

# **Joint Development Foundation Projects, LLC**

## **ALLIANCE FOR OPEN MEDIA PROMOTER AGREEMENT**

### **Background**

The Joint Development Foundation and its subsidiaries are dedicated to helping standards, specification, source code, and related Projects start quickly and operate efficiently. Joint Development Foundation Projects are ideal for long term standards, specification and source code projects or as a place to do incubation Projects before taking those projects to larger organizations.

By using established Joint Development Foundation legal agreements, groups can establish Projects quickly and with minimal legal expense. By operating under the Joint Development Foundation's legal umbrella, Projects can enjoy the benefits of Joint Development Foundation's existing legal agreements, choice of intellectual property policies, non-profit status, and corporate structure. This enables Projects to more easily establish themselves, collect funds, issue press releases in the Project's name, develop liaison relationships, and hold copyrights, all without negotiating custom agreements and new corporate organizations.

The Joint Development Foundation operates under a freemium-type model, where projects can be established and operated without paying anything. Projects can provide their own infrastructure (websites, email reflectors, conference organization, etc.), or can work with Joint Development Foundation approved vendors to provide these types of services if they wish.

### **Promoter Agreement**

This Promoter Agreement is used to join an existing Joint Development Foundation Project at the Promoter level, which allows Promoters to participate in the specified Working Group.

# Joint Development Foundation Projects, LLC

## ALLIANCE FOR OPEN MEDIA PROMOTER AGREEMENT

This Promoter Agreement (“Agreement”) is entered into between the Joint Development Foundation Projects, LLC, Alliance for Open Media Series (“Alliance for Open Media”) and the Promoter.

1. **Project Name.** Alliance for Open Media.
2. **Working Groups.** Select those groups you wish to join in the Working Group Charter.
3. **Fees.** See Exhibit A – Fee Schedule below. Fees are subject to change during subsequent terms upon at least 90 days’ notice prior to expiration of the then current term. There is no additional fee to join additional Working Groups.
4. **Intellectual Property.** Promoters agree to the intellectual property terms as set forth in the applicable Appendix D of the Applicable Working Group Charter. A Promoter may not issue Exclusion Notices for any material that has been included in a Draft Deliverable or Final Deliverable that has been available to Promoter for more than 45 days.
5. **Decision Making.**
  - 5.1. **Voting.** The Working Group will endeavor to make all decisions by consensus. Where the Working Group cannot reach consensus with respect to a particular decision to be made, the Working Group will make that decision by a Supermajority Vote of the Working Group Participants.
  - 5.2. **Notifications and Electronic Voting.** The Executive Director is responsible for issuing all notifications of meetings and votes of the Members and each Working Group chair is responsible for issuing all notifications of meetings and votes of the Working Group for which it is the chair, in each case subject to the following minimum criteria: (i) in-person meetings require at least 30 days prior written notice, (ii) teleconference meetings require at least 7 days prior written notice (this requirement only applies to the notification of the first meeting of automatically recurring teleconference meetings), (iii) electronic votes require no advance notice but must be made pursuant to a clear and unambiguous ballot with only “yes” and “no” options, and the voting must remain open for no less than 7 days. These notification requirements with respect to the Project or that particular Working Group may be overridden upon unanimous consent of all Members or all applicable Working Group Participants that have attended and participated in at least 50% of the last 4 meetings of the Project or Particular Working Group.

6. **Deliverable Development Process.**

6.1. **Chair.** Each Working Group will designate a chair for that Working Group by Supermajority Vote of the Working Group Participants. A Working Group may select a new chair upon a Supermajority Vote of the Working Group Participants of that Working Group.

6.2. **Working Group Requirements.** Each Working Group must be comprised of at least 2 Working Group Participants. No Promoter will be permitted to participate in a Working Group without first notifying the Executive Director in writing of its intent to participate in that Working Group, signing the Promoter Agreement, and receiving the countersigned Promoter Agreement.

7. **Conditions for Contributions.** A Working Group Participant may not make any Contribution unless that Working Group Participant is the exclusive copyright owner of the Contribution or has sufficient copyright rights from the copyright owners to make the Contribution under the terms of this Promoter Agreement. The Working Group Participant must disclose the identities of all known copyright owners in the Contribution.

8. **Deliverable Development Process.**

8.1. **Pre-Draft.** Any Working Group Participant may submit a proposed initial draft document as a candidate Draft Deliverable of that Working Group. The Working Group chair will designate each submission as a “Pre-Draft” document.

8.2. **Draft.** Each Pre-Draft document of a Working Group must first be approved by a Supermajority Vote of the Working Group Participants of that Working Group in order to become a Draft Deliverable. Once the Working Group approves a document as a Draft Deliverable, the Draft Deliverable becomes the basis for all going forward work on that deliverable.

8.3. **Working Group Approval.** Once a Working Group believes it has achieved the objectives for its deliverable as described in the Scope, it will progress its Draft Deliverable to “Working Group Approved” status by a Supermajority Vote of the Participants of that Working Group.

8.4. **Final Approval.** Upon a Draft Deliverable reaching Working Group Approved status, the Executive Director or his/her designee will present that Working Group Approved Draft Deliverable to all Members for approval. Upon a Supermajority Vote of the Members, that Draft Deliverable will be designated a “Final Deliverable.”

8.5. **Publication and Submission.** Upon the designation of a Draft Deliverable as a Final Deliverable, the Executive Director of the Project will publish the Final Deliverable in a manner agreed upon by a Supermajority Vote of the Working

Group Participants (i.e., Project member only location, publicly available location, Project maintained website, Project member website, etc.). The publication of a Final Deliverable in a publicly accessible manner must include the terms under which the Final Deliverable and/or source code is being made available under.

- 8.6. **Submissions to Standards Bodies.** Upon the Supermajority Vote of the Members, the Executive Director will coordinate the submission of the applicable Final Deliverable to another standards development organization, and the Working Group Participants that developed that Final Deliverable agree to grant the copyright rights necessary to make those submissions.

9. **Withdrawal and Termination.**

- 9.1. **Term.** The term of this Agreement is 1 year from the date this Agreement is countersigned by the Project. Upon the expiration of any term, this Agreement will automatically renew for successive 1 year periods unless a party provides the other party with notice of its intent not to renew this Agreement at least 30 days prior to the expiration of the then current term.
- 9.2. **Termination by Project.** The Project may terminate this Agreement in the event that a material breach of the Agreement by Promoter, if such breach is not remedied to Project's satisfaction by Promoter within 30 days of receiving written notification from Project.
- 9.3. **Termination by Promoter.** Promoter may terminate this Agreement at any time upon giving written notice to the Project. The effective termination date is the date on which the Project receives that written notice. No refunds will be provided.
- 9.4. **Effect of Termination.** Upon the termination of the Agreement, all existing commitments and obligations under this Agreement, up to the effective date of termination will remain in effect, but no new obligations will be incurred. A Promoter's patent licensing commitments shall continue to apply to any Essential Claims included in a Draft Deliverable as of the effective date of withdrawal or termination.

10. **Representations, Warranties and Disclaimers.** Promoter represents and warrants that it is legally entitled to grant the rights and promises set forth in this agreement. IN ALL OTHER RESPECTS THE CONTRIBUTIONS ARE PROVIDED "AS IS." The entire risk as to implementing or otherwise using a Draft Deliverable or Final Deliverable is assumed by the implementer and user. Except as stated herein, Promoter expressly disclaims any warranties (express, implied, or otherwise), including implied warranties of merchantability, non-infringement, fitness for a particular purpose, or title, related to the material. IN NO EVENT WILL ANY MEMBER OR PROMOTER BE LIABLE TO ANY

OTHER MEMBER OR PROMOTER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER MEMBER OR PROMOTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11. **Use of Name or Marks.** The Project may use Promoter's logo, trademark or service mark to identify Promoter's status as a Project Promoter. Other uses of the Promoter's logo, trademark or service mark are subject the Promoter's prior written approval. The Project will use commercially reasonable efforts to abide by Promoter's trademark guideline policies within 60 days of the Project's receipt of those guidelines from Promoter. Promoter may use the Project's logo, trademark or service mark to identify Promoter's status as a Project Promoter in accordance with the Project's trademark guideline policies, if made available by the Project. Other uses of the Project's logo, trademark or service mark are subject the Project's prior written approval.
12. **Non-Confidential, Restricted Disclosure.** Information disclosed in connection with the Project and any Working Group activity, including but not limited to meetings, Contributions, and submissions, is not confidential, regardless of any markings or statements to the contrary. Notwithstanding the foregoing, Members and Working Group Participants may not make any public disclosures of that information without a Supermajority Vote of the Members or Working Group, as applicable, authorizing that disclosure, and any distributions of technical information to third parties must include a notice materially similar to the following: "This is a document made available by the Alliance for Open Media. THESE MATERIALS ARE PROVIDED "AS IS." The contributors expressly disclaim any warranties (express, implied, or otherwise), including implied warranties of merchantability, non-infringement, fitness for a particular purpose, or title, related to the materials. The entire risk as to implementing or otherwise using the materials is assumed by the implementer and user. IN NO EVENT WILL ANY MEMBER OR PROMOTER BE LIABLE TO ANY OTHER MEMBER OR PROMOTER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER MEMBER OR PROMOTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE."
13. **Regulatory Intent.** The Members and Promoters acknowledge that they may compete with one another in various lines of business and that it is therefore imperative that they and their respective representatives act in a manner that does not violate any applicable antitrust laws and regulations. Each Member and Promoter may have similar agreements with others. Each Member and Promoter may design, develop, manufacture, acquire or market competitive deliverables, products and services, and

conduct its business, in whatever way it chooses. No Member or Promoter is obligated to announce or market any products or services. Without limiting the generality of the foregoing, the Members and Promoters agree not to have any discussion relating to any product pricing, methods or channels of product distribution, division of markets, allocation of customers or any other topic that should not be discussed among competitors.

#### 14. **Definitions.**

- 14.1. **“Affiliate”** means an entity that directly or indirectly controls, is controlled by, or is under common control of that Promoter or Member.
- 14.2. **“Contribution”** means any original work of authorship, including any modifications or additions to an existing work, that the Member intentionally submit for inclusion in the Draft Deliverable or Final Deliverable, which is included in the Draft Deliverable or Final Deliverable. For the purposes of this definition, “submit” means any form of electronic, oral, or written communication for the purpose of discussing and improving the Draft Deliverable or Final Deliverable, but excluding communication that the Working Group Participant conspicuously designate in writing as not a contribution.
- 14.3. **“Control”** means direct or indirect control of more than 50% of the voting stock or decision-making authority.
- 14.4. **“Draft Deliverable”** means all versions of a document (except a Final Deliverable) developed by a Working Group for the purpose of creating, commenting on, revising, updating, modifying, or adding to any document that is to be considered for inclusion in the Final Deliverable.
- 14.5. **“Executive Director”** means the Executive Director of the Project.
- 14.6. **“Final Deliverable”** means the final version and contents of any Draft Deliverable approved as a Final Deliverable as set forth in Section 8.4.
- 14.7. **“Member”** means a party that has signed the Project Charter for this Project, and that party’s Affiliates, unless that Member has withdrawn or been terminated from the Project.
- 14.8. **“Project”** means the name of the Project set forth in Section 1 that is established under this Project Charter.
- 14.9. **“Promoter”** means a party that has signed the Promoter Agreement, and that party’s Affiliates, unless that Promoter has withdrawn or been terminated from the Project. Promoters are not Members.

- 14.10. “**Scope**” means a description of the deliverables that a given Working Group will develop as set forth in that Working Group’s Charter.
- 14.11. “**Supermajority Vote**” means an affirmative vote of no less than 3/4 of Members or Working Group Participants, as applicable, that have attended/participated in at least 50% of the last 4 meetings of the group conducting the vote, where each Member or Working Group Participant will receive only 1 vote regardless of how many individuals from that Member participate. To ensure the group is capable of making decisions, the voting requirement for attendance/participation of at least 50% of the last 4 meetings shall be waived if there has not yet been 4 meetings.
- 14.12. “**Working Group**” means a working group of Working Group Participants established to develop technical Deliverables within the Scope. Each Working Group must have a Scope.
- 14.13. “**Working Group Participant**” means either i) a Member who has executed the Working Group Charter for a particular Working Group(s) or ii) a Promoter that has executed a Working Group charter for a particular Working Group(s).

## Exhibit A – Fee Schedule

**I certify that the following statements are true:** (check all that apply)

☐ Our organization is an accredited academic institution.  
The membership fee for accredited academic institutions is USD 500.

☐ Our organization is a government agency.  
The membership fee for government agencies is USD 10,000.

**For all other organizations:** Our organization's consolidated world-wide revenue for the prior fiscal year was:

☐ Greater than the equivalent of USD 100,000,000.  
The membership fee for this revenue level is USD 30,000.

☐ Greater than or equal to the equivalent of USD 10,000,000 and less than USD 100,000,000.  
The membership fee for this revenue level is USD 10,000.

☐ Greater than or equal to the equivalent of USD 1,000,000 and less than USD 10,000,000.  
The membership fee for this revenue level is USD 3,000.

☐ Less than the equivalent of USD 1,000,000.  
The membership fee for this revenue level is USD 500.

☐ Our organization is a registered non-profit and we are seeking an exemption to the membership fee.  
Please (a) provide a proof of non-profit status, (b) describe your extenuating circumstances and (c) indicate your consolidated world-wide revenue by checking one of the boxes above.



<b>For: Joint Development Projects, LLC, Alliance for Open Media Series</b>	
Signature:	
Print Name:	Matt Frost
Title:	Chairman
Company Name:	Joint Development Projects, LLC, Alliance for Open Media Series
Email:	mfrost@google.com
Address:	2810 N Church St, PMB 57274, Wilmington, Delaware 19802-4447 USA
Date:	

<b>For: Promoter</b>	
Signature:	
Print Name:	
Title:	
Company Name:	
Email:	
Address:	
Date:	