph, MANAGEMENT BOARD elections shall be held annually with one-half of the MANAGEMENT BOARD being elected each year for a two (2) year term. For each election, each SPONSOR may nominate one (1) candidate to represent it on the MANAGEMENT BOARD. Each SPONSOR shall have the same number of votes as there are vacancies on the MANAGEMENT BOARD and may cast at most one (1) vote per candidate. The candidates receiving the most number of votes shall be selected in order to fill such vacancies, provided that at no time may any SPONSOR have more than one member on the MANAGEMENT BOARD.
- d. Each SPONSOR may change its representative and/or its alternate upon written notice to the MANAGEMENT BOARD.
- e. The MANAGEMENT BOARD shall be responsible for filling any vacancies on the MANAGEMENT BOARD caused by the resignation or termination of a SPONSOR, whether during the initial MANAGEMENT BOARD terms established pursuant to Section 2.1(b) or thereafter.
- f. The MANAGEMENT BOARD shall seek to reach its decisions by consensus. When no consensus can be reached in a timely manner, however, the MANAGEMENT BOARD shall make decisions by voting, with each member of the MANAGEMENT BOARD having one (1) vote and, except as expressly set forth in this Agreement, all decisions of the MANAGEMENT BOARD shall be made by a simple majority of those voting when a QUORUM exists. Except for procedural matters (for example, whether to adjourn a meeting), the MANAGEMENT BOARD shall not make any decisions, whether by consensus or by voting, unless a QUORUM exists. Except as expressly set forth herein, voting percentages required for actions to be taken as set forth herein are to be calculated in terms of the number of "Yes" and "No" votes cast by those MANAGEMENT BOARD members present when a QUORUM exists. Only "Yes" and "No" votes shall be counted, and abstentions or non-votes shall not be counted, but also shall not affect the determination as to whether a QUORUM exists.

- g. The MANAGEMENT BOARD shall elect the following officers from its members: President, who serves as the chairman at all meetings of the MANAGEMENT BOARD and acts as the chief administrator of the MANAGEMENT BOARD; Vice President, who assists the President and performs the duties of the President when the President is unavailable; Secretary, who records and distributes key meeting results, including voting results; and a Treasurer to manage any financial issues associated with the creation, adoption, promotion and/or maintenance of the SPECIFICATIONS. The officers of the MANAGEMENT BOARD shall be elected for a term of one (1) year and may serve multiple terms, if duly elected.
  - h. The MANAGEMENT BOARD shall meet as frequently as is prudent to carry out its responsibilities, and such meetings may be held in person, by telephone or video conference, or such other means as the MANAGEMENT BOARD deems appropriate; provided, however, that the MANAGEMENT BOARD shall meet in person at least on a quarterly basis at such times and places as designated by the President. SPONSORS that do not have representatives serving on the MANAGEMENT BOARD may attend such in-person meetings, although the MANAGEMENT BOARD may, upon at least a fifty percent (50%) vote, choose to go into a closed session to consider matters of such sensitivity or confidentiality as to merit such treatment. In addition, the MANAGEMENT BOARD, may in its discretion, permit PARTICIPANTS that are not members of the MANAGEMENT BOARD to attend MANAGEMENT BOARD meetings, provided that such PARTICIPANTS shall have no voting rights with respect to MANAGEMENT BOARD activities. Meetings of the MANAGEMENT BOARD shall occur on not less than fourteen (14) days written notice to all SPONSORS.
- 2.2 In addition to the entities initially identified herein as FOUNDERS, other entities that wish to participate in the work of the Liberty Alliance as a SPONSOR, AFFILIATE or ASSOCIATE may submit an application to the MANAGEMENT BOARD in a form decided by the MANAGEMENT BOARD. Such other entities shall be permitted to join as SPONSORS, AFFILIATES or ASSOCIATES, provided that such entities meet the objective criteria for participation established by the MANAGEMENT BOARD in compliance with the objectives set forth in Section 2 of this Agreement and agree to the terms of this Agreement.
- 2.3 Except as expressly set forth below, no PARTICIPANT may use the name of any other PARTICIPANT in any form of publicity without the written permission of the other(s) whose names it wishes to use; provided, however, that any PARTICIPANT may, with the approval of the MANAGEMENT BOARD, publicly disclose the identity of other PARTICIPANTS in documentation, press releases, brochures and other materials, provided that all such references are truthful and accurate. In addition, any PARTICIPANT may publicly disclose the fact and nature of its own participation in the Liberty Alliance in documentation, press releases, brochures and other materials. In recognition of their special status in connection with the creation of SPECIFICATIONS, the FOUNDERS may identify themselves as founding members of the Liberty Alliance in any press releases, brochures and other materials relating to the SPECIFICATIONS, and no other PARTICIPANTS shall be permitted to make this claim or to identify themselves as FOUNDERS.

- 2.4 a. On an annual basis the MANAGEMENT BOARD shall establish a schedule of membership fees for each class of PARTICIPANTS. Any changes to the annual fees from year to year shall require a seventy five per cent (75%) majority vote of the MANAGEMENT BOARD.
  - b. Upon execution of this Agreement, in order to begin to enjoy the benefits of participation, each PARTICIPANT shall pay to an account designated by the Treasurer of the MANAGEMENT BOARD the applicable annual fee. Any PARTICIPANT that does not satisfy its Annual Membership Fee obligations under this Agreement and in accordance with Liberty Alliance policies that may be established from time to time, (subject to a reasonable opportunity to cure) shall be in breach of this Agreement, and in addition to any other remedies available at law or in equity, shall be precluded from further participation as a PARTICIPANT in the activities of the Liberty Alliance until such breach is fully remedied.
  - c. On an annual basis, the MANAGEMENT BOARD shall establish a budget for the activities of the Liberty Alliance. Approval of the budget shall require a seventy five per cent (75%) majority vote of the MANAGEMENT BOARD.
- 2.5 PARTICIPANT acknowledges that the MANAGEMENT BOARD has established, and may continue to establish, various technical, public policy and business/marketing groups composed of representatives from SPONSORS to carry out its MISSION ("EXPERT GROUPS").
- 2.6 The MANAGEMENT BOARD shall designate a representative to manage the ASSOCIATE and AFFILIATE sign-up process, including the authority to enter into the Agreements with AFFILIATES and ASSOCIATES, respectively, on behalf of the MANAGEMENT BOARD. For the avoidance of doubt, the authority that may be delegated pursuant to the preceding sentence shall not be understood to authorize such representative to modify the terms of an Agreement. The MANAGEMENT BOARD shall maintain an updated list of all current ASSOCIATES and AFFILIATES and all contact information for each ASSOCIATE and AFFILIATE. The MANAGEMENT BOARD will make the list of ASSOCIATES and AFFILIATES available to each SPONSOR upon request.
- 2.7 Any SPONSOR or group of SPONSORS may propose to the MANAGEMENT BOARD the establishment of one or more EXPERT GROUPS pursuant to the provisions of Section 8 of this Agreement. The MANAGEMENT BOARD shall also schedule at least two (2) meetings per year to include those SPONSORS, ASSOCIATES and AFFILIATES who wish to attend ("ALL PARTICIPANTS MEETING"). Any then-existing EXPERT GROUP shall send no less than one (1) representative to the ALL PARTICIPANTS MEETING who shall be responsible for receiving any comments or contributions of the PARTICIPANTS and to communicate those comments and contributions to the EXPERT GROUP. The purpose of the ALL PARTICIPANTS MEETING shall include providing any interested PARTICIPANT with the opportunity to comment on or make contributions to drafts or proposals before an EXPERT GROUP or the MANAGEMENT BOARD.

### **3 Ownership and Licensing of Intellectual Property**

- 3.1 Each PARTICIPANT shall retain ownership (including, but not limited to, the right to publish or distribute without any obligation of confidentiality, notwithstanding any terms of this Agreement to the contrary) of any of its LICENSED MATERIALS that such PARTICIPANT offers for use in the development of or for inclusion in a SPECIFICATION, as well as of such PARTICIPANT'S implementations of the technologies described in a SPECIFICATION. Where two or more PARTICIPANTS jointly develop LICENSED MATERIALS or intellectual property appurtenant thereto (such as copyrights or patent rights) as part of their work in Liberty Alliance, such PARTICIPANTS shall jointly own any such LICENSED MATERIALS and intellectual property, without any obligation of accounting to each other or to the other PARTICIPANTS. All the foregoing ownership rights are subject to any underlying licenses granted in this Agreement.
- 3.2 To the extent to which a SPECIFICATION constitutes a copyrightable work distinct from any PARTICIPANT'S copyright interests in LICENSED MATERIALS included as part of such SPECIFICATION or from which they are derived, the copyright in such SPECIFICATION shall be jointly owned by the contributing PARTICIPANTS, without any obligation of accounting.
- 3.3 Each PARTICIPANT understands and agrees that neither the EXPERT GROUP nor the MANAGEMENT BOARD has any obligation to include as part of any SPECIFICATION any LICENSED MATERIALS offered by such PARTICIPANT.
- 3.4 Each PARTICIPANT hereby grants to each other PARTICIPANT a limited, irrevocable, non-exclusive, worldwide, no-fee, royalty-free right and license of such PARTICIPANT'S LICENSED MATERIALS and under any of the PARTICIPANT'S claims that would be NECESSARY CLAIMS if the LICENSED MATERIALS were included in a FINAL SPECIFICATION solely to conduct the work of the EXPERT GROUP up to the point at which the MANAGEMENT BOARD approves (or rejects) a FINAL DRAFT SPECIFICATION recommended by the EXPERT GROUP in question.
- 3.5 If and to the extent a specific FINAL SPECIFICATION includes any LICENSED MATERIALS or is subject to any NECESSARY CLAIMS of a PARTICIPANT, the PARTICIPANTS grant licenses as follows:
- (a) Except as otherwise provided in Section 12.1, each PARTICIPANT hereby grants to all other parties an irrevocable, perpetual, non-exclusive, worldwide, paid-up copyright license to reproduce, display, perform, prepare and have prepared derivative works based upon, distribute and sublicense its LICENSED MATERIALS included in the specific FINAL SPECIFICATION and derivative works thereof as set out in this Agreement, including the right to authorize SUBSIDIARIES to do any, some or all of the foregoing, and including under any copyright interest such PARTICIPANT holds in the FINAL SPECIFICATION that is distinct from its copyright interest(s) in the LICENSED MATERIALS included in such FINAL SPECIFICATION; provided, however, that each PARTICIPANT acknowledges that the provisions described in Section 10 of this Agreement are the means by which the Liberty Alliance seeks to act as the steward for defining and revising FINAL

SPECIFICATIONS, and no PARTICIPANT shall take any actions under the foregoing license, including but not limited to granting sublicenses to third parties, that would be inconsistent with this intention.

- (b) (i) Except as otherwise provided in Section 12.1, each PARTICIPANT (on behalf of itself and its SUBSIDIARIES) hereby covenants to grant to any other person or legal entity (whether or not such person or entity is also a PARTICIPANT) a no-fee, royalty-free, nonexclusive, nontransferable, license under its NECESSARY CLAIMS to implement the specific FINAL SPECIFICATION from an EXPERT GROUP or from a SERVICES GROUP SUBTEAM of which the PARTICIPANT was a member when the FINAL SPECIFICATION was released by the SERVICES GROUP SUBTEAM, but only to the extent needed to be a FULLY COMPLIANT IMPLEMENTATION, and sell, promote or otherwise distribute the resulting implementation, which license may be made subject to the condition that those who seek licenses under this Section 3.5(b)(i) agree to grant reciprocal, no-fee, royalty-free, non-exclusive, nontransferable licenses under their NECESSARY CLAIMS to such PARTICIPANT and all other parties necessary to implement the specific FINAL SPECIFICATION as a FULLY COMPLIANT IMPLEMENTATION. Except as set forth herein, the negotiation of licenses pursuant to this Section 3.5(b)(i) shall be left to the parties concerned. Notwithstanding the foregoing, no PARTICIPANT shall be required to grant a license pursuant to this Section 3.5(b)(i) with respect to; (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a FINAL SPECIFICATION, but are not themselves expressly set forth in that FINAL SPECIFICATION (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, etc.); (ii) the implementation of other specifications, even if referred to in a FINAL SPECIFICATION; or (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be a FULLY COMPLIANT IMPLEMENTATION of a FINAL SPECIFICATION.
- (ii) Each PARTICIPANT (on behalf of itself and its SUBSIDIARIES) hereby covenants to grant to any other person or legal entity (whether or not such person or entity is also a PARTICIPANT) a fair, reasonable, non-discriminatory, nonexclusive, nontransferable, license under its NECESSARY CLAIMS to implement the specific FINAL SPECIFICATION from a SERVICES GROUP SUBTEAM of which the PARTICIPANT was not a member when the FINAL SPECIFICATION was released by the SERVICES GROUP SUBTEAM, but only to the extent needed to be a FULLY COMPLIANT IMPLEMENTATION, and sell, promote or otherwise distribute the resulting implementation, which license may be made subject to the condition that those who seek licenses under this Section 3.5(b)(ii) agree to grant reciprocal, fair, reasonable, non-discriminatory, non-exclusive, nontransferable licenses under their NECESSARY CLAIMS to such PARTICIPANT and all other parties necessary to implement the specific FINAL SPECIFICATION as a FULLY COMPLIANT IMPLEMENTATION. Except as set forth herein, the negotiation of licenses pursuant to this Section 3.5(b)(ii) shall be left to the parties

concerned. Notwithstanding the foregoing, no PARTICIPANT shall be required to grant a license pursuant to this Section 3.5(b)(ii) with respect to; (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a FINAL SPECIFICATION, but are not themselves expressly set forth in that FINAL SPECIFICATION (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, etc.); (ii) the implementation of other specifications, even if referred to in a FINAL SPECIFICATION; or (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be a FULLY COMPLIANT IMPLEMENTATION of a FINAL SPECIFICATION.

(iii) With respect to NECESSARY CLAIMS that pertain to a specific FINAL SPECIFICATION from a SERVICES GROUP SUBTEAM of which the PARTICIPANT was not a member when the FINAL SPECIFICATION was released by the SERVICES GROUP SUBTEAM but where an individual acting on PARTICIPANT's behalf Contributed LICENSED MATERIALS with knowledge that such materials likely would be subject to PARTICIPANT's NECESSARY CLAIMS, such NECESSARY CLAIMS are to be licensed under Section 3.5(b)(i) above.

(c) Notwithstanding any provision to the contrary in this Agreement, including Sections 3.5(b) and 12.1, use and license rights to the United States Government's interest in any applicable patent rights developed in whole or part by its employees or contractors are subject to and governed by Federal law and regulation. Terms of this Agreement are applicable to Federal employees, agencies, or contractors to the extent that they do not conflict with Federal law or regulation, and if PARTICIPANT is a Federal agency or contractor it agrees to use its best efforts to exercise whatever discretion granted to it by Federal law and regulation to make such patent rights available on terms consistent with the principles of this Agreement.

- 3.6 Except as explicitly set forth in this Agreement, a PARTICIPANT is not required to grant any other PARTICIPANT or third party any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such PARTICIPANT.
- 3.7 The parties hereto acknowledge that works created by employees of the Federal Government are not subject to copyright protection within the United States and may be copied or used by interested parties.
- 3.8 By a seventy five percent (75%) majority vote of its members, the MANAGEMENT BOARD may agree to establish one or more trademarks ("TRADEMARK") where the Board concludes that such establishment will serve the goals and objectives of the Liberty Alliance including, for example, to indicate compliance of an implementation of a FINAL SPECIFICATION with that SPECIFICATION and other requirements approved by the MANAGEMENT BOARD; provided, however, that the MANAGEMENT BOARD shall use reasonable efforts and act in good faith not to establish a TRADEMARK that would be confusingly similar to any trademark or service mark owned by any SPONSOR. Any

TRADEMARK established under this Section 3.8 shall be owned by a trust or other entity ("TRADEMARK OWNER") established by the MANAGEMENT BOARD on behalf of the SPONSORS. The TRADEMARK OWNER will use commercially reasonable efforts to clear and register the TRADEMARK in those countries designated by the MANAGEMENT BOARD as necessary countries, with appropriate input from the SPONSORS. The TRADEMARK OWNER will license all PARTICIPANTS to use the TRADEMARK pursuant to terms to be stated in a license agreement in a form approved by the TRADEMARK OWNER and MANAGEMENT BOARD.

- 3.9 Each SPONSOR shall be offered access to any password-protected areas of the Liberty Alliance website.

#### **4 Disclosure of Patents**

- 4.1 During the IPR REVIEW PERIOD, each PARTICIPANT shall disclose to the MANAGEMENT BOARD, in writing, the existence of any of its patent claims that it has determined would likely be NECESSARY CLAIMS if the DRAFT SPECIFICATION were to become final and that are personally known to the individuals acting on behalf of such PARTICIPANT with respect to the DRAFT SPECIFICATION , provided that it is understood and agreed that such individuals do not represent that they personally know of all potentially pertinent claims of patents and patent applications owned or claimed by the PARTICIPANT they represent or any third parties.
- 4.2 The obligation set forth in Section 4.1 above does not, however, imply any obligations on PARTICIPANTS (collectively or individually) to perform or conduct patent searches. Further, nothing in this Agreement nor the act of a PARTICIPANT submitting, supporting, or approving a proposal for a SPECIFICATION shall be construed or otherwise interpreted as any kind of express or implied representation that such PARTICIPANT does or does not hold any patents or patent applications which contain claims that cover such SPECIFICATION .

#### **5 Compliance with Antitrust Laws**

- 5.1. The PARTICIPANTS will be combining unique experience and skills to create an open standard for single sign-on with decentralized authentication and open authorization from multiple providers of data spanning all network devices, and this purpose is believed by the PARTICIPANTS to be more difficult to achieve through the independent efforts of each company. The PARTICIPANTS are committed to fostering open competition in the development and sales of products and services related to the network enabling ubiquitous single sign-on and decentralized authentication of data among multiple different networked devices. The PARTICIPANTS also understand that in certain lines of business they are direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust or competition laws pertaining to monopolistic or anti-competitive practices. Thus, all PARTICIPANTS shall comply with all applicable antitrust and competition laws of all relevant jurisdictions. In addition, with the advice of counsel the MANAGEMENT BOARD shall from time to time promulgate detailed Antitrust Compliance Guidelines for the consideration of the PARTICIPANTS concerning their participation in the Liberty Alliance. These Guidelines are not intended to replace or displace each PARTICIPANT'S

own antitrust policies, but shall operate to guide the PARTICIPANTS' participation in the Liberty Alliance.

- 5.2 As a result of signing this Agreement, participating in the development of SPECIFICATIONS, or in any way voting for or endorsing SPECIFICATIONS, the PARTICIPANTS are not required to develop or market any offerings, and are not precluded from engaging in any business activities whatsoever, even if they are competitive with the activities conducted under this Agreement.

## **6 Marking Requirements**

- 6.1 Any SPECIFICATION published by the MANAGEMENT BOARD shall contain the following printed notice in a clear and conspicuous place:

"Implementation of certain elements of this Specification may require licenses under third party intellectual property rights, including without limitation, patent rights. The Sponsors of and any other contributors to the Specification are not, and shall not be held responsible in any manner, for identifying or failing to identify any or all such third party intellectual property rights. This Specification is provided "AS IS", and no participant in the Liberty Alliance makes any warranty of any kind, express or implied, including any implied warranties of merchantability, non-infringement of third party intellectual property rights, and fitness for a particular purpose. Implementers of this Specification are advised to review the Liberty Alliance Project's website (<http://www.projectliberty.org>) for information concerning any Necessary Claims Disclosure Notices that have been received by the Liberty Alliance Management Board."

- 6.2 For any published SPECIFICATION for which any relevant non-PARTICIPANT patent has been reported to the MANAGEMENT BOARD a notice shall be published on the Liberty Alliance Project's website accessible to those who may wish to implement the SPECIFICATION to which such patent relates. The notice shall include an identification of the relevant patent owner(s), the owner, if known, and any known contact at such owner and the SPECIFICATION to which such patent(s) are relevant. The notice on the website shall include the following in a clear and conspicuous place:

"Implementation of Specifications may involve the use of one or more of the following identified patents. The Sponsors of the Specification take no position concerning the evidence, validity and scope of this claimed patent right. Implementation of certain elements of this Specification may also require licenses under third party intellectual property rights other than those identified above, including without limitation, patent rights. The Sponsors of the Specification are not and shall not be held responsible in any manner for identifying or failing to identify any or all such intellectual property rights that may be involved in the implementation of the Specifications."

## 7 Confidentiality

- 7.1 As a general principle, no PARTICIPANT wishes to receive from any other PARTICIPANT under this Agreement any information which the disclosing PARTICIPANT considers to be confidential; however, the PARTICIPANTS do wish to allow the work of the Liberty Alliance to proceed in a constructive manner under conditions which promote candid and open discussions.
- 7.2 Unless and until CONFIDENTIAL INFORMATION is made available to the public through the processes set forth herein or established by the MANAGEMENT BOARD, each PARTICIPANT (except the owner or authorized licensor) shall use the same degree of care and discretion it uses to avoid disclosure of its own confidential information not to disclose such CONFIDENTIAL INFORMATION to any entity or person who is not a PARTICIPANT engaged in the activities for which such LICENSED MATERIALS were provided.
- 7.3 The obligation of confidentiality set forth in this Section 7 shall expire three (3) years from the date the CONFIDENTIAL INFORMATION is first disclosed to the PARTICIPANT, and shall not apply to any information which: (i) is or becomes publicly available other than by the PARTICIPANT's breach of a duty; (ii) is rightfully received from a third party without any obligation of confidentiality; (iii) is rightfully known by the PARTICIPANT without any limitation on disclosure prior to its receipt; (iv) is independently developed by the PARTICIPANT without use of the CONFIDENTIAL INFORMATION; or (v) is released for disclosure by the PARTICIPANT with the disclosing party's written consent.
- 7.4 Disclosure of CONFIDENTIAL INFORMATION is not prohibited if prior notice is given to its owner and if such disclosure is (a) compelled pursuant to a legal proceeding or (b) otherwise required by law; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a protective order or to have informed the owner of the CONFIDENTIAL INFORMATION so as to allow it a reasonable opportunity to seek such an order.
- 7.5 Subject to the restrictions on disclosure set forth above and to any copyrights or patent rights, and excluding any CONFIDENTIAL INFORMATION concerning patents or patent applications disclosed pursuant to Section 12.1(a)(ii)(B) below ("NECESSARY CLAIMS CONFIDENTIAL INFORMATION" or "NCCI"), each PARTICIPANT shall be free to use any ideas, concepts, know-how and techniques contained in CONFIDENTIAL INFORMATION disclosed to it for any purpose in furtherance of the goals of the Liberty including, for example, the development of commercial products or services intended for use in conjunction with compliant implementations of the SPECIFICATIONS. It is understood that receipt of CONFIDENTIAL LICENSED MATERIALS under this Agreement will not create any obligation in any way limiting or restricting the assignment and/or reassignment of any PARTICIPANT employees.
- 7.6 Notwithstanding anything to the contrary herein, any PARTICIPANT shall be free to use the residuals of CONFIDENTIAL INFORMATION for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such CONFIDENTIAL

INFORMATION. The term "residuals" means that CONFIDENTIAL INFORMATION in nontangible form, which may be retained in the memories of individuals who have had rightful access to such CONFIDENTIAL INFORMATION under this provision of this AGREEMENT. It is understood that receipt of CONFIDENTIAL INFORMATION under this AGREEMENT shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a PARTICIPANT within PARTICIPANT's organization. However, this Section 7.6 shall not be deemed to grant to any party a license under the other party's copyrights or patents.

- 7.7 Any NCCI disclosed to the MANAGEMENT BOARD shall not be further disclosed by any SPONSOR except on a need-to-know basis, for example, to the chair or other select members (or their agents) of the EXPERT GROUP responsible for the SPECIFICATION in question in order to assess the feasibility and prudence of revising a SPECIFICATION to avoid NECESSARY CLAIMS identified in a NECESSARY CLAIMS DISCLOSURE NOTICE. This Agreement is not intended to prevent a party receiving NCCI from using NCCI RESIDUAL KNOWLEDGE, subject to any valid patents and copyrights of the owner of such NCCI. NCCI RESIDUAL KNOWLEDGE means NCCI that is retained in the unaided memories of the receiving party's employees or agents who have had access to NCCI.

## **8 Expert Group**

- 8.1 Any SPONSOR or group of SPONSORS may propose to the MANAGEMENT BOARD the establishment of one or more technical, public policy, or business/marketing EXPERT GROUPS to carry out the MISSION. Such proposal shall include a draft charter for such EXPERT GROUP, particularly including the specific technical or other area to be the subject of the EXPERT GROUP, and the SPONSORS that initially desire to participate in such EXPERT GROUP. SPECIFICATIONS developed by technical EXPERT GROUPS will focus on the definition of the infrastructure technology necessary to support the MISSION, such as the Identity Federation Framework. Approval of the formation of each EXPERT GROUP shall require a seventy five per cent (75%) majority vote of the MANAGEMENT BOARD, whereupon the MANAGEMENT BOARD shall appoint the chairperson(s) of such EXPERT GROUP. The MANAGEMENT BOARD shall provide timely notice of the formation and chairperson of each EXPERT GROUP to all SPONSORS.
- 8.2 Each SPONSOR will have the right to designate one (1) person to represent it in an EXPERT GROUP and one (1) person to serve as an alternate, should the primary representative not be able to participate. Each SPONSOR may change its representative and/or its alternate upon written notice to the EXPERT GROUP chair or Secretary. Only SPONSORS shall be members of the EXPERT GROUP, and, except as set forth in Section 8.5 or as otherwise directed by the MANAGEMENT BOARD, the meetings of EXPERT GROUPS shall be limited to their members. The schedule of the meetings of the EXPERT GROUP shall be published by the EXPERT GROUP and shall be held in locations that on average are equally convenient to all members. After the first meeting of an EXPERT GROUP, the members will elect a vice-chair and secretary from its members. Also after the first meeting of an EXPERT GROUP, it shall advise the MANAGEMENT BOARD of its officers and a membership roster, and will propose and present a schedule for meetings and activity milestone dates to the MANAGEMENT BOARD.

- 8.3 The EXPERT GROUP shall seek to reach its decisions by consensus. When no consensus can be reached in a timely manner, however, the EXPERT GROUP shall make decisions by voting. Only SPONSORS who have designated a representative to the EXPERT GROUP shall be entitled to vote in any vote taken by the EXPERT GROUP, with each member of the EXPERT GROUP having one (1) vote. Except as expressly set forth in this Agreement, all decisions of the EXPERT GROUP shall be made by a simple majority of those voting. A seventy five per cent (75%) majority vote of the EXPERT GROUP members shall be required to recommend a DRAFT SPECIFICATION to the MANAGEMENT BOARD for final approval.
- 8.4 Any member of an EXPERT GROUP who fails to attend three or more consecutive meetings or respond to three or more consecutive electronic votes may be removed from membership in the EXPERT GROUP by the EXPERT GROUP chair. The EXPERT GROUP chair shall send written notification to the MANAGEMENT BOARD and the removed member of such member's removal. Such removed member may re-join after attendance at any one meeting or vote in any electronic vote of the EXPERT GROUP. For the purposes of this Section 8.4, a member of an EXPERT GROUP shall have the opportunity to vote at a meeting in person, by telephone or such other means as the MANAGEMENT BOARD may prescribe, except as expressly directed otherwise by the MANAGEMENT BOARD.
- 8.5 On a case-by-case basis, specific EXPERT GROUPS may invite AFFILIATES and ASSOCIATES, as well as non-PARTICIPANTS, to participate in a specific meeting when such parties' presence is expected to serve the interests of the Liberty Alliance; provided, however, that prior to participating, any such non-PARTICIPANTS will have executed a confidentiality agreement in a form to be approved by the MANAGEMENT BOARD.
- 8.6 Any SPONSOR, upon agreement of the MANAGEMENT BOARD, may solicit suggestions for incorporation in the DRAFT SPECIFICATION from a non-PARTICIPANT before the DRAFT SPECIFICATION is finalized, provided that such suggestions are made pursuant to a suitable agreement in a form approved by the MANAGEMENT BOARD.
- 8.7 In addition to the basic provisions for defining, establishing and managing EXPERT GROUPS set forth above in this Section 8, the MANAGEMENT BOARD shall establish more detailed procedures for the operations of the EXPERT GROUPS as needed.
- 8.8 The work of the EXPERT GROUPS shall be conducted pursuant to milestones and a work schedule adopted and approved by the MANAGEMENT BOARD, as may be amended from time to time.
- 8.9 The initial EXPERT GROUPS shall be 1) technical, 2) public policy, and 3) marketing/business. These EXPERT GROUPS shall meet at least quarterly until the MANAGEMENT BOARD deems their work completed. At the first meeting of the each of these EXPERT GROUPS, a charter shall be adopted and submitted to the MANAGEMENT BOARD for approval.

## **9. Services Group**

- 9.1 The SERVICES GROUP will include a variable number of SUBTEAMS and a chairperson (s). The chairperson(s) shall be a representative of a SPONSOR. Any PARTICIPANT or group of PARTICIPANTS may propose to the MANAGEMENT BOARD the establishment of a new SUBTEAM to carry out the MISSION. Such proposal shall include a draft charter for such SUBTEAM, particularly including the specific technical or other area to be the subject of the SUBTEAM, and the PARTICIPANTS that initially desire to participate in such SUBTEAM. SPECIFICATIONS developed by the SERVICES GROUP or its SUBTEAMS will focus on the definition of applications or functions on top of the infrastructure technology, such as Contact Book, Geo-Location, and Presence. Approval of the formation of each SUBTEAM shall require a seventy five per cent (75%) majority vote of the MANAGEMENT BOARD, whereupon the MANAGEMENT BOARD shall appoint the chairperson(s) of such SUBTEAM. The MANAGEMENT BOARD shall provide timely notice of the formation and chairperson of each SUBTEAM to all PARTICIPANTS.
- 9.2 AFFILIATES and SPONSORS can be a member of any number of SUBTEAMS. An ASSOCIATE can be a member of only one SUBTEAM based on its base membership fee, but can join additional SUBTEAMS for a rate specified by the MANAGEMENT BOARD.
- 9.3 Except as set forth in Section 9.6 or as otherwise directed by the MANAGEMENT BOARD, the meetings of SUBTEAMS shall be limited to their members. Three PARTICIPANTS, including one SPONSOR, must agree to participate in the SUBTEAM. The schedule of the meetings of the SUBTEAM shall be published by the SUBTEAM and shall be held in locations that on average are equally convenient to all members. The SUBTEAM will finalize the charter at the first meeting. The charter must include: (i) the scope and description of the proposed specification activity, (ii) dependencies on other specifications, if applicable, (iii) a list of proposed deliverables which must include market requirements documents and specifications and (iv) a schedule of the milestones. The charter is to be submitted to the MANAGEMENT BOARD in a timely manner for approval. The members will elect a vice-chair and secretary from its members. The SUBTEAM will advise the MANAGEMENT BOARD of its officers and a membership roster, and will propose and present a schedule for meetings and activity milestone dates to the MANAGEMENT BOARD.
- 9.4 The SUBTEAM shall seek to reach its decisions by consensus. When no consensus can be reached in a timely manner, however, the SUBTEAM shall make decisions by voting. Only PARTICIPANTS who have designated a representative to the SUBTEAM shall be entitled to vote in any vote taken by the SUBTEAM, with each member of the SUBTEAM having one (1) vote. Except as expressly set forth in this Agreement, all decisions of the SUBTEAM shall be made by a simple majority of those voting. A seventy five per cent (75%) majority vote of the SUBTEAM members shall be required to recommend a DRAFT SPECIFICATION to the MANAGEMENT BOARD for final approval.
- 9.5 Any member of a SUBTEAM who fails to attend three or more consecutive meetings or respond to three or more consecutive electronic votes may be removed from membership in the SUBTEAM by the SUBTEAM chair. The SUBTEAM chair shall send written notification to the MANAGEMENT BOARD and the removed member of such member's removal. Such removed member may re-join after attendance at any one meeting or vote in any electronic vote of the SUBTEAM. For the purposes of this Section 9.5, a member of

a SUBTEAM shall have the opportunity to vote at a meeting in person, by telephone or such other means as the MANAGEMENT BOARD may prescribe, except as expressly directed otherwise by the MANAGEMENT BOARD.

- 9.6 On a case-by-case basis, specific SUBTEAMS may invite non-PARTICIPANTS, to participate in a specific meeting when such parties' presence is expected to serve the interests of the Liberty Alliance; provided, however, that prior to participating, any such non-PARTICIPANTS will have executed a confidentiality agreement in a form to be approved by the MANAGEMENT BOARD.
- 9.7 Any member of a SUBTEAM, upon agreement of the MANAGEMENT BOARD, may solicit suggestions for incorporation in the DRAFT SPECIFICATION being developed by the SUBTEAM from a non-PARTICIPANT before the DRAFT SPECIFICATION is finalized, provided that such suggestions are made pursuant to a suitable agreement in a form approved by the MANAGEMENT BOARD.
- 9.8 In addition to the basic provisions for defining, establishing and managing SUBTEAM S set forth above in this Section 9, the MANAGEMENT BOARD shall establish more detailed procedures for the operations of the SUBTEAMS as needed.

## **10 Approval of Specification and Other Output**

- 10.1 An EXPERT GROUP may decide by EXPERT GROUP vote to circulate interim drafts or releases of DRAFT SPECIFICATIONS to PARTICIPANTS for review and comment. Such DRAFT SPECIFICATIONS shall be designated INITIAL, CIRCULATION, REVIEW or FINAL by the EXPERT GROUP.
- 10.2 In addition, an EXPERT GROUP may request that a DRAFT SPECIFICATION be circulated for review by and comment from non-PARTICIPANTS. This request, along with the associated DRAFT SPECIFICATION, shall be formally submitted to the MANAGEMENT BOARD and upon a greater than fifty percent (50%) majority vote by the MANAGEMENT BOARD, shall be published.
- 10.3 A SERVICES GROUP SUBTEAM may decide to circulate interim drafts or releases of DRAFT SPECIFICATIONS to PARTICIPANTS as provided in this Section 10.3. Such DRAFT SPECIFICATIONS shall be designated INITIAL, CIRCULATION, REVIEW or FINAL by the SUBTEAM. After such decision, the SUBTEAM will provide the DRAFT SPECIFICATION to the SERVICES GROUP Chairman, who shall, in turn, verify that it conforms to the SUBTEAM charter and deliverables and then provide it to all EXPERT GROUPS for a timely review and comment. After any feedback and/or comments from the EXPERT GROUPS are addressed, the SUBTEAM can formally submit the DRAFT SPECIFICATION to a vote for release to all PARTICIPANTS. During the voting period for all PARTICIPANT release any EXPERT GROUP chairperson may propose that the MANAGEMENT BOARD approve such release. After a successful decision on non-FINAL release to all PARTICIPANTS, the SUBTEAM will provide the DRAFT SPECIFICATION to the SERVICES GROUP Chairman, who shall, in turn, verify that it conforms to the SUBTEAM charter and deliverables and then provide it to all PARTICIPANTS. After a successful decision on a FINAL version, the SUBTEAM will provide the DRAFT SPECIFICATION to the SERVICES GROUP Chairman, who shall, in

turn, verify that it conforms to the SUBTEAM charter and deliverables and then provide it to the MANAGEMENT BOARD.

- 10.4 In addition, a SUBTEAM may request that a DRAFT SPECIFICATION be circulated for review by and comment from non-PARTICIPANTS. The SUBTEAM will provide the DRAFT SPECIFICATION to the SERVICES GROUP Chairman, who shall, in turn, provide it to all other EXPERT GROUPS for a timely review and comment. After any feedback and/or comments from the EXPERT GROUPS are addressed, the SUBTEAM can formally submit the DRAFT SPECIFICATION to a vote for release to non-PARTICIPANTS. After a successful decision on release to non-PARTICIPANTS, the SUBTEAM will provide the DRAFT SPECIFICATION to the SERVICES GROUP Chairman, who shall, in turn, provide it to the MANAGEMENT BOARD and upon a greater than fifty percent (50%) majority vote by the MANAGEMENT BOARD, it shall be published.
- 10.5 The primary deliverable of an EXPERT GROUP or SERVICES GROUP SUBTEAM shall be a FINAL DRAFT SPECIFICATION on the subject matter or undertaking assigned to such EXPERT GROUP or SERVICES GROUP SUBTEAM, which drafts or proposals shall be formally submitted to the MANAGEMENT BOARD. When the EXPERT GROUP or SERVICES GROUP SUBTEAM, by a seventy five per cent (75%) majority vote of the members, reports to the MANAGEMENT BOARD that a FINAL DRAFT SPECIFICATION proposed for final approval is complete, or at any other time upon majority vote of the MANAGEMENT BOARD, the MANAGEMENT BOARD will take steps to accept or reject the FINAL DRAFT SPECIFICATION as set forth herein. To adopt the FINAL DRAFT SPECIFICATION, written notice (which shall include a copy of the FINAL DRAFT SPECIFICATION) shall be sent to all SPONSORS advising that a MANAGEMENT BOARD meeting will be held for the purposes of adopting such FINAL DRAFT SPECIFICATION. Such meeting shall take place no sooner than twenty-one (21) days after submission to the MANAGEMENT BOARD of the FINAL DRAFT SPECIFICATION. At such meeting, the MANAGEMENT BOARD shall vote on the FINAL DRAFT SPECIFICATION. Adoption of the FINAL DRAFT SPECIFICATION, or any update to a FINAL SPECIFICATION, requires approval of seventy-five percent (75%) of the MANAGEMENT BOARD. Such FINAL SPECIFICATION shall be made publicly available by the MANAGEMENT BOARD upon adoption.
- 10.6 After any FINAL SPECIFICATION has been approved in accordance with Section 10.3 above, any updates or alterations thereto shall be treated as a proposal to develop a new SPECIFICATION and shall be subject to the same processes and procedures used for development as set forth above. The adoption of new FINAL SPECIFICATIONS shall not terminate any right or obligation of any SPONSOR under this Agreement, including any licenses or covenants granted or received by a PARTICIPANT with respect to any earlier adopted FINAL SPECIFICATIONS.

## **11 Withdrawal from Agreement**

- 11.1 Any PARTICIPANT shall be permitted to withdraw from this Agreement at any time by giving written notice of its intent to terminate its participation but shall still be bound to its obligations under Section 3 a) with respect to LICENSED MATERIALS, SPECIFICATIONS that have been released by an EXPERT GROUP unless such withdrawal occurs before the end of the IPR REVIEW PERIOD applicable to such

SPECIFICATIONS and b) for any CONTRIBUTIONS made by PARTICIPANT to a DRAFT SPECIFICATION prior to the effective date of PARTICIPANT'S termination. Similarly, any PARTICIPANT that withdraws from the Liberty Alliance shall not have any licenses granted to such PARTICIPANT pursuant to Section 3.5 be prejudiced as a result of such withdrawal. Upon its withdrawal, any fees owed by a withdrawing PARTICIPANT prior to such PARTICIPANT'S withdrawal shall become immediately due and payable.

- 11.2 By a seventy five per cent (75%) majority vote, the MANAGEMENT BOARD may terminate the membership of any PARTICIPANT for its material breach of its obligations hereunder where such breach is not cured within 30 days following the PARTICIPANT'S receipt of notice of the breach.

## 12 Withdrawal of Necessary Claims

- 12.1 Notwithstanding Section 3.5(b)(i), each PARTICIPANT shall have until 45 days after a specific INITIAL, REVIEW or FINAL DRAFT SPECIFICATION is released by an EXPERT GROUP or a FINAL DRAFT SPECIFICATION is released by a SERVICES GROUP SUBTEAM for review by all PARTICIPANTS (the "IPR REVIEW PERIOD") to withdraw NECESSARY CLAIMS. In addition, each PARTICIPANT member of the particular SERVICES GROUP SUBTEAM shall have until 45 days after a specific INITIAL or REVIEW DRAFT SPECIFICATION is released by a SERVICES GROUP SUBTEAM ("SUBTEAM IPR REVIEW PERIOD") to withdraw NECESSARY CLAIMS. No IPR REVIEW PERIOD is associated with a CIRCULATION DRAFT SPECIFICATION. No IPR REVIEW PERIOD is associated with an INITIAL or REVIEW DRAFT SPECIFICATION for non-members of the particular releasing SERVICES GROUP SUBTEAM.

a. Such withdrawal shall be made by notifying the MANAGEMENT BOARD in writing ("NECESSARY CLAIMS DISCLOSURE NOTICE") on a good faith basis, setting forth:

- i. that it claims to be the sole owner of certain NECESSARY CLAIMS pertaining to such specific DRAFT SPECIFICATION and that the notifying PARTICIPANT elects to withdraw such NECESSARY CLAIMS from the license grant set forth in Section 3.5(b)(i) and, instead of on a no-fee, royalty-free basis, will license such NECESSARY CLAIMS on terms that are fair, reasonable and non-discriminatory, which license may be made subject to the requirement of a reciprocal fair, reasonable and non-discriminatory grant;

and

- ii. For each NECESSARY CLAIM identified in the NECESSARY CLAIMS DISCLOSURE NOTICE pertaining to such specific DRAFT SPECIFICATION, the following information shall be provided:

(A) the countries in which the patent(s) or application(s) in which they are contained was issued or is pending;

(B) the patent number for such patent (or serial number of such patent application, including a copy of the patent application as filed if the patent application has not yet been published, where such serial number and patent application may be declared as NECESSARY CLAIMS CONFIDENTIAL INFORMATION of the withdrawing PARTICIPANT as described in Section 7 of this Agreement);

(C) the portion of such specific DRAFT SPECIFICATION where the withdrawing PARTICIPANT believes an infringement would arise; and

(D) an explanation of the nature of the infringement which shall include a claim chart mapping each element of an identified NECESSARY CLAIM with the corresponding element of the specific SPECIFICATION portions identified in Section 12.1(a)(ii)(C).

and

- iii. subject to any limitations imposed by antitrust or other laws, and to the extent that the notifying PARTICIPANT deems it appropriate, the specific terms of license to be provided pursuant to Section 12.1(a)(i).
- b. The NECESSARY CLAIMS DISCLOSURE NOTICE shall be effective on the date it is received by the MANAGEMENT BOARD, provided that it contains the information required by Section 12.1(a).
- c. The MANAGEMENT BOARD shall promptly evaluate any NECESSARY CLAIMS DISCLOSURE NOTICE received hereunder. This evaluation may include soliciting advice from the relevant EXPERT GROUP, legal counsel and/or other expert advisors. Based on such evaluation, the MANAGEMENT BOARD shall then give guidance to the EXPERT GROUP in question as to how it should proceed.
- d. If a DRAFT SPECIFICATION (or, with respect to Section 12.2, a FINAL SPECIFICATION) is modified in response to a NECESSARY CLAIMS DISCLOSURE NOTICE, then the notifying PARTICIPANT shall have 45 days from the date on which the modified SPECIFICATION is provided to that PARTICIPANT to again submit a NECESSARY CLAIMS DISCLOSURE NOTICE to the MANAGEMENT BOARD.
- e. Except as provided in Section 12.2, a PARTICIPANT cannot withdraw from the Section 3.5(b)(i) grant any NECESSARY CLAIMS that were relevant to a previously circulated DRAFT SPECIFICATION that were not identified in a NECESSARY CLAIMS DISCLOSURE NOTICE during the applicable IPR REVIEW PERIOD.
- f. A PARTICIPANT also cannot exercise its rights under this Section 12.1 with respect to NECESSARY CLAIMS that pertain to LICENSED MATERIALS where any individual acting on the PARTICIPANT'S behalf Contributed such LICENSED MATERIALS with knowledge that such materials likely would be subject to the PARTICIPANT'S NECESSARY CLAIMS, except when the PARTICIPANT'S NECESSARY CLAIMS have been declared with specificity required by Section 12.1

(a)(ii) by the PARTICIPANT upon the Contribution of such LICENSED MATERIALS.

12.2 Any PARTICIPANT that enters into this Agreement after the MANAGEMENT BOARD has already adopted a FINAL SPECIFICATION shall have until 45 days after entering into this Agreement to deliver a NECESSARY CLAIMS DISCLOSURE NOTICE relating to such FINAL SPECIFICATION to the MANAGEMENT BOARD as set forth in Section 12.1 (a).

### 13 General

13.1 All LICENSED MATERIALS are provided "AS IS", and no PARTICIPANT makes any warranty of any kind, express or implied, including any implied warranties of merchantability, non-infringement of third party intellectual property rights, and fitness for a particular purpose. None of the PARTICIPANTS warrant or assume any liabilities in connection with the rights granted, nor the actions anticipated or taken under this Agreement. EXCEPT WITH RESPECT TO THE DISCLOSURE OF NECESSARY CLAIMS CONFIDENTIAL INFORMATION OR TO FEES OR REIMBURSEMENTS DUE FROM A PARTICIPANT PURSUANT TO SECTION 2.4, IN NO EVENT SHALL ANY PARTICIPANT BE LIABLE TO ANY OF THE OTHER PARTICIPANTS FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR FOR DIRECT, INDIRECT, SPECIAL OR EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, ARISING OUT OF THIS AGREEMENT. For the avoidance of doubt, the exclusions of a PARTICIPANT'S liability under this Section 13.1 do not apply with respect to such PARTICIPANT'S actions either as a licensee under licenses granted pursuant to Sections 3.4 or 3.5 or outside of the scope of such licenses.

13.2 This Agreement does not create a joint venture, partnership or other form of business association between the PARTICIPANTS nor an obligation to develop, make available, use, license, buy or sell any information, product, services or technology.

13.3 None of the PARTICIPANTS shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the MANAGEMENT BOARD, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon, and shall inure to the benefit of, the permitted successors and assigns of each party hereto.

13.4 Each PARTICIPANT agrees to comply with all applicable laws, rules and regulations, including without limitation, those relating to the export or re-export of technical data when exporting or re-exporting any LICENSED MATERIALS.

13.5 Except as otherwise explicitly provided for in this Agreement, all costs and expenses incurred by any party in carrying out its obligations under this Agreement shall be paid by the party that incurred the expense. Each party shall possess or obtain at its own expense all necessary licenses or permits.

- 13.6 If any provision of this Agreement, or the applicable thereof in any circumstances, is held to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision(s) in every other respect and the rest of the provisions of this Agreement shall remain in effect, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereto.
- 13.7 The headings in this Agreement are for reference only and do not affect the meaning or interpretation of this Agreement.
- 13.8 No party hereto will bring a legal action under this Agreement more than two years after the cause of action arose. Each party waives its rights to a jury trial in any resulting litigation.
- 13.9 No party shall bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this Agreement due to any act of God, act of governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party so delayed or interrupted.
- 13.10 No approval, consent or waiver will be enforceable unless signed by the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.
- 13.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and each of which must include completed first and signature pages, but all of which together shall constitute one and the same instrument.
- 13.12 This Agreement shall come into effect upon the date of the last signature of a FOUNDER. This Agreement shall come into effect in relation to future PARTICIPANTS as of the date that they sign a copy of this Agreement. This Agreement may only be terminated by the MANAGEMENT BOARD, save that this Agreement is automatically terminated with respect to a signatory, if that signatory ceases to be a PARTICIPANT. Any rights or obligations established by Sections 1, 3.1 through 3.4, 3.6, 7 or 13 shall survive after termination or expiration of this Agreement with respect to all signatories. Any obligations created pursuant to Sections 3.5 or 12.1(a)(i) shall survive termination or expiration of this Agreement except as expressly set forth in Section 11.1.
- 13.13 All notices hereunder shall be written and sent to the Liberty Alliance Secretary, with copy to the Liberty Alliance President, at their addresses as recorded in the Liberty Alliance Membership rolls. Such notices shall be deemed served when personally delivered, or, if transmitted by facsimile or electronic transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report. Notice may also be sent by nationally recognized courier service, effective upon delivery.
- 13.14 The parties agree to attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in the spirit of mutual cooperation. If those attempts, including escalation to the MANAGEMENT BOARD fail, then the party

demanding mediation will submit the dispute for non-binding mediation conducted by a mediator selected by the MANAGEMENT BOARD within twenty-one (21) days after written notice. Any dispute that cannot be resolved between the disputing parties through negotiation or mediation within forty-five (45) days of the date of the initial demand for mediation by one of the parties may then be submitted to the courts within New York, New York for resolution. The use of any mediation procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. Nothing in this Section 13.14 will prevent either party from resorting to judicial proceedings, if (i) good faith efforts to resolve the dispute have been unsuccessful, (ii) the claim or suit involves intellectual property rights, or (iii) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.

13.15 Except for the rights expressly provided by this Agreement, no PARTICIPANT grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

13.16 This Agreement constitutes the entire agreement between the PARTICIPANTS concerning its subject matter and supersedes any prior or contemporaneous agreement or understanding, whether written or oral, if any, among the parties with respect to such subject matter. Any modification or amendment of this Agreement shall only be binding upon the PARTICIPANTS if set forth in writing and approved by a 75% majority vote of the entire MANAGEMENT BOARD, provided, however that such modification or amendment shall not be binding on any PARTICIPANT who terminates this Agreement within thirty (30) days of receipt of written notice of such modification or amendment. Subject to Section 13.14 and to any controlling federal law, New York law will govern any action related to this Agreement.

13.17 The parties agree any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is an original.

ACCEPTED AND AGREED TO FOR:

PARTICIPANT

By: \_\_\_\_\_

Membership Level: (check one)

Name: \_\_\_\_\_ (please print)

Sponsor : \_\_\_\_\_

Title: \_\_\_\_\_

Associate: \_\_\_\_\_

Date: \_\_\_\_\_

Affiliate: \_\_\_\_\_

PARTICIPANT

(NAME) \_\_\_\_\_

(ADDRESS) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_