

BioAPI Member Agreement

This Agreement is effective as of March 31, 1999 by and between each company that has executed this Agreement and its Affiliates, collectively referred to as the "Members."

BACKGROUND

- A. The Members intend to define, establish and promote an interoperable standard, presently referred to here as BioAPI ("BioAPI") for mass deployment of an Application Program Interface (API) supporting a variety of biometrics devices intended for biometric authentication or identification of users.
- B. The Members are developing a Specification for an API that defines an interface between a computer software application and a set of biometrics technologies for the purpose of biometric authentication or identification.
- C. The Members wish to encourage broad and open industry adoption of the Specification and wish to provide or identify necessary licenses to do so.
- D. The Members also desire to provide for the possibility of issuing revisions and updates to the Specification.
- E. The Members are establishing a BioAPI Consortium to administer development of the Specification; Consortium meetings, communications and Website; and other activities as normal for a consortium or special interest group.

AGREEMENT

1. Definitions

- 1.1 "Affiliate" is an entity that directly or indirectly controls, is controlled by, or is under common control with another entity, so long as such control exists. "Control" means beneficial ownership of more than fifty percent of the voting stock or equity in an entity.
- 1.2 "Necessary Claims" shall mean those claims of all patents and patent applications, other than design patents and design registrations, throughout the world entitled to an effective filing date prior to January 1, 2003, under which a Member, as applicable, or its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the scope granted herein without such grant or the exercise of rights thereunder resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates) and (i) which are necessarily infringed by an implementation of a version of the Specification approved by the Members pursuant to Section 6.2 below, where such infringement could not have been avoided by another commercially reasonable noninfringing implementation of such Specification, or (ii) for which infringement is based on an implementation of any example which may be included in the body of the Specification. Necessary Claims shall not include, and no license shall apply to, information included solely in any appendix, exhibit or other attachment to the actual Specification. Additionally, Necessary Claims shall not include, and no license shall apply to, other specifications and APIs, such as a Member's operating system APIs. To the extent the Specification is incorporated into another specification, such incorporation shall not affect the grants and rights herein.

- 1.3 "Specification" means the document entitled BioAPI (or any other name given to the document) describing an application programming interface for biometric authentication or identification as finally approved by the Members pursuant to Section 6.2.
- 1.4 "Fully Compliant" means an implementation of the Specification which implements all of the interfaces defined by the Specification as being "Required."
- 1.5 "Confidential Information" means nonpublic information that the disclosing party designates in writing as being confidential. All written materials containing such nonpublic information must include a confidential designation at the time of provision of such written materials. A written designation of any oral disclosure containing such nonpublic information must be made within thirty (30) days of the first oral disclosure of such nonpublic information.
- 1.6 "BioAPI Framework Implementation" consists of the binaries of a library, which routes calls to attached BioAPI Service Providers to complete the biometric operations called by an application.
- 1.7 "BioAPI Service Provider" is a proprietary implementation of the necessary algorithms to support the BioAPI semantics with a particular class of biometric device(s).
- 1.8 "BioAPI Reference Implementation" is a body of source code from which a BioAPI Framework Implementation may be constructed. The Reference Implementation itself must be fully conformant with the BioAPI specification. The Reference Implementation may include source code sample BioAPI Service Providers to assist in the conformance testing of the Reference Implementation, and as a guide to developers of real BioAPI Service Providers. Tools may also be included to assist in the implementation of BioAPI Service Providers.

2. Covenants

- 2.1 Grants of Licenses. Upon Agreement by the Members as to the final version of the Specification as set out in Section 6.2 without timely withdrawal under Section 8.1 and after proper public notice by the Member of the availability of its invention for licensing, if necessary, each Member (on behalf of itself and its Affiliates) hereby covenants to grant to each of the other Members and their Affiliates, under reasonable and nondiscriminatory terms and conditions, a nonexclusive, nontransferable, royalty-free, nonsublicenseable (except as part of transfer of an end user product), worldwide license under its Necessary Claims, to implement the Specification and sell, promote or otherwise distribute the resulting implementation; provided, however, that (i) the above license shall not extend to features which are not required to comply with the Specification, (ii) the above license shall be granted only to the extent that the resulting implementation is used for the purposes of biometric authentication or identification, and (iii) the resulting implementation is an application programming interface (whether implemented in hardware, software, or some combination of hardware and software) which is Fully Compliant with such Specification.

- 2.2 Administration of the Specification.
- 2.2.1 One member of the Steering Committee shall be appointed as the secretary for the Specification (the "Secretary"). The Secretary shall be responsible for keeping a list of all Members and keeping copies of all Member's Agreements. Should the acting Secretary desire to cease acting as the Secretary, or should it withdraw as a Member, the Members shall appoint another Member as the new Secretary, and (i) the outgoing secretary shall provide the new Secretary with all of its files related to the administration of this Agreement.
- 2.2.2 Each of the Members shall promptly notify each other of any violation of any Member's Agreement by a Member. Each Member shall have the right to enforce compliance with the terms of such Agreements by Members upon notice to the other Members and as allowed by law. Upon receipt of such notice, any Member may, at its option, bring suit against such Member to enforce such Agreement. The other Members, at their discretion, shall provide reasonable assistance in the prosecution of such suit. Each party shall bear its own costs in any such enforcement action.
- 2.3 Notices. Any publication of the Specification shall contain an appropriate copyright notice in the name of the BioAPI Consortium on behalf of the Members. Public references to the Specification shall attribute authorship to the BioAPI Consortium and the Members to the extent practical.
- 2.4 References to Specification/Names. The Members hereby agree not to assert against any Member any trademark or trade name rights they may have now or hereafter in any name or logo unanimously adopted by the Members for use in connection therewith or this Agreement. If the Members agree to collectively claim or assert trademark or trade name rights in such name or logo, they agree to use commercially and legally reasonable efforts, that represent the best interests of all parties, to agree on the nature of ownership, licensing and registration of such name or logo. Prior to adoption of such new name or logo, the Members shall transmit a proposed name or logo to the Members for comments regarding any claimed rights in such new name or logo. The Members agree that any collective press release or similar public statement shall be made only after consultation and unanimous agreement by the Steering Committee. The name or logo of a U.S. government Member or its parent agency shall not be used on any advertisement, product or service directly or indirectly related to this agreement. A U.S. government Member does not directly or indirectly endorse any product or service. Members shall not in any way imply that this Agreement is an endorsement of any such product or service by such U.S. government Member.

- 2.5 Government Patent and Copyright Ownership. The Members agree that, under Executive Order 10096 and 37 CFR Part 501, the U.S. government, as represented by a Member, is entitled to an assignment of the entire right, title and interest in any invention or improvement made by a government employee under this Agreement which bears a direct relation to or was made in consequence of the employee-inventor's official duties. Inventions or improvements created by employees of a party become the property of the inventing party. Joint inventions will be jointly owned. Copyright protection, under Section 105 of the United States Code, Title 17, is not available for any work of the United States Government as represented by the Contributor, which includes any works prepared by United States Government employees under this agreement. As such, any contribution by a government employee to the collaborative work of this agreement will render such contribution unavailable for copyright protection.

3. Title and Modifications

- 3.1 Title. Each Member shall own, and is hereby conveyed, a non-exclusive, undivided, and equal ownership in the copyrights to the final Specification as a whole, subject to the underlying ownership rights to contributions of individual Members. Each Member shall have the right and license to make and distribute copies of the Specification as a whole.
- 3.2 Modifications. Any proposed modifications to or derivative works of the Specification shall be owned solely by the Member(s) creating them unless and until such modification is adopted as an update. Should a Member desire to publish a modified or derivative work (apart from mere translations of the Specification into other languages), the Member will provide a request to the Steering Committee detailing the modified or derivative work to be published. The Steering Committee shall arrange for a vote on such proposed publication. The Steering Committee shall provide each Member with a copy of the detailed statement and a ballot. The ballot shall allow for three positions (a) Yes, (b) No and (c) Abstain. All voting shall be conducted within five (5) business days from the issuance of the ballot. A 2/3 majority, as defined below, is required for such proposed publication to be authorized. A 2/3 majority for the purposes of this vote is defined as approval by at least a majority of the Members and at least 2/3 of those voting, excluding abstentions. The mere preparation of, and compliance with, a proprietary implementation or extension of the Specification shall not act to extinguish a Member's rights under Section 2 where such Member is implementing the Specification.

4. Steering Committee

- 4.1 Steering Committee Responsibilities. The Steering Committee shall manage the activities and affairs of the BioAPI Consortium. The responsibilities of the Steering Committee shall include but not be limited to:

- Administration of Consortium policies and procedures;
- Management of specification development process including initiation of Working Committees, resource and schedule management, and physical maintenance of the BioAPI specification(s) and associated code-base;
- Scheduling of and arranging of facilities for BioAPI meetings;
- Management of all external communications including, but not limited to press releases, representation at conferences, trade shows and industry events, and interaction with external organizations including standards organizations;
- Maintenance of Consortium Web site and e-mail lists;
- Licensing the Specification to a conventional standards body upon 2/3 Member approval; and
- Other duties as normal for a consortium or special interest group.

4.2 Steering Committee Members.

- 4.2.1 The Steering Committee shall consist of seven (7) Members who are Members in good-standing.
- 4.2.2 The initial election of the Steering Committee members shall occur when twenty-five (25) Members have signed this Agreement but in any event no later than thirty (30) days after the formation of the BioAPI Consortium under this Agreement. Three of the initial Steering Committee members shall be selected from the Group of Compaq Computer Corporation, Identicator, Miros, Novell and I/O Software. The remaining four (4) initial Steering Committee members can be any members in good standing not elected from the above group. Any Member in good standing may nominate another or itself for election. The Members in good standing in each group with the most votes shall be elected to the Steering Committee.
- 4.2.3 After the initial Steering Committee, all seven (7) members of the Steering Committee shall be elected from the Members in good standing without consideration of former status. Any Member in good standing may nominate another or itself for election. The Members in good standing with the most votes shall be elected to the Steering Committee.
- 4.2.4 Steering Committee selection requires active participation by elected company representative(s), but does not obligate company to provide additional resources, financial or otherwise

- 4.3 Steering Committee Term. The term of office for each Steering Committee member shall be for a term of one (1) year except that the initial Steering Committee shall serve a term of six (6) months from the date of the election. A Steering Committee Member may resign by 30-days prior written notice to the Steering Committee Chairperson.
- 4.4 Steering Committee Chairperson. The Steering Committee shall elect a chairperson to annually preside over Steering Committee meetings, or take such other actions as may be agreed upon by the Steering Committee Members.
- 4.5 Removal of Steering Committee Members. The Steering Committee may remove any member of the Steering Committee upon the unanimous vote of all other Steering Committee members at a meeting called for the express purpose of removing that member from the Steering Committee. The Steering Committee may not remove more than one Steering Committee member at any one meeting described in this Section 4.5.
- 5. Working Committees**
- 5.1 Formation. The Members may propose to the Steering Committee the establishment of one or more Working Committees to carry out the work of the BioAPI Consortium. Such proposal shall include the purposes of such Working Committee, particularly including the specific technical area to be the subject of the Working Committee, and the Members that initially desire to participate in such Working Committee. The Steering Committee shall (i) approve the formation of each Working Committee by a 2/3 majority vote, and (ii) appoint the chairperson of such Working Committee. The Steering Committee shall provide timely notice of the formation and chairperson of each Working Committee to all Members. After the first meeting of a Working Committee, a schedule for meeting and activity milestone dates will be proposed and presented to the Steering Committee.
- 5.2 Attendance. Any Member may join a Working Committee. Any Member may attend a Working Committee meeting. The schedule of meetings of the Working Committee shall be published by the Steering Committee. Only Members who have joined the Working Committee shall be entitled to vote in any vote taken by the Working Committee. A simple majority shall be required to pass for votes of the Working Committee.
- 5.3 Activities. The result of a Working Committee shall be a Specification proposal on the subject matter or undertaking assigned to such Working Committee, which specification proposal shall be submitted to the Steering Committee for voting by the Members. If the result of the Working Committee is also the development of a BioAPI Reference Implementation, any Member contributing to such development shall execute a license agreement allowing royalty free use by Members implementing the Specification, such license agreement to be provided by the Steering Committee, after proper public notice by the Member of the availability of its contribution for licensing, if necessary.

6. Specification Completion

- 6.1 Draft Specification Publication. A Working Committee may request that a draft version of the Specification be published. This request and the draft version of the Specification shall be transferred to the Steering Committee and the Steering Committee shall arrange for a vote on the publication of such draft version of the Specification. The Steering shall provide each Member with a copy of the draft version of the Specification and a ballot. The ballot shall allow for three positions (a) Yes, (b) No and (c) Abstain. All voting shall be conducted within five (5) business days from the issuance of the ballot. A 2/3 majority, as defined below, is required for such draft version of the Specification to be published. A 2/3 majority for the purposes of this vote is defined as approval by at least a majority of the Members and at least 2/3 of those voting, excluding abstentions.
- 6.2 Specification Approval. After completion of a proposed Specification by a Working Committee and transfer to the Steering Committee, the Steering Committee shall arrange for a vote on such proposed Specification. The Steering Committee shall provide each Member with a copy of such proposed Specification and a ballot. The ballot shall allow for three positions (a) Yes, (b) No and (c) Abstain. All No votes shall include the reason(s) for the position and, if possible, recommend specific modifications that would warrant a Yes vote. Abstentions shall include a reason for not taking a position. All voting shall be conducted within five (5) business days from the issuance of the ballot. A 2/3 majority, as defined below, is required for such proposed Specification to be approved as a final Specification. A 2/3 majority for the purposes of this vote is defined as approval by at least a majority of the Members and at least 2/3 of those voting, excluding abstentions. Such final Specification shall be made publicly available.
- 6.3 Updates to the Specification. Once Members have agreed in writing on a final Specification under Section 6.2 above, any updates or alterations to the final Specification shall be treated as a proposal to develop a new Specification, and shall be subject to the same processes and procedures used for development and licensing of the final Specification as outlined above. Each Member may, in its sole discretion, cooperate with development of such new Specification or withdraw with regard to such new Specification without withdrawing from an earlier adopted Specification. The adoption of a new Specification shall not terminate any right or obligation of any Member under this Agreement, including any licenses or covenants granted or received by a Member with respect to the earlier adopted Specifications. Notwithstanding anything herein to the contrary, no Member shall be deemed to grant any licenses or covenants to any Specification unless such Member has agreed to such Specification in writing or failed to withdraw in a timely manner under Section 8.1.

7. Confidentiality

7.1 To the extent permitted by law, each Member will maintain the Confidential Information of the Members, the Specification and the contributions each other Member makes to the specification in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. However, no obligation of confidentiality shall arise prior to the written designation of such Confidential Information and no party shall be required to search for, retrieve or otherwise pursue any information which is disseminated in any manner prior to the written designation of the information as being Confidential Information. No Member will disclose or copy any contributions to the Specification except as necessary for its employees or consultants with a need to know; provided that disclosures to consultants are only made under nondisclosure agreements with terms no less restrictive than those contained herein. Any information incorporated in a particular proposal for revision of the Specification, including any exhibits or attachments thereto, shall be permitted to be released upon agreement of the Members pursuant to Section 6 hereof. Any copies which are made will be marked "confidential," "proprietary" or with a similar legend. Unless the parties agree otherwise, this obligation of confidentiality will expire three (3) years from the date of disclosure of such information hereunder. A Member will not, however, be liable for the disclosure of any information that is:

- a) rightfully in the public domain other than by the recipient's breach of a duty;
- b) rightfully received from a third party without any obligation of confidentiality; or
- c) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party; or
- d) independently developed by employees of the recipient without access to the disclosed information; or
- e) rightfully disclosed as required by law.

7.2 This Agreement and the terms of confidentiality hereunder shall not be construed to limit any Member's right to independently develop or acquire products or technology, including similar or competing products or technology, without use of another Member's Confidential Information. Further, any Member shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such Member shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be inadvertently retained by persons (without reference to the Confidential Information) who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. No Member shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to any Member a license under the other Member's copyrights or patents.

8. Withdrawal

- 8.1 Notice of Withdrawal After Voting. A Member may, on thirty (30) days written notice to the Secretary provided within thirty (30) days of receipt of notice of approval of a final Specification, withdraw from this Agreement without granting the license of Section 2.1 as to such final Specification.
- 8.2 Notice of Withdrawal at Any Time. A Member may withdraw at any time.
- 8.3 Effect of withdrawal. Upon withdrawal by a Member:
- 8.3.1 Subject to Section 8.1, all covenants and licenses previously granted by and to such withdrawing Member with respect to any final Specification adopted by the Member as of notice of the date of such withdrawal shall continue in full force and shall extend to and from the entities who are or later become Members (and their Affiliates as provided in the license), even after such withdrawal. No license shall be deemed granted or received by such Member as to a new Specification adopted after the date of such withdrawal.
- 8.3.2 A withdrawing Member must identify in its notice of withdrawal, with reasonable specificity, any technical contribution it has made with regard to any as yet unadopted revision or proposed update to the Specification being considered at the time of withdrawal. Additionally, the copyrights in any materials contributed by such Member as of the time of withdrawal shall still be subject to the provisions of Section 3.1 above.

9. General

- 9.1 No Other Licenses. Except for the rights expressly provided by this Agreement, no member grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.
- 9.2 Limited Effect. This Agreement shall not be construed to waive any Member's rights under law or any otherThis Agreement shall not be construed to waive any Member's rights under law or any other agreement except as expressly set out here.
- 9.3 No Warranty. All parties acknowledge that the Specification, proposals and contributions are provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.
- 9.4 Damages. In no event will Members be liable to each other or any third party for any loss of profits, loss of use incidental, consequential, indirect, or special damages arising out of this Agreement or any Member Agreements, whether or not such party had advance notice of the possibility of such damages.

9.5 Notices. Notices to the BioAPI Consortium shall be sent to the Secretary at its published notice address. Notices for the Member shall be sent to:

9.6 Governing Law. As to Members which are not U.S. government entities, this Agreement shall be construed and controlled by the laws of New York without reference to conflict of laws principles. As to Members which are U.S. government entities, this Agreement shall be governed by the laws of the United States.

9.7 Legal Relationships. The Members are independent companies and are not partners, joint venturers, or any other formal business organization of any kind. While the Members 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.

9.8 Complete Agreement. This Agreement 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 Agreement shall be binding unless accepted in writing by an authorized representative of all parties.

9.9 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one instrument.

9.10 Publicity. To the extent permitted by law, any news release, public announcements or publicity of any type with regard to this Agreement shall not be released without prior approval of the other Members.

9.11 Costs. Except if specifically identified herein, each party hereto will perform its responsibilities as provided for herein at no cost to the other parties.

10. Compliance with Antitrust Laws

Each non-U.S. governmental Member acknowledges that the non-U.S. governmental Members are committed to fostering competition in the development of new products and services based on the Specification. The non-U.S. governmental Members further 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 which does not violate any applicable antitrust laws and regulations. Without limiting the generality of the foregoing, the non-U.S. governmental Members acknowledge that the non-U.S. governmental Members will not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic which should not be discussed among competitors. Accordingly, each non-U.S. governmental Member hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under this Agreement regarding the importance of limiting their discussions to subjects that relate to the purposes of the Agreement, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

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

By: _____

Name: _____

Title: _____

Date: _____