

Royalty Free Business Process Execution Language for Web Services Specification License Agreement

This is a legal agreement ("Agreement") between the undersigned (either an individual or an entity) ("Company"), and Microsoft Corporation ("Microsoft") (collectively the "Parties"). If Company wants a license from Microsoft to implement the Business Process Execution Language for Web Services Specification ("BPEL4WS") (as defined below), Company must sign and return this Agreement to Microsoft. This is an offer to be accepted only on the terms set forth in this Agreement. If changes are made to this Agreement, the offer is revoked.

RECITALS

Whereas, International Business Machines Corporation ("IBM"), BEA Systems, Inc. ("BEA"), SAP AG ("SAP"), Siebel Systems, Inc. ("Siebel") and Microsoft jointly developed BPEL4WS and submitted it to OASIS for standardization; and

Whereas, Company wants a license from Microsoft to implement BPEL4WS, and whereas Company understands and acknowledges that licenses from IBM, BEA, SAP, Siebel and/or other third-parties may also be required to implement BPEL4WS.

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 decisions for the subject entity.

1.2 "Company Implementation" means only those specific portions of Company Products that (i) implement and are compliant with all or part of the required portions of BPEL4WS, and (ii) are branded with a trademark owned or controlled by Company.

1.3 "Company Product" means a product branded with a trademark owned or controlled by Company that includes a Company Implementation, either alone or with other components.

1.4 "Effective Date" means the date that this agreement, fully executed by Company without any changes, is received by Microsoft pursuant to Section 6.3 below.

1.5 "End User" means a third party customer to whom a copy of or access to a product or service is licensed or otherwise provided for such customer's own use, and not for further sublicense or distribution.

1.6 "Necessary Claims" means claims of a patent or patent application that (a) are owned or controlled by a Party or its Affiliates now or at any future time; and (b) are necessarily infringed by implementing the required portions of BPEL4WS, wherein a claim is necessarily infringed only when it is not possible to avoid infringing it because there is no technically reasonable non-infringing alternative for implementing such portions of BPEL4WS. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims: (i) other than those set forth above even if contained in the same patent as Necessary Claims; (ii) that, if licensed, would require a payment of royalties or other fee(s) by a Party to unaffiliated third parties; (iii) to any enabling technologies that may be necessary to make or use any product or portion thereof that implements BPEL4WS (e.g., enabling semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology, protocols, programming interfaces, etc.); (iv) covering the implementation of other published specifications developed elsewhere and referred to in the body of BPEL4WS; (v) to any portions of any product and any combinations thereof the purpose or function of which is not required for compliance with BPEL4WS; or (vi) that are necessarily infringed by implementing any optional portions of the BPEL, including any required aspects of such optional portions.

1.7 "BPEL4WS" means the following specification that was submitted by Microsoft, IBM and BEA to OASIS on May 16, 2003: Business Process Execution Language for Web Services version 1.1, dated May 5, 2003, <http://msdn.microsoft.com/library/default.asp?url=/library/en-us/dnbizspec/html/bpel1-1.asp>.

1.8 "BPEL4WS Licensee" means any entity that fully executes this Agreement without modification and returns the executed Agreement to Microsoft.

2. License Grants

2.1 Copyright License Subject to Section 2.5 and Company's grant of licenses in accordance with Section 2.4, Microsoft hereby grants Company under Microsoft's copyrights in BPEL4WS a non-exclusive, royalty-free, non-transferable, non-sublicenseable, personal, worldwide license to make copies of BPEL4WS, and to distribute such copies along with Company Implementations distributed in accordance with Sections 2.2 and 2.3, provided that all reproductions thereof shall include (1) all copyright notices and disclaimers contained in BPEL4WS; and (2) the link to BPEL4WS set forth in Section 1.7.

2.2 Patent License Subject to Section 2.5 and Company's grant of licenses in accordance with Section 2.4, Microsoft and its Affiliates hereby grant Company a nonexclusive, royalty-free, nontransferable, non-sublicenseable, personal, worldwide license under Microsoft's Necessary Claims to make, use, import,

offer to sell, sell and distribute directly or indirectly to End Users, object code versions of Company Implementations only as incorporated into Company Products and solely for the purpose of complying with BPEL4WS.

2.3 Source Code Distribution Company also has a nontransferable, non-sublicenseable, personal, license to distribute or otherwise disclose source code copies of such Company Implementation licensed in Section 2.2 only if Company (i) prominently displays the following notice in all copies of such source code, and (ii) distributes or discloses the source code only under a license agreement that includes the following notice as a term of such license agreement and does not include any other terms that are inconsistent with, or would prohibit, the following notice:

"This source code may incorporate intellectual property owned by Microsoft Corporation. Our provision of this source code does not include any licenses or any other rights to you under any Microsoft intellectual property. If you would like a license from Microsoft (e.g. rebrand, redistribute), you need to contact Microsoft directly."

2.4 Reciprocal Patent License Company, on behalf of itself and its Affiliates, hereby grants Microsoft, and hereby agrees to grant to all other BPEL4WS Licensees upon request, a nonexclusive, royalty-free, nontransferable, non-sublicenseable, personal, worldwide license under Necessary Claims of Company to make implementations of BPEL4WS that are compliant with all or part of the required portions of BPEL4WS ("BPEL4WS Implementation"), and to use, import, offer to sell, sell and distribute directly or indirectly to End Users, BPEL4WS Implementations solely for the purpose of complying with BPEL4WS.

2.5 Defensive Suspension If Microsoft, Company or any of their Affiliates ("the sued party") are first sued for patent infringement by the other Party hereto or any of its Affiliates, on account of the manufacture, use, sale, offer for sale, importation or other disposition or promotion of the sued party's Company Implementation or Microsoft's BPEL4WS Implementation, as applicable, then the sued party may terminate all license grants and any other rights provided under this Agreement to such entity and such entity's Affiliates. The foregoing shall not apply if the patent infringement suit that would otherwise trigger such clause is solely based on the sued party's Company Implementation or Microsoft's BPEL4WS Implementation, as applicable, not complying with the scope of the license grants set forth in this Agreement.

2.6 Reservation of Rights All rights not expressly granted in this Agreement are reserved by Microsoft and Company. No additional rights are granted by implication or estoppel or otherwise. By way of clarification, in order for a third party to distribute a Company Implementation as part of its third party branded products, such third party must be authorized to do so by Company and must also execute this license and comply with its terms.

3. Term

Except as set forth herein, this Agreement and the license grants herein are effective as of the Effective Date and terminate upon the last of Microsoft's and Company's Necessary Claims to expire. The license grants do not include a release for any infringement occurring prior to the Effective Date.

4. Representations and Disclaimers of Warranty

4.1 Company represents and warrants that the person executing this Agreement on behalf of Company and its Affiliates is authorized to do so, that Company is authorized to enter into this Agreement, and that this Agreement is a binding obligation of Company and its Affiliates.

4.2 If Company or any of its Affiliates transfers any Necessary Claims, Company shall require that the transferee be bound by the terms of Section 2.4.

4.3 DISCLAIMERS. BPEL4WS AND ALL INTELLECTUAL PROPERTY DELIVERED AND/OR LICENSED BY EITHER PARTY AND/OR ITS AFFILIATES TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EACH PARTY AND ITS AFFILIATES DISCLAIMS ALL WARRANTIES, DUTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

5. Limitation of Liability

MICROSOFT AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES EVEN IF MICROSOFT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

6. Miscellaneous

6.1 No Partnership, Joint Venture or Franchise Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise as defined in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2(a), or any similar laws in other jurisdictions.

6.2 Export Regulations Company acknowledges that implementations of BPEL4WS may be subject to U.S. export jurisdiction and other applicable national or international laws. Company agrees to comply with all applicable international and national laws that apply to BPEL4WS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments,

and privacy laws. See <http://www.microsoft.com/exporting/>.

6.3 Executed Agreements Only one agreement per Company shall be accepted by Microsoft. To be effective, an executed Agreement must be sent by messenger, traceable express mail or prepaid certified mail, return receipt requested, addressed to Microsoft as follows:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Microsoft Standards Inquiries (stdsreg@microsoft.com)
Copy to: Director of Distributed Systems Standards

6.4 Governing Law; Jurisdiction; Attorneys' Fees This Agreement shall be construed and controlled by the laws of the State of Washington, and Company consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Company consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum nonconveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.

6.5 Assignment Company may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, except with the express written consent of Microsoft, and any attempted assignment by Company in violation of this Section shall be void. For purposes of this Agreement, an "assignment" by Company under this Section shall be deemed to include, without limitation, each of the following: (a) a change in beneficial ownership of Company of greater than twenty percent (20%) (whether in a single transaction or series of transactions) if Company is a partnership, trust, limited liability company or other like entity; (b) a merger of Company with another entity, whether or not Company is the surviving entity; (c) the acquisition of more than twenty percent (20%) of any class of Company's voting stock (or any class of non-voting security convertible into voting stock) by another entity (whether in a single transaction or series of transactions); and (d) the sale or other transfer of more than fifty percent (50%) of Company's assets (whether in a single transaction or series of transactions). In the event of such assignment or attempted assignment by Company, Microsoft shall have the right to immediately terminate this Agreement and/or any license grants to Company.

6.6 Construction If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable (other than Sections 2.3, 2.4 and 2.5), such provision and the rest of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the Agreement will continue in full force and effect. In the event that a court of competent jurisdiction finds that Sections 2.3, 2.4 or 2.5 are unenforceable, this entire Agreement and any licenses granted hereunder shall be rendered null and void. Failure by a Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

6.7 Trademark/Logo Usage Nothing herein grants Company any right to use or display any Microsoft trademark or logo in connection with a Company Implementation or Company Product.

6.8 No Requirement to Implement Nothing in this Agreement shall be construed as requiring Company to use or implement BPEL4WS, or limit the Parties from competing in any way without infringing each others' intellectual property, including engaging in activities, independently or with others, that may be deemed competitive with BPEL4WS.

6.9 Identification of Licensees The fact that Company is a BPEL4WS Licensee is not confidential. Either Party may make public announcements regarding Company's execution of this Agreement. Microsoft, at its option, may list Company as a licensee on its web services website.

6.10 Entire Agreement This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Company and Microsoft by their respective duly authorized representatives.

Agreed to and accepted on behalf of Company:

By (signature):	Your Company Name:
Name (printed):	Your Address:
Title:	City, State, Zip, Country:
Dated:	Phone Number:
Email (optional):	Fax Number (optional):