



ESR Consortium Agreement

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1 Purpose of the Agreement

1.1 ESR Consortium is a non-profit entity formed in order (the COMMUNITY PURPOSE is) to create and promote the adoption and use of, as well as to improve Java technology in the embedded software field; to define, propose and review new specifications for embedded Java software libraries and to encourage the use of Java in the embedded software market by educating Java, non Java developers, and embedded software developers as well as to communicate to company managers and the media.

1.2 This Association (the CONSORTIUM) has been formed on December the 10th of 2009, in accordance with the French Law of July 1st, 1901 and the Decree of August 16, 1901. As specified in this Law, the CONSORTIUM is a non-profit organization whose target is not to sell anything but only to promote and improve a technology.

1.3 By joining the CONSORTIUM, each MEMBER attests that it has no other purpose and no other intention than being involved in the COMMUNITY and developing technology in accordance with the COMMUNITY PURPOSE.

1.4 In consideration of their participation in the CONSORTIUM, and in consideration of all other MEMBERS entering into AGREEMENTS in identical form and all future parties who wish to join the CONSORTIUM entering into such an Agreement (this AGREEMENT) as a condition of becoming a MEMBER, each MEMBER agrees to the following:

2 Definitions

“**Association**” shall mean the legal form of the COMMUNITY, according to the French Law of 1901.

“**COMMITTEE**” shall mean the management committee of the Association comprised of Voting Members.

“**COMMUNITY**” shall mean the legal entity created by all the MEMBERS of this CONSORTIUM.

“**Specification**” shall mean the sound semantic description of a software library that may be used to develop an application or an implementation of that library.

“**ESR**” shall mean embedded specification request, meaning the Specification of a software library that has been defined by an ESR Working Group and adopted by the COMMUNITY.

“**ESR Draft Specification**” shall mean the written document that is proposed by the ESR Working Group for approbation before being adopted as an ESR.

“**ESR Group Leader**” shall mean the Leader of the ESR Working Group.

“**ESR Working Group**” shall mean a group of MEMBERS that will work on the definition of the new ESR and its potential evolutions.

“**MEMBER**” shall mean any individual, entity or association which is part of or is about to join the COMMUNITY and agrees with the terms of this AGREEMENT.

“**Voting MEMBER**” shall mean any MEMBER that is has the right to express its point of view during and vote in a ballot of the COMMITTEE. Voting MEMBERS under the STATUTES are: SILVER MEMBERS, GOLD MEMBERS and PLATINUM MEMBERS as such grades of membership are outlined in this Agreement.

“**Review Period**” shall mean the period of time during which an ESR Project Proposal or ESR Draft Specification is given to the COMMUNITY for review.

“**STATUTES**” shall mean the legal document that determines the rules and the creation of the COMMUNITY.

“**PRESIDENT**” shall mean the President of the Association, that will be designated according to the process described in the STATUTES.

“**ECK**” shall mean ESR compatibility kit, meaning the collection of unit tests that are intended to be used in order to test the compliance of an ESR implementation in relation to the standards described in the Specification.

“**Website**” shall mean the CONSORTIUM'S website which address is <http://www.e-s-r.net>.

“**WIPO**” shall mean World Intellectual Property Organization.

3 Membership

3.1 Qualification for membership in the CONSORTIUM shall be as set forth in the CONSORTIUM'S Association statutes (the “STATUTES”) and in this AGREEMENT.

3.2 Each MEMBER shall complete a registration form, as defined by the STATUTES, and abide by this AGREEMENT. According to the grade of membership that MEMBER is planning to reach, MEMBER shall pay the applicable membership dues and any fees (if any) and complete any other assessment duly imposed on MEMBERS as established by the STATUTES in order to be entitled to participate in the CONSORTIUM. MEMBER shall bear its own costs and expenses for its participation in CONSORTIUM, including, but not limited to, all travel and living expenses associated with MEMBER'S participation in ESR Working Groups, conferences, votes, meetings.

3.3 By accepting this AGREEMENT, the natural person executing this AGREEMENT on behalf of the MEMBER warrants that he or she has all requisite signing authority for and on behalf of the entity, association or individual seeking membership.

3.4 There are four (4) levels of membership defined by this AGREEMENT in accordance with the STATUTES to accommodate different levels of participation and commitment: “GUEST MEMBERS”, “SILVER MEMBERS”, “GOLD MEMBERS” and “PLATINUM MEMBERS” as outlined below.

GUEST Membership

3.5 GUEST MEMBERS are been given the opportunity to access the COMMUNITY for free.

3.6 As a GUEST MEMBER, the MEMBER will be informed, as a priority, of all new ESR initiations, adoptions and updates.

3.7 As a MEMBER, GUEST MEMBERS will be able, during the Review Period, to make all comments, give any idea and give their opinions on either the ESR PROJECT PROPOSAL, or the ESR Draft Specification. All the comments shall be recorded, published and taken in consideration by the ESR Working Group.

3.8 For GUEST MEMBERS, this AGREEMENT shall come into effect when MEMBER clicks through the “I agree to the ESR Consortium Agreement” (this “AGREEMENT”) button at the end of the registration form.

SILVER Membership

3.9 SILVER MEMBERS will be given the opportunity to participate in CONSORTIUM decisions and to actively take part in the CONSORTIUM in accordance with the COMMUNITY PURPOSE and this AGREEMENT. Every entity or individual will have the opportunity to join the COMMUNITY as a SILVER MEMBER and take active part in its activities.

3.10 SILVER MEMBERS shall be allowed to participate in and co-operate with the CONSORTIUM in one or more ESR Working Groups in accordance with further instructions and guidelines set out in this AGREEMENT. SILVER MEMBERS shall:

- be allowed to actively participate in ESR Working Groups;
- be able to introduce technical contributions and ideas as an expert during the writing process of ESR Draft Specifications;
- participate in review meetings;
- have access to relevant information and ESR, and;
- be allowed to implement an ESR;
- have access to the ECK;
- be allowed to refer to the COMMUNITY using the COMMUNITY registered and non registered Trademarks;
- be entitled to receive information and access to the results of the development of the Partnership subject to the provisions of this AGREEMENT.

3.1 SILVER MEMBERS shall pay the relevant annual fee. The fee for the first year shall be paid in full irrespective of the date of joining. The fee is to be paid before the end of the first month of each calendar year.

GOLD Membership

3.2 GOLD MEMBERS are extended voting privileges on ESR activities and have the right to evolve standards for assessing Specifications by submitting to the CONSORTIUM a technology modification request or an ESR.

3.3 In addition to the rights and privileges provided to SILVER MEMBERS, GOLD MEMBER shall be allowed to:

- initiate an ESR;
- lead one or more ESR Working Groups (as an ESR Group Leader).

3.1 GOLD MEMBERS may wish to become PLATINUM MEMBERS. To do so, a GOLD MEMBER may be proposed by one of the PLATINUM MEMBERS to upgrade its account in order to become a PLATINUM MEMBER.

3.2 GOLD MEMBERS shall pay the relevant annual fee. The fee for the first year shall be paid in full irrespective of the date of joining. The fee is to be paid in the first month of each calendar year.

PLATINUM Membership

3.3 PLATINUM MEMBERS are extended voting privileges on all CONSORTIUM general activities and COMMITTEE activities.

3.4 In addition to the rights and privileges provided to GOLD MEMBERS, PLATINUM MEMBER shall:

- take part in the COMMITTEE;
- take part in the administration of the COMMUNITY.

3.1 PLATINUM MEMBERS shall organize a ballot of the COMMITTEE every year to decide which proposed GOLD MEMBER will be given the opportunity to become a PLATINUM MEMBER.

3.2 PLATINUM MEMBERS shall pay the relevant annual fee. The fee for the first year shall be paid in full irrespective of the date of joining. The fee is to be paid in the first month of each calendar year.

4 COMMITTEE

4.1 GOLD MEMBERS and SILVER MEMBER shall proceed, each calendar year, to the election of a representative of each membership level that will be the link between the CONSORTIUM and SILVER MEMBERS or GOLD MEMBERS. The representative will also be in charged with the representation of its constituents in the COMMITTEE.

4.2 In consideration of the special remit of the representatives, the elected GOLD MEMBER and the elected SILVER MEMBER will not be charged the annual fees for the year of its term as such representative.

4.3 According to the STATUTES, PLATINUM MEMBERS shall automatically be members of the COMMITTEE.

5 ESR Adoption Process

Initiating an ESR

5.1 GOLD MEMBERS as well as PLATINUM MEMBERS are allowed to initiate an ESR by providing, to the COMMUNITY, a proposal of an ESR and relevant Specification (an “ESR PROJECT PROPOSAL”). In such a case, the initiating GOLD MEMBER or PLATINUM MEMBER becomes the initiator of such ESR PROJECT PROPOSAL (“ESR INITIATOR”). This initiation may be inspired by any ESR suggestion, posted in accordance with the related process, by any MEMBER who may not be able to initiate such an ESR PROJECT PROPOSAL.

ESR PROJECT PROPOSAL Review and Approbation

5.2 When the ESR PROJECT PROPOSAL is enough sufficiently detailed and precise (according to the relating rules and process), the ESR INITIATOR shall introduce the ESR PROJECT PROPOSAL to the COMMUNITY for review (the “ESR PROJECT PROPOSAL Review”).

5.3 During the ESR PROJECT PROPOSAL Review, MEMBERS should review the relevant ESR PROJECT PROPOSAL and provide the ESR INITIATOR with comments, ideas, suggestions or elements that could be useful in determining the opportunity and the feasibility of the ESR PROJECT PROPOSAL as an approved ESR.

5.4 The comments, ideas, suggestions or elements shall be posted in accordance with the related process. Those elements are available to all MEMBERS during the Review Period for ESR PROJECT PROPOSAL Review.

5.5 Following the Review Period for an ESR PROJECT PROPOSAL Review, the relevant ESR PROJECT PROPOSAL may be approved if at least one other GOLD or PLATINIUM MEMBER and two other voting MEMBERS vote to approve it.

Formation of and Participation in an ESR Working Group

5.6 If an ESR PROJECT PROPOSAL is approved, an ESR Working Group will be created in order to write the ESR Draft Specification. The ESR Working Group will be composed of PLATINUM, GOLD and SILVER MEMBERS who have the remit to create the ESR Draft Specification. All MEMBERS, except GUEST MEMBERS, are given the opportunity to join any ESR Working Group.

5.7 Participation in each ESR Working group shall be limited as follow:

- one expert by SILVER MEMBER;
- two experts by GOLD MEMBER;
- three experts by PLATINUM MEMBER.

5.1 The ESR Group Leader will be responsible for creating rules for each ESR Working Group.

5.2 The ESR Working Group will be conducted by the ESR Group Leader whose mission will be to coordinate the actions, to organize the meetings (virtual or physical) and to conduct the debates during all the ESR Working Group writing process. By default, the ESR Group Leader will be the ESR INITIATOR. If the ESR INITIATOR does not want to be the ESR Group Leader, it will in charge of the organization of a ballot between all the ESR Working Group participating MEMBERS that will designate, among the GOLD or PLATINUM participating MEMBERS, the ESR Group Leader.

5.3 The ESR Group Leader will conduct the debates, organize the exchanges and organize the ESR Working Group ballots if no consensus can be reached on the writing of ESR Draft Specification. The ESR Group Leader will be in charge of the final writing of the ESR Draft Specification that will be submitted to the COMMUNITY for the ESR Approval Review.

ESR Draft Specification Review

5.4 When the ESR Group Leader considers the ESR Draft Specification is ready for review, the ESR Draft Specification is published. Every MEMBER of the COMMUNITY will be able to review the ESR Draft Specification.

5.5 Taking into consideration the comments of the MEMBERS, the ESR Group Leader may decide to convene the ESR Working Group again in order to make the appropriate modifications. If so, the new ESR Draft Specification will be subject to a new ESR Draft Specification review procedure.

5.6 Following a further six (6) weeks of review (the “ESR Draft Specification Review Period”), if the ESR Group Leader does not decide to make any modification to the ESR Draft Specification, the ESR Draft Specification will be subject to an adoption ballot that will complete the ESR adoption procedure.

5.7 At the end of the Review Period, the ESR Group Leader may choose to change any part of the ESR Draft Specification. The new ESR Draft Specification shall be subject to a new review.

Adopting an ESR

5.8 During the ESR Draft Specification Review Period, if the ESR Group Leader decides that the ESR Draft Specification may be adopted, the ESR Group Leader will organize a ballot between all the ESR Working Group participants. The ESR adoption ballot process shall be a majority ranked preferential voting system where:

- Each PLATINIUM MEMBER’S vote counts for 8 points;
- Each GOLD MEMBER’S vote counts for 5 points;
- Each SILVER MEMBER’S vote counts for 2 points;

5.1 If the adoption ballot result rejects the ESR Draft Specification, the ESR Group Leader shall decide whether the ESR Draft Specification is definitively canceled or if some changes can be made to make it acceptable for a new ballot. In the latter case, the ESR Draft Specification shall be given back to the ESR Working Group for modification. When suitable modifications have been integrated into the new ESR Draft Specification, the adoption process shall start with a new ESR Draft Specification Review Period.

5.2 If the adoption ballot result is in favor of the adoption, the ESR Draft Specification shall be definitively adopted and published as an ESR.

5.3 Thenceforward, the ESR Working group will be responsible for drafting the relevant ECK that will validate the future implementation of the relevant ESR. To do so, the ESR Working Group shall provide the COMMUNITY with the relevant test suite, available for free for the MEMBERS. All the intellectual property rights in the ECK shall be owned by the CONSORTIUM.

6 ESR Maintenance

6.1 Maintenance of the ESRs, such as error correction, deprecated function removal or adding new functions (“ESR Maintenance”), will be procured by the ESR Working Group.

6.2 The ESR Group Leader is in charge of ESR Maintenance during the life of an ESR or until he resigns or is dismissed as ESR Group Leader or from his GOLD or PLATINIUM membership. The resigning ESR Group Leader shall organize a ballot that will determine, between GOLD and PLATINIUM participants in the relevant ESR Working Group, the new ESR Group Leader.

6.3 If an ESR modification is suggested by any GOLD or PLATINIUM MEMBER, the ESR Group Leader, shall convene the ESR Working Group in order to assess the appropriateness of such a modification. If the modification is accepted, the ESR Working Group will draft a new ESR Draft Specification that will be subject to an ESR Working Group ranked preferential ballot on the same basis as the Adoption process.

7 Summary of Each Membership Associated Rights

	GUEST	SILVER	GOLD	PLATINIUM
Being Informed of all ESR	*	*	*	*
Invitation to COMMUNITY Meetings	*	*	*	*
Suggesting an ESR PROJECT PROPOSAL	*	*	*	*
Review the ESR PROJECT PROPOSAL	*	*	*	*
Review the ESR Draft Specification	*	*	*	*
Read and Practice an ESR	*	*	*	*
Using the CONSORTIUM registered trade marks		*	*	*
Participating in an ESR Working Group		*	*	*
		1 expert max	2 experts max	3 experts max
Voting in ESR adoption ballot (ESR Working Group participants only)		*	*	*
		2 units	5 units	8 units
Implementing an ESR		*	*	*
Access to an ECK		*	*	*
Initiating an ESR PROJECT PROPOSAL			*	*
Leading an ESR Working Group			*	*
Suggesting an ESR modification			*	*
Choosing MEMBERS to become PLATINIUM MEMBERS				*
Member of the COMMITTEE		*(1)	*(1)	*

(1): One representative elected by its peers

8 Intellectual Property

8.1 All the ESR may be used by any MEMBER. All the ESR shall be implementable by any Voting MEMBER, the ESR Group Leader and every Member of the ESR Working Group hereby assigns all intellectual property rights, if any, which they may own in the Specification to the CONSORTIUM. This Specification will be accessible, free of charge for any PLATINUM, GOLD and SILVER MEMBERS, and for a nominal price for all GUEST MEMBERS.

8.2 The ESR Working group will also provide, free of charge any Voting MEMBERS (for the avoidance of doubt : PLATINUM, GOLD and SILVER MEMBERS but not GUEST MEMBERS) who intend to design an implementation of the ESR, with the appropriate ECK. The ESR Group Leader will provide the ECK under any license terms that comply with the terms of this paragraph 8.2.

9 Confidentiality

9.1 The confidential information that is likely to be disclosed between MEMBERS under this AGREEMENT (“Confidential Information”) is defined for the purposes of this Agreement as: the MEMBERS' technology, specifications, designs, process information, technical data, marketing plans, business plans, customer names, product roadmaps, pricing, prototypes, toolkits, software, intellectual property, source code, products, features, schedules, strategy, competitive advantage, pricing, customer and partner relationships.

9.2 MEMBERS shall protect the Confidential Information with the same degree of care, but no less than a reasonable degree of care as MEMBERS uses to protect their own similar confidential information, and to prevent any use not authorized herein.

Referring to the COMMUNITY

9.3 Every Voting MEMBER is allowed, under this AGREEMENT, to refer to his involvement with the COMMUNITY. The COMMUNITY gives every Voting MEMBER the right to refer to the COMMUNITY by any means such as but not limited to press release and website communication. Every MEMBER will be provided with the COMMUNITY logos that it will be able to publish on its own website or any other means of communication.

Referring to other MEMBERS

9.4 This AGREEMENT does not allow any MEMBER to refer to his involvement with any other MEMBER. If any MEMBER wishes to communicate about any other MEMBER, this MEMBER may request a special agreement with the relevant MEMBER that will not be covered by this AGREEMENT.

Membership disclosure

9.5 GOLD MEMBERS and SILVER MEMBERS can decide, when filing the registration form, whether the relevant MEMBER will permit the COMMUNITY to disclose its membership of the COMMUNITY. In such a case, the COMMUNITY may use that MEMBER'S name in a list of MEMBERS that can be disclosed to promote the COMMUNITY.

9.6 PLATINIUM MEMBERS and GUEST MEMBERS, by joining the COMMUNITY agree that their name, company name and activity shortcut may be disclosed in order to promote the COMMUNITY.

10 MEMBERS Relationships

10.1 No MEMBER will have any obligation under this AGREEMENT to purchase any product or service from any another MEMBER or to offer for sale products using or incorporating embedded Java technology.

10.2 This AGREEMENT is based on mutual trust and confidence. MEMBER to MEMBER disputes and MEMBER to CONSORTIUM disputes shall be settled, as far as possible, amicably. If it is not possible to reach such an amicable settlement, the WIPO arbitration court shall have exclusive jurisdiction.

11 Termination of this AGREEMENT

Withdrawal

11.1 Each MEMBER has the right to terminate this AGREEMENT in accordance with its terms.

11.2 To do so, GUEST MEMBERS will only have to remove their account from the website to be automatically removed as a MEMBER of the Association.

11.3 Any other MEMBER may terminate its membership by not paying its annual payment.

11.4 If a MEMBER wishes to cancel its membership between two annual payments, that MEMBER may send a letter with proof of receipt to the CONSORTIUM giving notice of termination. In that case, termination of this Agreement will be effective no more than three (3) working days after receipt by the CONSORTIUM of such letter. No refund of annual fees will be made by the Association to the MEMBER on termination.

Termination

11.5 Membership may be terminated by the CONSORTIUM in case of the breach of a material provision of this AGREEMENT including, but not limited to (i) breach of the confidentiality provisions of Section 9 (ii) any breach of the rules contained in the STATUTES or in this AGREEMENT, (iii) behavior in the COMMUNITY which is not in accordance with the COMMUNITY PURPOSE set out in Section 1.

11.6 When such breach happens, the PRESIDENT, after having consulted the COMMITTEE will inform the breaching MEMBER of such breach and require remedy (if possible) of the breach within thirty (30) days. If the breach is not rectified within thirty (30) days of receipt of such notice, or the breach is incapable of remedy, the PRESIDENT will determine the consequences of the breach. If exclusion is decided, this AGREEMENT will be terminated with immediate effect. Failure to pay the annual fee on time shall be a ground for termination without any COMMITTEE consultation requirement.

11.7 No compensation of any kind shall be payable to MEMBER at or in consequence of lawful termination of this AGREEMENT by the CONSORTIUM.

12 Miscellaneous

12.1 This AGREEMENT shall be governed by the Law of France excluding its conflicts-of-law rules.

12.2 The working language between MEMBERS shall be English. All documentation and, except where an express particular agreement between two MEMBERS is being agreed where both MEMBERS agree to communicate in a language other than English, all written communications, shall be provided in English.

12.3 This AGREEMENT does not create a joint venture, partnership, or other form of business association between the MEMBERS nor an obligation to develop, make available, use, license, buy or sell any product based on Java technology.

12.4 The CONSORTIUM will record the MEMBERS information contained in the registration form. The French Data Protection Agency (CNIL) has been informed of the existence of this database. In accordance with the "French Data Protection Act" you have the right to access rectify or object to information held about you and to have it deleted. Such requests should be sent to legal@e-s-r.net.

