

MEMBERS AGREEMENT FOR THE OPENNTF ALLIANCE

This Members Agreement (the "Agreement") for the OpenNTF Alliance (the "Alliance") is entered by and among the Members (as defined below).

Background

- A. The Members, believing each other to have complementary expertise in the development of IBM Lotus Notes® and IBM Lotus Domino® templates and applications and/or interest in putting such templates and applications to productive use, have demonstrated a willingness to devote resources to the collaborative development and enhancement of templates and applications for IBM Lotus Notes® and IBM Lotus Domino® for distribution under freely distributable licensing terms.
- B. The Members wish to encourage broad industry use of the OpenNTF's IBM Lotus Notes® and IBM Lotus Domino® templates and applications and wish to grant licenses therefore as described herein.

Agreement

1. Definitions

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

1.2 "Code" shall mean computer software (either source or object versions), including XML schema, DTDs, ntf, nts, and other data or document formats.

1.3 "Contribution" means any work of authorship, including any modifications or additions to an existing work, that is submitted to the Alliance for inclusion in any Project, posted on any Alliance forum, or otherwise made available for inclusion on the OpenNTF website. For the purposes of this definition, "submitted" means any form of electronic or written communication sent to the Alliance or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, wikis, and other systems that are managed by, or on behalf of, the Alliance.

1.4 "Effective Date" for each Member shall mean the effective date provided in Section 3.1 and for the OpenNTF Alliance as a whole shall mean the earliest date when at least two Members Agreements are effective.

1.5 "Members" means the entities which have signed this Members Agreement and whose membership in the OpenNTF Alliance has been approved in accordance with Section 3.1, but only during the term that their specific Members Agreement remains in force.

1.6 "Participation" means the participation that each Alliance Member engages in. Such Participation may include any or all of the following:

- 1) Financial contribution;
- 2) In kind assets;
- 3) Website hosting and maintenance;
- 4) Intellectual property, including existing software, documentation, or other written material;
- 5) Personnel time dedicated to developing the Alliance's intellectual property or to activities that further the Purpose;
- 6) Services including, without limitation, public relations, organization of events, or management oversight; and

- 7) Public statements, including press releases, analyst visits, and visible participation, that raise the awareness of the Alliance.

1.7 "Project" means a combination of roadmaps, Code, documentation, and such other works of authorship developed within or contributed to the Alliance.

1.8 "Purpose" means worldwide collaboration on providing the framework for the community to develop applications and templates for IBM Lotus Notes® and IBM Lotus Domino® which may be distributed under distribution under freely distributable licensing terms.

1.9 "Working Group" means a committee of Member representatives who work to develop one or more Projects for approval under the terms of this Agreement.

2. Steering Committee

2.1 Formation of Steering Committee. The Members will create a Steering Committee of up to seven representatives to act on their behalf. Seats on the Steering Committee shall be filled by a vote of the Members. Initial terms begin on the formation of the Steering Committee, four of which (the first four seats filled or, if more than four seats were filled on the same date, the four with the highest number of votes) will run for two years and the remaining three will run for one year. After the initial terms, the seats shall be filled for two year terms with about half of these Steering Committee seats being elected each year.

Any election shall be conducted in accordance with reasonable procedures adopted by the Steering Committee (or the Membership as a whole if the Steering Committee has not yet been established).

2.2 Conducting Steering Committee Business. The Steering Committee shall elect by majority vote a Chair from its representatives to schedule and run meetings. The Steering Committee shall meet, in person, by phone, or electronically, at least once per quarter. Unless otherwise specified, decisions of the Steering Committee require agreement of a majority of the total number of representatives present. Except for decisions that require the approval of the entire Membership, the Steering Committee is empowered to make all decisions regarding the Alliance in furtherance of the Purpose.

2.3 OpenNTF Alliance Finances. Each Member will bear its own costs and expenses in connection with its performance under this Agreement, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with this Agreement or any other activities of the Alliance. The Members intend to operate the Alliance in such a way that the expense associated with the Alliance activities is reasonably shared among the Members. However, the Steering Committee may determine that certain expenses need to be centrally managed. If so, the Steering Committee will adopt a budget and establish periodic dues to be paid by the Members. The Steering Committee may appoint a Member or a third party to manage the budget, collect the dues, and pay approved expenses. If a third party is appointed, the budget shall include a reasonable fee to be paid to that third party for such services.

3. Members

3.1 New Members. Consistent with Section 6.1, membership in the Alliance is intended to be broadly available to organizations with a demonstrated interest and commitment to the Purpose. Applications for Membership, along with a description of the applicant's planned Participation, must be submitted to the Steering Committee (or the Membership as a whole if the Steering Committee has not yet been established). An application for membership shall be accepted if the applicant can demonstrate to the Steering Committee's (or Membership's) satisfaction, partly through its planned Participation, that it intends to support and promote the Purpose. The Effective Date of an accepted applicant's membership shall be the later of the date a signed original of this Agreement is received from the applicant or the date the application for Membership is approved.

3.2 Affiliates. Only one entity of an Affiliated group of entities may be a Member at any one time. Agreements signed by Affiliates of existing Members are void. In the event of a merger that would result in two or more Affiliates being Members, the Affiliates involved will immediately inform the Steering Committee as to which Members are withdrawing. In any event, Members who are Affiliates shall collectively have only one vote.

3.3 Conducting Member Business. The Members shall meet, in person, by phone, or electronically, at least once per year. Member meetings shall normally be held at the annual IBM Lotusphere conference and shall be called by the Steering Committee, which shall give Members at least ten business days notice prior to the Meeting. Unless

otherwise specified, decisions of the Members require agreement of a simple majority of the total number of Members. Minutes of all Member meetings shall be distributed to all Members as soon as practicable after each Member meeting.

3.4 IPR Policy. Each Member agrees that it will comply with the requirements of the Intellectual Property Rights (“IPR”) Policy, attached hereto as Attachment A. Covenants and licenses granted in the IPR Policy are self-executing and are effective immediately without any further action on the part of any Member or any third party. The IPR Policy may be amended only by the process described in Section 6.2 below.

3.5 Disclaimer of Liabilities. Each of the Members acknowledges and agrees that the Steering Committee is acting solely as a facilitator at their request and for their convenience. The Steering Committee will not be deemed to be an agent of any of the Members except as expressly provided in this Agreement. The Steering Committee will not be liable to any of the Members for any action or omission on its part taken or made in good faith that is not in breach of this Agreement. IN NO EVENT WILL ANY MEMBER BE LIABLE TO ANY OTHER MEMBER OR ANY THIRD PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

4. Development and Adoption of Project

4.1 Establishment of the Technical Committee. The Steering Committee shall establish a Technical Committee that shall be responsible for the technical direction of the Alliance. The Technical Committee shall:

- Consist of Member representatives and Committers (as defined in the OpenNTF Alliance Development Policy and Process) as determined by the Steering Committee;
- Determine the technical needs and requirements of the IBM Lotus Notes® community;
- Establish new projects to meet such needs;
- Set up and maintain the OpenNTF software repository infrastructure;
- Ensure the IPR Policy is followed; and
- Encourage the contribution of existing code from the community.

4.2 Establishment of Working Groups. The Steering Committee, upon recommendation from the Technical Committee, shall establish Working Groups for the development of Projects. Each Member may participate in any Working Group through one or more representatives. Regardless of how many representatives are participating in a Working Group, no Member shall have more than one vote in any Working Group decision. Working Groups may invite individual Committers as participants. The Steering Committee may terminate a Working Group, either before or after the requested Project is developed.

5 Term and termination

5.1 Term. The term of this Agreement shall begin on the Effective Date and, except as provided below, shall continue indefinitely subject to each Member’s right to withdraw.

5.2 Termination. This Agreement as a whole may be terminated at any time if such termination is approved by a three-fourths vote of the Steering Committee and a two-thirds vote of all of the Members. Such termination will not be effective until a notice of termination is sent by the Steering Committee to all of the Members. Any individual Member's Agreement may be terminated by a three-fourths vote of the portion of the Steering Committee that excludes such Member if the Member has breached any material provision of this Agreement, breached the IPR Policy, or has failed to attend or vote at three consecutive monthly Steering Committee meetings (if it is represented on the Steering Committee) or three consecutive Member meetings.

5.3 Withdrawal. A Member may withdraw from this Agreement at any time. The timing of such withdrawal will determine the effect on such Member’s rights and obligations as specified in the IPR Policy. A Member's withdrawal will be effective on the date that the Steering Committee receives written notice from the Member of its withdrawal or, if later, the date specified in such written notice.

5.4 Survival. In the event of termination or withdrawal, the following shall survive and remain in effect: section 1 (Definitions), section 3.4 (IPR Policy), section 3.5 (Disclaimer of Liabilities), this section 5.4, and section 6 (General). All intellectual property grants and covenants made by or to a Member survive termination or withdrawal of that Member's Members Agreement.

6. General

6.1 Compliance With Antitrust Laws. The Members intend that membership in the Alliance be open to organizations and individuals that can demonstrate an interest in, and commitment to, promoting the Purpose of the Alliance. The Members are committed to fostering open competition in the development of Internet based products and services. The Members acknowledge that they may compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Each Member may have similar agreements with others. Each Member may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. No Member is obligated to announce or market any products or services. Without limiting the generality of the foregoing, the Members agree not to have any discussion relating to product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic that should not be discussed among competitors. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives regarding the importance of limiting their discussions to subjects that relate to the purposes of the Alliance, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

6.2 Modification of the Terms of this Agreement. The terms of this Agreement may be amended only by a three-fourths vote of the Steering Committee and two-thirds acceptance by the Members. The amendment will become effective on the later of the proposed effective date or the date that two-thirds of the Members have returned an executed copy of the proposed amendment to the Steering Committee. Any Members that do not return an executed copy of the proposed amendment to the Steering Committee by its actual effective date shall be deemed to have withdrawn from this Agreement on such date.

6.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

6.4 Incorporation. The Members may agree to form a non-profit corporation to facilitate the development of the OpenNTF Alliance. The Members agree that any such non-profit corporation will adopt the IPR Policy and any operating procedures then previously adopted by the Steering Committee.

6.5 Governing Law and Jurisdiction. This Agreement shall be construed and controlled by the laws of the State of New York without reference to conflict of laws principles. The parties agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in, the state and Federal courts of the State of New York. The proceedings shall be conducted in the English language. The parties hereby waive any right to trial by jury.

6.6 Notices. All notices hereunder shall be electronic or written and sent to the Members at the addresses indicated in the signature block below or at such other address as a Member may later specify by written notice to the Steering Committee.

6.7 Complete Agreement; No Waiver. This Agreement, including all attachments, sets forth the entire understanding of the parties and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. No modifications or additions to or deletions from this Agreement shall be binding unless approved in accordance with the terms herein, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

6.8 Order of Precedence. Notwithstanding anything else to the contrary in this Agreement and notwithstanding the order of their adoption, in the case of the conflict between the terms of this Agreement and the terms of the IPR Policy, the terms of the IPR Policy shall control.

In witness of this agreement, the Member has executed this Agreement below:

<Member Name>:

Notices to be sent to:

By: _____

By Fax – to +1 845-491-7347
Or email a scanned copy of the executed
document to
IP-manager@openntf.org

Name: _____

Title: _____

Date: _____

Attachment A

OpenNTF Alliance Intellectual Property Rights Policy

1. Definitions

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

1.2 "Code" shall mean computer software (either source or object versions), including XML schema, DTDs, ntf, nts and other data or document formats.

1.3 "Contribution" means any work of authorship, including any modifications or additions to an existing work, that is submitted to the Alliance for inclusion in any Project posted on any Alliance forum, or otherwise made available for inclusion on the OpenNTF website. For the purposes of this definition, "submitted" means any form of electronic or written communication sent to the Alliance or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, wikis, and other systems that are managed by, or on behalf of, the Alliance. .

1.4 "Contributor" means any Member or any non-Member that submits a Contribution to the Alliance.

1.5 "Member" shall mean Members of the Alliance as defined in the OpenNTF Alliance Members Agreement.

1.6 "Project" means a combination of roadmaps, Code, documentation, and such other works of authorship developed within or contributed to the Alliance.

2. Licenses

2.1 Licenses for Contributions to Project. Each Contributor, on behalf of itself and its Affiliates, grants to the Alliance and each Member and its Affiliates a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute its Contributions and such derivative works.

2.2 Licenses for Contributions of Code. In addition to any other grants or covenants in this IPR Policy, to the extent any Contribution includes Code, the Contributor licenses such Code to the Alliance and to every Member under the Apache License, Version 2.0 ("ALv2").

2.3 License Conflict. Notwithstanding the foregoing, the Contributor may license Code to the Alliance and every Member under a license other than ALv2 where the potential Contributor of such Code is unwilling or unable to license the Code under ALv2, and the Steering Committee (or delegate thereof) has approved alternate licensing terms. These terms will be clearly laid out in a file accompanying the Code.

This policy should be read to discourage, but not prohibit, the licensing of any Code under terms and conditions that would require that distributions by OpenNTF of the object code, source code or derivative works of any Code be governed by terms and conditions other than the ALv2.

2.4 License for Legacy Code. Code contributed to OpenNTF before the Effective Date of the Membership Agreement will continue to be distributed under the license under which it was submitted to OpenNTF. The Alliance will encourage the resubmission of such code under ALv2.

2.5 Outgoing License for other content. Contribution content other than Code distributed by the Alliance or its Members through the Alliance website will be made available under the following terms:

Permission to copy and display "_____" (the "Project"), in any medium without fee or royalty is hereby granted, provided that you include the copyright notice as shown herein and link or URL to the Project on the OpenNTF Alliance website.

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3. Representations and Disclaimer

3.1 Representation. Except as otherwise disclosed in writing by such Contributor at the time it makes a Contribution, each Contributor represents and warrants at the time of any such Contribution by it that, to the best knowledge of the individual actually making the Contribution, making the Contribution subject to the terms of this IPR Policy does not violate the copyright or trade secret interests of another.

3.2 Disclaimer of Warranties. THE CONTRIBUTORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, (1) EXCEPT AS SET FORTH IN SECTION 3.1, ANY WARRANTY OF TITLE OR THAT ANY CONTRIBUTION DOES NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON OR ENTITY, (2) ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR (3) THAT THE RIGHTS AND LICENSES GRANTED HEREUNDER COMPRISE ALL THE RIGHTS AND LICENSES NECESSARY OR DESIRABLE TO USE THE PROJECT.