

**NATIONAL INFORMATION STANDARDS ORGANIZATION (NISO)**

**INTELLECTUAL PROPERTY RIGHTS POLICY**

As approved by NISO Board of Directors on May 7, 2013

**1. IPR Generally**

**1.1 Purpose**

The National Information Standards Organization (the "Consortium") has adopted this Intellectual Property Rights Policy (the "Policy") and related rules of procedure (the "Rules of Procedure") in order to minimize the possibility of inadvertent infringement of the IPR of Members and third parties using or implementing any Consortium Specifications.

**1.2 Applicability**

All Members, all Member Representatives, and all third parties attending or participating in any technical process meeting are subject to this Policy and the Rules of Procedure.

**2. Definitions**

<b>Term</b>	<b>Definition</b>
Call for Patents	See Section 3.3 below
Draft Specification	A technical specification or other material that is produced by a Project that could, if used or implemented as intended, infringe a claim(s) under an issued patent or a patent application anywhere in the world.
Implementers	Those Members and non-Members who desire to use or implement a Specification.
IPR	An abbreviation of "Intellectual Property Rights". As used in this Policy, IPR means claims in patents and patent applications and copyrights, but excludes trademarks and trade secrets, which are not included in a Participant and Member's licensing obligations.
License	Either (a) an agreement to license Necessary Claim(s) to any Member or non-Member implementer, on a perpetual, non-exclusive and worldwide basis, with such license permitting the licensee to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement such Necessary Claim(s), or (b) a binding, perpetual, irrevocable commitment, in a form acceptable to Consortium, not to assert Necessary Claim(s) against any Member or non-Member implementer of the Specification to which such commitment relates.
Member	A Consortium member of any class
Necessarily Infringed	Unavoidable infringement by an implementation of a Required Element of a Specification, there being no reasonable alternative way to implement that element of the Specification without resulting in such infringement.

Necessary Claims	Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of the Required Elements of a Specification. Necessary Claims do not include claims covering reference implementations or implementation examples.
Non-discriminatory	Available to all, and available to all under terms that are substantially identical to the terms made available to others under similar circumstances. It is acknowledged that non-discriminatory behavior cannot be established with precision where circumstances differ.
Non-Member	An organization, corporate entity, or individual that is not a Member of the Consortium.
Non-Member Participant	A Participant in a Project that is not a Member of the Consortium, who has agreed to participate and thereby agreed to be bound by the terms of the Consortium's IPR Policy.
Owned	With respect to any Necessary Claim(s), the word "Owned" includes any Necessary Claim(s) that are controlled but not Owned by the Member in question, provided that the Member in question is (i) entitled to sublicense such Necessary Claim(s), and (ii) would not incur an obligation to pay any royalty or other compensation to the true owner of such Necessary Claim(s) in connection with a sublicense.
Other Work Product	Any Project deliverable that is not a Draft Specification or Specification. Unless the context otherwise requires, any reference to the adoption of Other Work Product shall also be deemed to apply to the adoption of an amendment to that Other Work Product as well.
Participant	Any Member, Member Representative, or Non-Member Participant that enrolls to take part in a Project that has not withdrawn from such Project within 90 days of the date upon which that Project was chartered.
Project	A formally chartered Consortium technical process that is intended to produce a Specification or Other Work Product.
RAND	Reasonable and Non-discriminatory
Reasonable	License terms relating to IPR included in a Specification that are not more onerous (including as to price) than could be obtained by the owner of such IPR in the open market absent its inclusion in a Specification. It is acknowledged that Reasonableness can not be established with precision.
Related Party	Any entity that is directly or indirectly controlled by the subject party. For this purpose, "control" means beneficial ownership or the right to exercise more than 50% of the voting power for the entity.
Representative	Any individual that acts on behalf of a Member, or Non-Member in connection with a Project, or in the completion of any form to be delivered to Consortium pursuant to the Policy or the Rules of Procedure.
Required Element	Any element of a Draft Specification or Specification that has not been identified as "Optional." For the avoidance of doubt, when a Draft Specification or Specification requires an Implementer to implement one of two or more alternative elements, then all such elements shall be deemed to be "Required Elements."
Specification	A Draft Specification that has been formally adopted by Consortium. Unless the context otherwise requires, any reference to the adoption of

	a Specification shall also be deemed to apply to the adoption of an amendment to a Specification as well.
Submission	An affirmative and knowing contribution of IPR with the intention that such IPR be considered for inclusion in a Specification or Other Work Product. A Submission, in written or electronic form, may occur: as a result of an unsolicited offer to Consortium of existing technology by a Member or third party; in response to a general Consortium request for proposals; or from a Participant at any time during a technical process.
Submitter	A Member, any representative(s) of a Member, or any other person or entity making a Submission.
Technical Committee	At any relevant time, the most senior technical committee involved in the technical process.

### 3. Patent Disclosures and Commitments

#### 3.1 Elections by Submitters at Time of Submission

(a) Any Submitter making a Submission must agree that if the Draft Specification in connection with which the Submission is made is finally approved by Consortium, the Submitter and each of its Related Parties will provide a License to all IPR Owned by it or any of its Related Parties and included in its Submission that become Necessary Claim(s)

(b) Such election shall be made pursuant to a written declaration in the form of **Appendix A** to this Policy.

#### 3.2 Elections by Participants

(a) Any Participant must, at the time that a Draft Specification is posted for final Participant comments, elect one of the following:

- i. Royalty Free RAND License. Agree that if the Draft Specification is finally approved by Consortium, the Participant and each of its Related Parties will provide a License to all Necessary Claim(s) Owned by it, without compensation and otherwise on a RAND basis, to all Implementers; or
- ii. Petition the Consortium Board of Directors for consideration of a RAND License with Royalty. If approved by the Board of Directors, agree to the same terms, but reserving the right to charge a royalty or other fee on RAND terms; or
- iii. Withholding of License as to Identified Necessary Claims. Identify those Necessary Claims owned by it and/or its Related Parties under the Draft Specification, in its then-current form, and the portion of the Draft Specification that would result in such infringement, and indicate that no guarantee of License rights is being made (or that such rights will in fact be denied in some or all cases) as to such Necessary Claims by it and its Related Parties. In the case of Necessary Claims under non-public patent applications, the disclosure of such claims need not be in such detail as would disclose any trade secrets.

Provided, however, that an election form returned pursuant to this Section 3.2 by a Participant that was a Submitter shall only apply to those portions of a Draft Specification that do not derive

from such Participant's Submission, and the Submitter's original undertakings under Section 3.1 above shall continue to be binding as to the balance of the Draft Specification.

(b) No elections under this Section 3.2 may be required to be made in less than 45 days from the date that a Draft Specification has been posted as a Public Draft, and electronic notification of such posting has been sent to each Participant. All elections by Participants shall be made pursuant to a written election in the form of **Appendix B** to this Policy.

(c) If the Board of Directors should choose to reject the petition for royalty payments, then the Participant must elect to proceed as described in either Section 3.2.a.i or Section 3.2.a.iii.

### **3.3 Patent Calls**

At the beginning of every in-person meeting and teleconference that occurs as a part of the technical process, and at any other appropriate time in the course of electronic collaboration as may be provided for under the NISO Procedures for the Development of National Standards, a Patent Call shall be made. The text to be employed in making Patent Calls is set forth in **Appendix C** to this Policy.

### **3.4 Sanctions for Failure to Respond or to Knowingly Withhold IPR**

(a) In the event that:

- i. any Representative (x) knowingly and willfully fails to respond to a Patent Call with respect to all Necessary Claims that are personally known to such Representative and are Owned by such Representative or his/her employer, or
- ii. a Participant fails to timely return a signed and completed election form as required by Section 3.2(b) above, or
- iii. a Participant does return a signed and completed election form, but later asserts a Necessary Claim(s) against an Implementer of the Specification in question, and (y) it can be shown that such Member knowingly and willfully withheld disclosure of such Necessary Claim(s) at the time of returning such election form;

then such Participant (or the Member represented by the Representative referred to in i. above, as the case may be), shall be deemed to have elected to License all of its Necessary Claims under the Specification in question (in the case of i or ii above), or the Necessary Claim(s) in question (in the case of iii above), with the terms to be as set forth in Section 3.2(a)i or ii above. In the event that such Participant or non-Participant Member shall later bring an infringement action against any Implementer with respect to such a Necessary Claim(s), Consortium shall have no obligation to intervene, but such Implementer shall be entitled to claim protection, and assert a complete defense against such action, under this Section 3.4 as a third party beneficiary.

### **3.5 Ownership of Collaborative Work Product**

As regards any portion of a Draft Specification that is collaboratively created in a Project (i.e., a portion that was not a formal Submission), the following rules shall apply:

(a) Each Member that was a Participant in a Project agrees that if: (i) the Draft Specification of that Project is finally approved by Consortium, (ii) any Representative of such a Participant in such Project is named as an inventor in any patent anywhere in the world, where such patent contains a Necessary Claim(s) under such finally adopted Specification and that claim was discovered as a result of such collaboration; then such Participant will not assert such Necessary Claim(s) anywhere in the world against any Implementer with respect to its implementing of such Specification.

(b) In the event that any such inventor or Participant shall breach the foregoing obligation, Consortium shall have no obligation to intervene, but such Implementer shall be entitled to claim protection, and assert a complete defense against such action, under this Section 3.5 as a third party beneficiary.

### **3.6 Document Notations**

#### **3.6.1 Notation when no Necessary Claims have been Identified**

All Draft Specifications that are subject to public comment and all Specifications shall include the following introductory language:

"Recipients of this document are requested to submit, with their comments, notification of any relevant patent claims or other intellectual property rights of which they may be aware that might be infringed by any implementation of the specification set forth in this document, and to provide supporting documentation."

All Specifications shall additionally include the following introductory language:

"THIS SPECIFICATION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED. ANY USE OF THIS SPECIFICATION SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND NEITHER Consortium, NOR ANY OF ITS MEMBERS OR SUBMITTERS, SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY IMPLEMENTER OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF THIS SPECIFICATION."

#### **3.6.2 Notation when Necessary Claims or other IPR are Identified**

(a) When Necessary Claims have been identified for Draft Specifications, or thereafter with respect to already published Specifications, where the owner of such Necessary Claim(s) is willing to provide a License agreement relating to such Necessary Claim(s), such Draft Specification or Specification shall include a notice substantially as follows in the introductory language:

"Consortium draws attention to the fact that it is claimed that compliance with this specification may involve the use of a patent ("IPR") concerning [section of Specification]. Consortium takes no position concerning the evidence, validity or scope of this IPR.

"The holder of this IPR has assured Consortium that it is willing to License all IPR it owns and any third party IPR it has the right to sublicense which might be infringed by any implementation of this specification to Consortium and those Licensees (Members and non-Members alike) desiring to implement this specification. Information may be obtained from:

[Name of Holder of Right]  
[Address]

"Attention is also drawn to the possibility that some of the elements of this specification may be the subject of IPR other than those identified above. Consortium shall not be responsible for identifying any or all such IPR.

"THIS SPECIFICATION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED. ANY USE OF THIS SPECIFICATION SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND NEITHER Consortium, NOR ANY OF ITS MEMBERS OR SUBMITTERS, SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY IMPLEMENTER OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF THIS SPECIFICATION."

(b) In the event that the owner of any IPR has asserted that infringement would result from the implementation of a Draft Specification or Specification, and such owner has refused to grant a License under the terms of this Policy, then the second paragraph of the above notice shall be replaced or supplemented, as appropriate, with the following:

"The holder of such IPR has refused a request by Consortium that it agree to make a License available for the purpose of implementing this specification. Information may be obtained from:

[Name of Holder of Right]  
[Address]"

### **3.7 Patent Searches**

In no event shall Consortium, Representative, Participant or non-Participant Member be obligated to conduct any patent searches regarding any Necessary Claims that may be infringed by any implementation of a Draft Specification or Specification.

### **3.8 Patent Claims Revealed After Publication**

In the event that a Necessary Claim is first revealed by a Member, a Non-Member Participant, or third party following adoption and publication of a Specification (other than a Necessary Claim subject to sanction under Section 3.4 above), such holder will be asked to License the Necessary Claim in the manner outlined in Section 3.1 above. If such request is refused, the Specification in question shall be referred back to the Technical Committee for further consideration, as appropriate.

## **4. Copyrights**

### **4.1 Copyright in Specifications**

The copyright for all Specifications and Other Work Product shall belong to Consortium.

### **4.2 Contributions of Copyrighted Materials**

Each Submitter who contributes copyrighted materials to Consortium shall retain copyright ownership of its original work, while at the same time granting Consortium a non-exclusive, irrevocable, worldwide, perpetual, royalty-free license under the Submitter's copyrights in its Submission to reproduce, distribute, publish, display, perform, and create derivative works of the Submission based on that original work for the purpose of developing a Draft Specification, Specification or Other Work Product under Consortium's own copyright.

## **5. Trade Secrets**

Participants and other Members will not be expected to reveal trade secret information in the course of participation in any Consortium activity, nor will they be asked by Consortium to sign non-disclosure agreements. Consortium will not be held responsible for the disclosure of any Member's or non-Member's trade secrets, regardless of the circumstances.

## **6. Trademarks**

### **6.1 Consortium Trademarks**

Trademarks created by Consortium, registered or otherwise, are the property of Consortium. Use of Consortium trademarks shall be governed by such policies, procedures and guidelines as may be established and approved by Consortium from time to time, and applicable law.

### **6.2 Non-Consortium Trademarks**

Consortium's use of third-party trademarks, registered or otherwise, shall be governed by such policies, procedures and guidelines as may be established and approved by the owners of such trademarks, and applicable law.

Appendix A

**NATIONAL INFORMATION STANDARDS ORGANIZATION**

**SUBMISSION OF TECHNOLOGY FORM**

**NOTE:** All blanks must be completed in order for this Submission to be given consideration. This submission is subject to the Intellectual Property Rights Policy (the "IPR Policy") of the National Information Standards Organization, and such rules of process and procedure as the Consortium shall from time to time adopt (collectively, both such documents being referred to below as the "Policies and Procedures"). *All capitalized terms used in this form are intended to have the meanings given to them in Exhibit A attached to this form.*

<b>Name of Submitter:</b>	
<b>Name of Representative Completing this Form on Behalf of Submitter:</b>	
<b>Mailing Address of Representative:</b>	
<b>Email Address of Representative:</b>	
<b>Draft Specification and RFP (if any) to which this Submission relates:</b>	

A The Representative hereby represents the following on behalf of him/herself and the Submitter, as the context requires:

1. The Representative is authorized to make the Submission attached hereto as **Exhibit B** on behalf of the Submitter, and to make the following representations and warranties.
2. The Submitter has reviewed the Policies and Procedures and agrees that its Submission is being made in full compliance with the same.
3. The Submitter hereby irrevocably agrees that if its Submission is incorporated, either in whole or in part, into the Draft Specification referenced above, that on request it will License all Necessary Claims Owned by it and/or its Related Parties (each of which party and Necessary Claim is identified on **Exhibit C-1**) and inherent in its Submission without compensation and otherwise on a RAND basis, to all Implementers
4. The Submitter hereby agrees that Consortium may copy, distribute and otherwise make available this Submission for the purpose of evaluation, and that in the event that the Submission is accepted, in whole or in part, that Consortium will own the copyright in the resulting Specification and all rights therein, including the rights of distribution. This agreement shall not in any way deprive the Submitter of any patent claims or other IPR relating to the technology to which its Submission relates.



5. The Submitter is not aware of any Necessary Claim(s) or other IPR of any third party that might be infringed by the implementation of the Specification referenced above as a result of the incorporation of the Submission therein, whether in whole or in part. If the Submitter is aware of any such potential infringement, then the Submitter has described such Necessary Claim(s) or other IPR on **Exhibit C-2**, together with any supporting documentation that may be readily available to the Submitter.

B. Consortium, in accepting this Submission, acknowledges the following:

1. The representation required in paragraph A.5 above is being solicited purely for informational purposes, and Consortium will not be relying on such representation or otherwise holding the Representative or Submitter responsible for its completeness or accuracy.

2. EXCEPT AS SPECIFICALLY PROVIDED FOR ABOVE, THIS SUBMISSION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED, EXCEPT TO THE EXTENT OF KNOWING FALSITY IN ANY STATEMENT MADE ABOVE. ANY IMPLEMENTATION OF ANY SPECIFICATION INCORPORATING THIS SUBMISSION IN WHOLE OR IN PART SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND THE SUBMITTER SHALL HAVE NO LIABILITY WHATSOEVER TO ANY IMPLEMENTER OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER DIRECTLY OR INDIRECTLY ARISING FROM SUCH IMPLEMENTATION, EXCEPT AS A RESULT OF ANY KNOWING FALSITY IN ANY STATEMENT MADE ABOVE.

This submission has been made on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of Submitter

By: \_\_\_\_\_  
Signature of Representative

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

**Exhibit Index:**

- A: Defined Terms**
- B: Submission**
- C-1: Necessary Claims (if any)**
- C-2: Third Party IPR (if any)**

**Exhibit A**

**DEFINED TERMS**

<b><u>Term</u></b>	<b><u>Definition</u></b>
Draft Specification	A technical specification or other material that is produced by a Project that could, if used or implemented as intended, infringe a claim(s) under an issued patent or a patent application anywhere in the world.
Implementers	Those Members and non-Members who desire to use or implement a Specification.
IPR	An abbreviation of "Intellectual Property Rights". As used in this Policy, IPR means claims in patents and patent applications and copyrights, but excludes trademarks and trade secrets, which are not included in a Participant and Member's licensing obligations.
License	Either (a) an agreement to license Necessary Claim(s) to any Member or non-Member implementer, on a perpetual, non-exclusive and worldwide basis, with such license permitting the licensee to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement such Necessary Claim(s), or (b) a binding, perpetual, irrevocable commitment, in a form acceptable to Consortium, not to assert Necessary Claim(s) against any Member or non-Member implementer of the Specification to which such commitment relates.
Member	A Consortium member of any class
Necessarily Infringed	Unavoidable infringement by an implementation of a Required Element of a Specification, there being no reasonable alternative way to implement that element of the Specification without resulting in such infringement.
Necessary Claims	Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of the Required Elements of a Specification. Necessary Claims do not include claims covering reference implementations or implementation examples.
Non-discriminatory	Available to all, and available to all under terms that are substantially identical to the terms made available to others under similar circumstances. It is acknowledged that non-discriminatory behavior cannot be established with precision where circumstances differ.
Non-Member	An organization, corporate entity, or individual that is not a Member of the Consortium.
Non-Member Participant	A Participant in a Project that is not a Member of the Consortium, who has agreed to participate and thereby agreed to be bound by the terms of the Consortium's IPR Policy.
Owned	With respect to any Necessary Claim(s), the word "Owned" includes any Necessary Claim(s) that are controlled but not Owned by the Member in question, provided that the Member in question is (i) entitled to sublicense such Necessary Claim(s), and (ii) would not incur an obligation to pay any royalty or other compensation to the true owner of such Necessary Claim(s) in connection with a sublicense.

Other Work Product	Any Project deliverable that is not a Draft Specification or Specification. Unless the context otherwise requires, any reference to the adoption of Other Work Product shall also be deemed to apply to the adoption of an amendment to that Other Work Product as well.
Participant	Any Member or Non-Member Participant that enrolls to take part in a Project that has not withdrawn from such Project within 90 days of the date upon which that Project was chartered.
Project	A formally chartered Consortium technical process that is intended to produce a Specification or Other Work Product.
RAND	Reasonable and Non-discriminatory
Reasonable	License terms relating to IPR included in a Specification that are not more onerous (including as to price) than could be obtained by the owner of such IPR in the open market absent its inclusion in a Specification. It is acknowledged that Reasonableness can not be established with precision.
Related Party	Any entity that is directly or indirectly controlled by the subject party. For this purpose, “control” means beneficial ownership or the right to exercise more than 50% of the voting power for the entity. .
Representative	Any individual that acts on behalf of a Member, or Non-Member in connection with a Project, or in the completion of any form to be delivered to Consortium pursuant to the Policy or the Rules of Procedure.
Required Element	Any element of a Draft Specification or Specification that has not been identified as “Optional.” For the avoidance of doubt, when a Draft Specification or Specification requires an Implementer to implement one of two or more alternative elements, then all such elements shall be deemed to be “Required Elements.”
Specification	A Draft Specification that has been formally adopted by Consortium. Unless the context otherwise requires, any reference to the adoption of a Specification shall also be deemed to apply to the adoption of an amendment to a Specification as well.
Submission	An affirmative and knowing contribution of IPR with the intention that such IPR be considered for inclusion in a Specification or Other Work Product. A Submission, in written or electronic form, may occur: as a result of an unsolicited offer to Consortium of existing technology by a Member or third party; in response to a general Consortium request for proposals; or from a Participant at any time during a technical process.
Submitter	Both a Member as well as any representative(s) of a Member, and any other person or entity making a Submission.
Technical Committee	At any relevant time, the most senior technical committee involved in the technical process.

**Exhibit B**

**SUBMISSION**

Insert description of Submission in such detail as may from time to time be required under the Policies and Procedures

**Exhibit C-1**

**SUBMITTER NECESSARY CLAIMS**

[Adapt as Necessary] List here all Necessary Claim(s) Owned by you

<b>Patent Number</b>	<b>Necessary Claim</b>	<b>Effected Portion of Specification</b>

**Exhibit C-2**

**THIRD PARTY IPR**

List here all Necessary Claim(s) Owned by third parties, to the extent of your knowledge.

<b>Patent Number</b>	<b>Necessary Claim</b>	<b>Effected Portion of Specification</b>

Appendix B

**NATIONAL INFORMATION STANDARDS ORGANIZATION  
INTELLECTUAL PROPERTY RIGHTS ELECTION FORM**

**NOTE:** All blanks must be completed in order for this Submission to be given consideration. This submission is subject to the Intellectual Property Rights Policy (the "IPR Policy") of the National Information Standards Organization, and such rules of process and procedure as the Consortium shall from time to time adopt (collectively, both such documents being referred to below as the "Policies and Procedures"). *All capitalized terms used in this form are intended to have the meanings given to them in Exhibit A attached to this form.*

<b>Name of Member:</b>	
<b>Name of Representative Completing this Form on Behalf of Member:</b>	
<b>Mailing Address of Representative:</b>	
<b>Email Address of Representative:</b>	
<b>Draft Specification to which this Election Form relates:</b>	

A. The Representative hereby represents the following on behalf of him/herself and the Member, as the context requires:

1. The Representative is authorized to complete and submit this Election Form on behalf of the Member, and to make the following representations and warranties.
2. The Representative and the Member have each reviewed the Policies and Procedures, and agree that this Election Form is being completed and submitted in full compliance with the same.
3. The Member hereby irrevocably agrees that if the Draft Specification referred to above is finally adopted (*Note: all Representatives **must** elect one of the following*):

\_\_\_\_\_ That on request it will License all Necessary Claims Owned by it and/or its Related Parties (each of which party and Necessary Claim is identified on; *or*

\_\_\_\_\_ The Member agrees to the same terms, but hereby petitions the NISO Board of Directors to consider an exemption to it's preferred RAND-Free policy with regard to compensation, and reserves the right to charge a royalty or other fee on RAND terms; *and/or*

\_\_\_\_\_ The Member identifies on **Exhibit B** certain Necessary Claim(s) and/or other IPR under the Draft Specification, in its current form, and the portion of the Draft Specification that would Necessarily Infringe such Necessary Claims or other IPR, and hereby notifies Consortium that no guarantee of License rights is being made (or that such rights will in fact be denied in all cases) as to such Necessary Claims. *(Note: You may elect option i. or ii. as to some Necessary Claim(s), and this option as to other Necessary Claim(s)).*

4. The Representative is not aware of any Necessary Claim(s) or other IPR of any third party that might be infringed by the implementation of the Draft Specification referenced above. If the Representative is aware of any such potential infringement, then the Representative has described such Necessary Claim(s) or other IPR on **Exhibit C**, together with any supporting documentation that may be readily available to the Representative.

B. Consortium, in accepting this Election Form, acknowledges that the representation required in paragraph A.4 above is being solicited purely for informational purposes, and Consortium will not be relying on such representation or otherwise holding the Representative or Member responsible for its completeness or accuracy.

This Election Form has been submitted on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of Participant or  
Non-Participant Member

By: \_\_\_\_\_  
Signature of Representative

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

**Exhibit Index:**

- A: Defined Terms**
- B-1: Withheld IPR (if any)**
- B-2: Third Party IPR (if any)**

**Exhibit A**

**DEFINED TERMS**

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License	Either (a) an agreement to license Necessary Claim(s) to any Member or non-Member implementer, on a perpetual, non-exclusive and worldwide basis, with such license permitting the licensee to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement such Necessary Claim(s), or (b) a binding, perpetual, irrevocable commitment, in a form acceptable to Consortium, not to assert Necessary Claim(s) against any Member or non-Member implementer of the Specification to which such commitment relates.
Member	A Consortium member of any class
Necessarily Infringed	Unavoidable infringement by an implementation of a Required Element of a Specification, there being no reasonable alternative way to implement that element of the Specification without resulting in such infringement.
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Project	A formally chartered Consortium technical process that is intended to produce a Specification or Other Work Product.
RAND	Reasonable and Non-discriminatory
Reasonable	License terms relating to IPR included in a Specification that are not more onerous (including as to price) than could be obtained by the owner of such IPR in the open market absent its inclusion in a Specification. It is acknowledged that Reasonableness can not be established with precision.
Related Party	Any entity that is directly or indirectly controlled by the subject party. For this purpose, "control" means beneficial ownership or the right to exercise more than 50% of the voting power for the entity. .
Representative	Any individual that acts on behalf of a Member, or Non-Member in connection with a Project, or in the completion of any form to be delivered to Consortium pursuant to the Policy or the Rules of Procedure.
Required Element	Any element of a Draft Specification or Specification that has not been identified as "Optional." For the avoidance of doubt, when a Draft Specification or Specification requires an Implementer to implement one of two or more alternative elements, then all such elements shall be deemed to be "Required Elements."
Specification	A Draft Specification that has been formally adopted by Consortium. Unless the context otherwise requires, any reference to the adoption of a Specification shall also be deemed to apply to the adoption of an amendment to a Specification as well.
Submission	An affirmative and knowing contribution of IPR with the intention that such IPR be considered for inclusion in a Specification or Other Work Product. A Submission, in written or electronic form, may occur: as a result of an unsolicited offer to Consortium of existing technology by a Member or third party; in response to a general Consortium request for proposals; or from a Participant at any time during a technical process.
Submitter	Both a Member as well as any representative(s) of a Member, and any other person or entity making a Submission.
Technical Committee	At any relevant time, the most senior technical committee involved in the technical process.

**Exhibit B-1**

**WITHHELD IPR**

**[Adapt as Necessary]** List here all Necessary Claim(s) Owned by you for which Section 3.2(a)i. or ii. Licenses will not be supplied.

<b>Patent Number</b>	<b>Necessary Claim</b>	<b>Effected Portion of Specification</b>

**Exhibit B-2**

**THIRD PARTY IPR**

List here all Necessary Claim(s) Owned by third parties, to the extent of your knowledge.

<b>Patent Number</b>	<b>Necessary Claim</b>	<b>Effected Portion of Specification</b>

## Appendix C

### **PATENT CALL TEXT**

Please be aware that this meeting is being held under the Intellectual Property Rights Policy adopted by NISO. If you do not have a copy of this policy, please see the NISO Staff during this meeting. You may also view and download a copy of that policy at the About/Documents section of the NISO website.

At this time, I would ask that anyone in attendance inform me if they are personally aware of any claims under any patent applications or issued patents that would be likely to be infringed by an implementation of the specification or other work product which is the subject of this meeting. You need not be the inventor of such patent or patent application in order to inform us of its existence, nor will you be held responsible for expressing a belief that turns out to be inaccurate.