

**OSFP (OCTAL SMALL FORM FACTOR PLUGGABLE)  
MULTI-SOURCE AGREEMENT (“MSA”)**

**November 4, 2016**

**Amended October 4, 2021**

**1.     Summary**

The OSFP (Octal Small Form Factor Pluggable) MSA specifies high-density pluggable modules with eight or sixteen high-speed electrical interface lanes that supports optical transceivers, active optical cables, and active or passive copper cables with aggregate interface speeds of 400 Gbps and above.

**1.1 MSA Points of Contact**

Chair	Andreas Bechtolsheim	avb at arista dot com
Co-Chair	Chris Cole	chris.cole at ii-vi dot com
Co-Chair	Brian Kirk	brian.kirk at amphenol-tcs dot com
Co-Chair	Mark Nowell	mnowell at cisco dot com

## 2. Table of MSA Participants

The OSFP MSA Participant companies are listed below. A number of Participant companies have been acquired since they joined the OSFP MSA and under the rules of the MSA their successor companies have become the current Participant in the MSA.

Acacia	Fujitsu Optical Components	Neophotonics
Accelink	Ghiasi Quantum	Nextronincs
Adva	Google	Nokia
All Best Electronics Ltd	Hewlett Packard Enterprise	NTT Electronics
Amphenol	HG Genuine Optics	Nvidia
Analog Devices	HiSense	O-Net Communications
Applied Optoelectronics	Hitachi Cable America	Oclaro
AppliedMicro	Huawei Technologies	OE Solutions
Arista Networks	II-VI, Inc	Oracle
Axalume	Infinera	Panduit Corp
Ayar Labs Inc	Innolight	PHY-SI
Barefoot Networks	Innovium	Pinjack International
Broadcom	Inphi	Quanta Computer
Brocade	Intel	Ranovus
Cable Express	Ixia	Renesas Electronics
Cavium	Jess-Link Products Co	Rosenberger
Ciena	Juniper Networks	SAE
CIG Tech	Kaiam	Samtech
Cisco Systems	Keysight	Senko
Clariphy	King Signal	Sicoya GmbH
Cloud Light Technology	Leoni Cables	Sifotonics
Colorchip	Linkedin	Source Photonics
Coriant	LinkTel	Spirent Communications plc
Corning	Lorom	Sumitomo
Credo Semiconductor	Lumentum	TE Connectivity
CXTEC	LuxShare	The Siemon Company
Dell Products LP	Luxtera	USconnec
Delta Electronics	Macom	Viavi Solutions
Dust Photonics Inc	Marvell	Volex Inc
Egide Group	Maxim	Wavesplitter Technologies
Elenion Technologies	MaxLinear	Wilder Technologies
EoptoLink Technology	Mellanox	Xilinx, Inc
Finisar	Molex	Xsight Labs
Fourte	Multilane	Yamaichi Electronics



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#### **4. Purpose of the MSA**

- 4.1. Each Participant agrees to cooperate in the development, publication and support of a Specification within the Scope (as defined in Section 5.1 below) under this Multi-Source Agreement (“**MSA**”). The goal of the Participants is to be able to provide products that are mechanically and electrically interchangeable due to such products being compliant with the Scope of the Specification.
- 4.2. The Participants desire to define the Specification for the OSFP (Octal Small Form Factor Pluggable) and OSFP-XD module form factors and make details of the Specification available to the industry to promote industry adoption of compatible products.

#### **5. Scope of the OSFP Specification**

- 5.1. The scope of the OSFP Specification (“**Scope**”) must define, at a minimum, the following:
  - The OSFP and OSFP-XD module mechanical form factors, including latching mechanism;
  - Host cage together with the host electrical connector mating with such plug;
  - Electrical interface, including pin-out, data, control, power and ground signals;
  - Mechanical interfaces, including package outline, front panel, connector footprint and PCB layout requirements;
  - Thermal requirements and limitations, including heatsink design and airflow;
  - Electrostatic discharge (ESD) requirements; and
  - The module management interface.
- 5.2. Other product aspects, such as internal design elements that are not required by this Specification for mechanical, electrical, or thermal interoperability, are entirely at the discretion of each Participant and are outside of the scope of the Specification.

#### **6. Compliance With Antitrust Laws**

- 6.1. The Participants are committed to open competition in the development of products and services based on the requirements of the Specification. The Participants acknowledge and understand that in certain lines of business they are or may be direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any state, federal, or international antitrust laws or regulations. Without limiting the generality of the foregoing, the Participants acknowledge that this MSA prohibits any communications or actions that violate antitrust laws. Accordingly, each Participant will make a good faith effort to counsel its representatives who participate in any activities under this MSA on limiting the scope of their discussions and communications, whether they take place during formal meetings, informal gatherings, or otherwise, to the topics that relate to the purposes of this MSA.

#### **7. Definitions**

- 7.1. “**Affiliate**” of a party means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with such party, so long as such Control exists.
- 7.2. “**Compliant Portions**” means only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with all required relevant portions of the Specification, and (ii) are within the bounds of the Scope.

- 7.3. “**Contributions**” means any ideas, suggestions, comments or other feedback submitted by a Participant for the purpose of proposing additions to or modifications of the Draft Specification.
- 7.4. “**Control**” means beneficial ownership of more than fifty percent (50%) of the voting stock or equity in an entity or equivalent control over voting power.
- 7.5. “**Draft Specification**” means any draft versions of the Specification.
- 7.6. “**Essential Claims**” means those claims of any patents that are necessarily infringed by an implementation compliant with the requirements within the Scope of the Specification, where such infringement could not have been avoided by another technically feasible non-infringing alternative implementation of such Specification. For the avoidance of doubt, normative references, optional additions, enabling technologies and other references mentioned in the Specification shall not be considered “requirements of the Specification” for the purpose of this definition. Claims directed to any functional aspects of an optical transceiver outside of the Scope of the Specification will not be considered Essential Claims.
- 7.7. “**Membership Form**” means the OSFP MSA Membership Request Form, in the form attached at the end of this MSA.
- 7.8. “**OSFP**” means Octal Small Form Factor Pluggable.
- 7.9. “**OSFP-XD**” means Octal Small Form Factor Extra Density Pluggable.
- 7.10. “**OSFP Group**” means all the Participants.
- 7.11. “**Participant**” means a company that becomes a member of this MSA in accordance with Section 12.6 below, and such company’s Affiliates. Notwithstanding anything to the contrary herein, if Google Inc. (“**Google**”) is a Participant hereunder, Google’s X group (and any successors thereto) will be excluded from this MSA.
- 7.12. “**Specification**” means one or more OSFP or OSFP-XD specifications that are approved by the Participants for publication.

## **8. Licensing and Fees**

- 8.1. This MSA grants no license under the patents, know-how, trade secrets or any other technology of any Participant either expressly, by implication, or by estoppel. This MSA grants no license under copyrights except as expressly stated, and no such license is granted by implication or by estoppel.
- 8.2. Each of the Participants agrees to offer and negotiate a license under any of its Essential Claims to any entity requesting such license from such Participant in support of implementations that are compliant with the requirements of the Specification (“**Requesting Entity**”) on reasonable and non-discriminatory (“**RAND**”) terms and conditions, provided that: (a) such obligation is subject to applicable laws and regulations; (b) such license shall not be conditioned on the Requesting Entity also obtaining a license to non-Essential Claims or other patents (for the avoidance of doubt, such additional licenses included voluntarily by both the Participant and the Requesting Entity shall be permitted); (c) such license may reasonably require a reciprocal license granted by the Requesting Entity as to Essential

Claims held by such entity or its Affiliates on RAND terms and conditions; (d) the Participant's obligation of this Section 8.2 to license to a given Requesting Entity is terminated and the right for such Requesting Entity to receive any Essential Claim license under this MSA is waived if such Requesting Entity has transferred patents containing Essential Claims to another entity (which is not an Affiliate) prior to seeking a license from Participant under this Section 8.2, and still retains a right to practice those transferred patents, provided such transfer avoids the Requesting Entity's requirement to license Essential Claims; and (e) the license may be limited for use necessary to conform with all relevant requirements in the Scope of the Specification. For the purposes of clarity, nothing in this MSA shall act as a waiver of damages that occur prior to a Requesting Entity entering into a license required by this Section 8.2 and each Participant reserves all rights to such damages without limitation.

- 8.3. A Participant's obligation to offer licenses to Essential Claims includes Essential Claims owned or controlled by its Affiliates. If a Participant or an Affiliate grants an exclusive license to or transfers an Essential Claim, the licensing obligations hereunder shall run with title to the patent such that the recipient and all successors will be subject to the obligations under this MSA. While the Participants intend that such obligations shall pass with title, the Participant transferring or exclusively licensing an Essential Claim must include provisions in its transfer documents providing for this result.
- 8.4. The OSFP Group may agree, with the number of Participant approvals set forth in Section 12.3, to provide the appropriate licenses under the copyright in the Specification to an adopting standards body, provided the license obligations of such adopting standards body require that Essential Claims be licensed on RAND terms (in contrast to royalty-free RAND terms) and further provided that the Specification remains substantially the same.
- 8.5. Each Participant is free to seek technology or other exchanges with other entities in order to support its activities under this MSA, subject to the confidentiality provisions and requirements of Section 6 of the MSA.
- 8.6. Each Participant agrees to be responsible for its own development, manufacturing, marketing and selling in order to supply product meeting the Specification. For the avoidance of doubt, this Section 8.6 does not prohibit any Participant from entering into any arrangement with any other entity for such development, manufacturing, marketing and selling.
- 8.7. This MSA does not:
  - a) preclude any Participant from making, using or selling products that may not meet the Specification;
  - b) preclude any Participant from making, using or selling products that practice Essential Claims; or
  - c) authorize any Participant to make, use or sell products that practice Essential Claims.
- 8.8. Each Participant may use its sole discretion regarding its methods of implementing its own product, e.g., by engineering effort or by technology licensing or transfer or combination of these or other practices. There is no obligation to purchase products from any other Participant.

8.9. Each Participant retains sole discretion in its choice of pricing, sales channels and distribution.

8.10. Each Participant affirms its intention to compete freely and openly in the marketplace with the Participants as well as other competitors. The determination of market condition suitability is to be made by each Participant individually and in each Participant's sole discretion.

## **9. Disclosure Policy**

9.1. Intellectual Property Disclosure: No Participant shall have any duty to perform any patent search. Before any vote to adopt a Draft Specification, each Participant shall have a good faith obligation to disclose to all other Participants in writing, the existence and identity of any of its or its Affiliates' patents of which the Participant's representative is actually aware, and which, if the underlying technology is incorporated into the Specification, reasonably may contain Essential Claims. To enable compliance with this obligation, the Chairperson (as defined in Section 12.7 below) shall maintain and update a master list of the email contact information for all Participants and provide such contact list to any Participant upon request.

## **10. Intellectual Property, Copyright and Trademarks**

10.1. Ownership: 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 MSA to the contrary) of its respective Contributions and its implementations of the technologies described in the Specifications. Furthermore, any Participants that jointly develop intellectual property as part of the MSA agree to negotiate in good faith a separate joint ownership agreement to address equitable sharing of filing, prosecution, and maintenance costs and revenues generated from licensing the jointly owned patents pursuant to the terms of this MSA.

10.2. Copyrights in Specification: Effective as of the adoption of the Specification, each Participant and its Affiliates hereby convey to each other Participant and its Affiliates that does not withdraw or is not removed pursuant to Section 14 (Withdrawal and Removal), a non-exclusive, undivided, and equal ownership in the copyrights in the Specification to the extent that the Contribution, or portion of the Contribution, of such conveying Participant is included in the Specification, subject to the underlying copyright ownership rights of Contributions of individual Participants (collectively "**Materials**"). Subject to Section 11 (Confidentiality), each Participant may exercise any and all rights of copyright ownership and sublicense such rights in the Materials as if such rights were solely owned by such Participant, without permission of the other Participants or their Affiliates and without any duty to account. However, no Participant shall publish a modified or derivative work from Materials (although each Participant may translate into another language) which are identified as "OSFP Compliant" or an "OSFP Specification" without the express consent of a majority of the Participants. Contributions and portions of Contributions not included in the Specification shall remain the sole property of the contributing Participant. A Participant shall memorialize its oral Contributions in writing. Contributions may be (1) submitted in writing or (2) stated orally and recorded in the minutes of a MSA meeting, and attributed to an individual. A Participant may memorialize, correct or withdraw its oral Contributions by providing written notice to the Chairperson within fourteen (14) days after the MSA meeting minutes were delivered to such Participant. No Participant shall knowingly include in a Contribution protected works or content (1) belonging to another party to this MSA (excluding such Participant's Affiliates whose protected works or content may be included in a Contribution), or (2) belonging to a



third party unless such Participant discloses in writing to the other Participants any dependency of the Contribution on such third party intellectual property rights. All Participants that withdraw or are removed pursuant to Section 14 (Withdrawal and Removal) waive all ownership rights, title and interest to the Specification and shall have no rights to Materials of other Participants.

10.3. Authorship: Authorship to the Specification shall be attributed to the OSFP Group.

10.4. Use: To support widespread use of the Specification after initial publication of the Specification, the Participants agree to permit unrestricted use, reproduction and distribution of the Specification without constraint except attribution of authorship to the OSFP Group; provided that each Participant agrees to distribute the Specification under terms that prohibit products from using any Trademark (as defined in Section 10.5 below) or claiming compliance with the Specification unless such product includes all Compliant Portions contemplated by the Specification.

10.5. Trademark Selection: The Participants hereby agree not to assert against any Participant any trademark, trade name or similar rights they may have now or hereafter in the name "OSFP" ("**Trademark**"), it being agreed that the adoption and procedures associated with authorized use of such Trademark, name or logo shall be agreed upon by a majority of the Participants. If the Participants agree to create or assert trademark or trade name rights in such name or a related logo or another name or logo to be used in conjunction with the Specification, they agree to use commercially reasonable efforts to agree on the clearance for use, nature of ownership, licensing and registration of such name or logo prior to adoption. In order to adopt a new name or logo in connection with the Specification, the Participant proposing a new name or logo shall transmit the proposed name or logo to the other Participants for comments regarding any claimed rights in such new name or logo. Such proposed new name or logo shall receive at least 75% approval of the Participants as a condition precedent for adoption. The Participants will have no less than forty-five (45) days 'notice to review the new name or logo proposal.

10.6. No Obligation to Use Trademarks: No Participant shall be obligated to use any Trademark on any product, advertising, or on any other material in any manner.

## **11. Confidentiality**

11.1. Each Participant shall maintain this MSA, the substance of OSFP Group meetings including phone conferences, and any Draft Specifications or Contributions of others in confidence as described below. Participants may discuss specific details of the Draft Specification with third parties before completing the Specification so long as such discussion is under a suitable confidentiality agreement with terms of confidentiality at least as restrictive as those of this MSA. Each Participant will maintain the confidentiality with at least the same degree of care that it uses to protect its own confidential and proprietary information. Each Participant will ensure that its employees protect the confidential nature of information disclosed pursuant to MSA, it being understood that such employees will use no less than a reasonable degree of care under the circumstances, and Participants will neither disclose nor copy the Draft Specification or Contributions except as necessary for its employees with a need to know, such employees having signed confidentiality agreements, or otherwise having acknowledged in writing or by electronic means confidentiality obligation documents, where such agreements or documents have terms of confidentiality at least as restrictive to those of this MSA. Any copies which are made will be marked "confidential," or with a similar legend. Notwithstanding anything in the foregoing, a Participant is not obligated to maintain

confidentiality of individual subject matter that has been included in that Participant's own Contributions or own disclosures made in OSFP Group meetings or otherwise pursuant to this MSA. A Participant will not be liable for the disclosure of any Contributions received from other Participants under this MSA which are:

- a) rightfully in the public domain other than by the Participant's breach of a duty;
- b) rightfully received from a third party without any obligation of confidentiality;
- c) rightfully known to the Participant without any limitation on use or disclosure prior to its receipt from the disclosing party;
- d) independently developed by or for the Participant by persons without access to the other Participants' disclosed Contributions;
- e) rightfully disclosed as required by law; or
- f) published by the OSFP Group after approval in accordance with this MSA.

## **12. Operating Procedures**

- 12.1. Each Participant must identify the person(s) in their organization that have the authority and responsibility to sign the MSA. At least one such person, or delegate with full authority to represent the Participant, is encouraged to participate in each meeting and will have the single vote for that Participant.
- 12.2. Meetings may be face-to-face, phone or other e-conferences and may be scheduled on a nominal reoccurring basis or otherwise as agreed by the OSFP Group. Any non- regularly scheduled meeting shall have a minimum ninety-six (96) hours 'notice with the notice including an agenda. The quorum for all meetings is a minimum of 50% of the OSFP Group. Decisions by the OSFP Group can be made at a meeting if a quorum exists; otherwise an e-mail ballot is required. Prior to any vote to approve a Specification, the Draft Specification must be circulated to all Participants at least fourteen (14) days in advance of such vote, along with information regarding when and how such vote will occur.
- 12.3. Unless otherwise stated herein, all decisions by the OSFP Group, including but not limited to new action items, design changes, decisions on public information disclosure, or other activity related to this MSA or the Specification, will require the approval of a minimum of 50% of the Participants voting for a proposal, it being understood that abstentions will not count either for or against a proposal and shall be disregarded for purposes of determining the approval percentage. Voice votes are acceptable at any meeting satisfying the requirements of Section 12.2. E-mail ballots are permissible for items previously discussed in a meeting(s) or e-mail exchange lasting a minimum of one (1) week where all Participants had opportunity to comment and all Participants are considered present when these conditions are met. For voice votes and e-mail ballots, a failure to respond shall be deemed an abstention and abstentions will not be counted as a vote for purposes of determining the approval percentage associated with the proposal. Each Participant shall have one vote.
- 12.4. Participants desiring to bring in new Participants may approach a company and provide general information regarding the existence of the MSA and the purpose of the MSA. If the company is interested in learning more about the MSA, the Participant can enter into a non-

disclosure agreement with the company, with confidentiality obligations at least as restrictive as those of Section 11 (Confidentiality) herein, and provide a copy of the MSA for review.

- 12.5. Participants reserve the right to overrule adoption, modification, substitution, addition or any other change to the Draft Specification so long as at least a majority of the Participants agree to overrule the change.
- 12.6. A company requesting MSA membership may become a Participant if they (i) sign the Membership Form and (ii) are approved by a majority of the current Participants. Notwithstanding the foregoing, approval by a majority of the current Participants is not required for the Initial Participants.
- 12.7. A chairperson ("**Chairperson**") and editor ("**Editor**") will be appointed by approval of a majority of the Participants. The Chairperson will be the point of contact for the OSFP Group and will help facilitate meetings. The Editor will be responsible for maintaining and updating the Draft Specification.

### **13. Publicity and Announcements**

- 13.1. Publicity: Use of a Participant's name or logo in connection with any public communication about this MSA or related activities hereunder, including any proposal, draft, document, or specification, requires the prior written permission of that Participant.
- 13.2. When announcing this MSA and the Specification, such announcement shall include a reference to "OSFP." Examples of how this term would be used include (but are not limited to): The "OSFP MSA" or The "OSFP Specification".
- 13.3. Prior to the date for publication, the Participants agree to announce the Specification in a manner to be agreed upon by the Participants and shall cooperate to create the initial and subsequent announcements (collectively, "**Announcements**"). For the avoidance of doubt, all Announcements are subject to Section 13.1 (Publicity).
- 13.4. Prior to the initial Announcement, the Specification shall remain confidential information.
- 13.5. After the initial Announcement, the Specification shall be made available to anyone (Participant or non-Participant) who requests a copy.
- 13.6. Each Participant agrees to use the OSFP name in reference to this MSA or the Specification in announcements and promotional efforts.
- 13.7. After this MSA and Specification are announced, each Participant may advertise or otherwise promote this MSA or the Specification in any way that it deems appropriate, bearing in mind the obligation to use the Trademark in the agreed upon manner and the requirements of Section 13.1 (Publicity).

### **14. Withdrawal and Removal**

- 14.1. Withdrawal: A Participant may withdraw from MSA membership at its own discretion at any time by sending a written notice to the Chairperson.
- 14.2. Removal/Loss of Voting Rights: Participants may be removed from the OSFP Group or lose their voting rights for a material breach of this MSA by majority vote of the Participants. The

vote will decide whether loss of voting rights or removal from the group will be imposed. The OSFP Group will provide a dated, written notice of such breach and majority vote result, in sufficient detail for Participant to understand the breach, and the Participant in breach shall have thirty (30) days from the date of such notice to cure the breach, unless such breach is for violation of confidentiality obligations as set forth in Section 11 (Confidentiality), in which case loss of membership or voting rights shall be effective upon such breach being substantiated by the Participant whose confidential information was subject of such breach and if affirmed by the Participants' vote for loss of membership or voting rights as described in Section 12.3. Except in the case of violation of confidentiality, the loss of membership or voting rights shall take effect at the end of the 30-day cure period, unless the breach shall have been cured. Material breach may include:

- a) Failure to participate in the activities of the OSFP Group;
- b) Failure to abide by the disclosure policy as provided in Section 9 (Disclosure Policy);
- c) Failure to offer licenses in accordance with Section 8 (Licensing and Fees); or
- d) Failure to comply with the obligations in Section 13 (Publicity and Announcements).

14.3. Licensing Upon Withdrawal/Removal/Loss of Voting Rights: If a Participant withdraws or is removed from MSA membership or loses their voting rights, that Participant is still bound to license under Section 8 (Licensing and Fees) any Essential Claims with respect to (i) any Specification adopted by the Participants prior to the withdrawal/ removal/loss of voting rights of the Participant, and (ii) any Contributions that were provided by such Participant prior to the withdrawal/removal/loss of voting rights of the Participant and that are included in the Specification.

14.4. Suspension of Membership: In the event that a Participant is placed on any government watch list, entity list or is otherwise subjected to legal or regulatory restrictions or limitations that prevent, limit, or otherwise adversely affect one or more other members ability to interact with that Participant in the MSA setting, such Participant will automatically be suspended from participating in any activities associated with the MSA, and such Participant's voting rights will, likewise, be suspended. Such suspension shall continue until such time as the Participant is removed from the corresponding list or, if Participant's participation is not precluded or discouraged by legal or regulatory restrictions or limitations, and at least 75% of the other Participants vote to allow the Participant to resume normal activities in the MSA.

## **15. Termination of License**

15.1. Participants recognize that an essential part of the MSA is good faith. Each Participant warrants that it (i) has not transferred patents that it knew contained, and (ii) shall not transfer patents that it knows contain, Essential Claims prior to executing this MSA with the intent to avoid its duty to license under this MSA. It is expressly agreed that breaching this warranty shall cause any license granted to the breaching Participant based on this MSA in fulfillment of the obligations of Section 8.2 to be immediately terminated and all rights to such a license are waived by the breaching Participant and it is further agreed that a breach of the above warranty is a material breach of this MSA such that the breaching Participant's membership in the MSA is immediately terminated upon such breach.

## 16. **General**

- 16.1. **Other Vendors**: The Participants recognize that additional vendors may choose to support the Specification after this MSA is announced. Each Participant recognizes it is desirable and keeping with the intent of the MSA for such additional vendors to support the mechanical dimensions and functional attributes described in the Specification. Therefore, each Participant may encourage other vendors to support the Specification.
- 16.2. **Limitation of Liability**: EXCEPT FOR BREACH OF ITS DUTIES OF CONFIDENTIALITY UNDER SECTION 11 (CONFIDENTIALITY), IN NO EVENT WILL A PARTICIPANT BE LIABLE TO ANY OTHER PARTICIPANT OR ITS AFFILIATES FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF ANYTHING MADE AVAILABLE BY SUCH PARTICIPANT TO SUCH OTHER PARTICIPANT HEREUNDER OR FROM THE EXERCISE BY SUCH PARTICIPANT OF ANY RIGHTS OR LICENSES GRANTED TO IT BY SUCH OTHER PARTICIPANT UNDER OR PURSUANT TO THIS MSA, WHETHER OR NOT SUCH PARTICIPANT HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- 16.3. **No Warranty**: ALL PARTICIPANTS ACKNOWLEDGE THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS MSA, ALL INFORMATION PROVIDED AS PART OF THE SPECIFICATION DEVELOPMENT PROCESS AND THE DRAFT SPECIFICATION AND/OR SPECIFICATION ITSELF, INCLUDING CONTRIBUTIONS ARE ALL PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE. IN PARTICULAR, THE PARTICIPANTS ACKNOWLEDGE AND EXPRESSLY DISCLAIM ALL WARRANTIES RELATING TO THE VALIDITY OF THE PARTICIPANTS' PATENTS AND/OR THE NON-INFRINGEMENT OF THIRD-PARTY PATENTS BY PRODUCTS MANUFACTURED IN ACCORDANCE WITH THE SPECIFICATION.
- 16.4. **Governing Law**: This MSA shall be construed and controlled by the laws of the State of Delaware without reference to conflict of laws principles.
- 16.5. **Jurisdiction**: The Participants agree that all disputes arising in any way out of this MSA shall be heard in, and the Participants irrevocably consent to jurisdiction and venue in, the state and federal courts of Delaware.
- 16.6. **Written Notices**: Except as otherwise provided, all notices hereunder shall be in writing and sent via electronic mail to the MSA Points of Contact who then will forward them with electronic mail to other Participants. Such notices shall be deemed served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Any Participant may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such Participants at such changed address.
- 16.7. **Not Partners**: The Participants are independent companies and this MSA does not create any agency, partnership, or joint venture between them. While the Participants may select an entity to handle certain administrative tasks for them, no party is authorized to make any

commitment on behalf of all or any of them. Nothing in this MSA shall be construed as requiring the Participants to use or implement the Specification, or limit the Participants from competing in any way, including engaging in activities, independently or with others, that may be deemed competitive with the Specification.

- 16.8. Severability: If any provision of the MSA shall be held by a court of competent jurisdiction to be contrary to the law or public policy, the remaining provisions shall remain in full force and effect.
- 16.9. Headings: The headings of the Sections hereof are inserted for reference only and shall have no effect on the interpretation of this MSA.
- 16.10. Multiple Counterparts: This MSA, together with any Membership Form, may be executed in multiple counterparts, by original or facsimile thereof (including electronic document), each of which shall be deemed an original, but collectively shall constitute one and the same instrument.
- 16.11. Complete Agreement; No Waiver: This MSA sets forth the entire understanding of the parties and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this MSA shall be binding unless accepted in writing by an authorized representative of at least a unanimous-less-one group of Participants, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default, provided that prior to a vote on any such change, notice of the intended change must first be provided in writing to all Participants with sufficient time before such vote for review of such change. In the event that a Participant disagrees with a desired change, that Participant may provide notice of the disagreement and may further indicate that the Participant considers the change to be unacceptable and withdraw from this MSA in accordance with Section 14.1 (Withdrawal) with immediate effect.
- 16.12. Good Faith Dealing: Each Participant agrees to cause all patents owned or controlled by it and its Affiliates to be subject to the licensing obligations as set forth in Section 8.2 of this MSA.
- 16.13. Compliance with Laws: Anything contained in this MSA to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government.
- 16.14. No Assignments: None of Participants may assign, subcontract, delegate or otherwise transfer this MSA or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this MSA, without the other Participants' prior written consent. Any unauthorized attempted assignment, subcontracting, delegation or transfer is void.
- 16.15. Costs and Expenses: Each Participant shall bear its own costs and expenses that it incurs in the performance of this MSA.
- 16.16. Membership Change. In the event that a Participant is acquired by a third party, the third party will be deemed to have agreed to the terms of this MSA and shall automatically become a Participant, with all the resultant obligations and benefits, unless the third party provides written notice of an intention to withdraw from the MSA within 30 days of the acquisition. In the event that a Participant is acquired by another Participant, the purchased Participant will

be deemed to have been subsumed by the purchasing Participant and the purchasing Participant will take on the obligations and benefits of the purchased Participant.

## **17. Term**

- 17.1. This MSA shall commence on November 4, 2016 (“**Effective Date**”) and terminate on December 31, 2031. In the event the Participants decide that no further work is necessary or otherwise decide to terminate the Agreement, the Agreement will expire on a simple majority vote of the Participants with voting rights in good standing. If any Participant withdraws or is removed from MSA membership or this Agreement is terminated by any other means, Sections 7 (Definitions), 8 (Licensing and Fees), 10 (Intellectual Property, Copyright, and Trademarks), 13 (Publicity), 14.3 (Licensing Upon Withdrawal/Removal/Loss of Voting Rights), 15 (Termination of License), and 16 (General) shall survive in perpetuity.

**Amended OSFP MSA Membership Request Form**

The entity named below ("**Company**") requests membership in the Amended OSFP Multi-Source Agreement ("**MSA**") and agrees to the terms and conditions of the MSA.

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

\_\_\_\_\_  
Representative Name: \_\_\_\_\_

Representative Email: \_\_\_\_\_

Email for Legal Notices if Different From Above: \_\_\_\_\_

Signed by a person duly authorized by the Company on the date below:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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