Technical Standards
Intellectual Property Disclosure & Policy Agreement

I. Openness
A. XXXXX is a non-profit membership organization developing open technology standards for data interoperability for the educational community. Members of the XXXXX and invited non-members meet periodically in person and virtually, in an open forum to discuss issues surrounding the development of standards. (Non-members may or may not vote.)

B. The agenda for each meeting is published to members and the public before the meeting. The first item on each agenda shall be a reminder to meeting participants of the necessity to comply with antitrust laws and the requirements of this agreement, including a statement that patent protection is not available for the work of others.

C. The minutes of each meeting are published to members and made available to the public after that meeting.

II. Terms
A. This Intellectual Property Disclosure and Policy Agreement (this “Agreement”) describes the terms and conditions applicable to (1) member acquisition and use of the services provided by XXXXX (the “Services”) to its members and the public, (2) member acquisition and use of each and every software, website link, resource, interface, tool, standard or program created, published, provided or made available or accessible by XXXXX (collectively, the “IP”), (3) member participation in any and all XXXXX development initiatives and Workgroups as a member or otherwise (“XXXXX Benefits”), and (4) member use of the website maintained and operated by XXXXXXX under the domain and sub-domains of www.XXXXX (the “Website”).

Members that do not agree to be bound by the terms and conditions of this Agreement will not have the right to access or use the Services, the IP, the XXXXX Benefits or the Website (collectively referred to herein for purposes of convenience as the “XXXXX IP”). Any such access to, or use of, the XXXXX IP without acceptance of this Agreement shall be an unauthorized act and shall be strictly prohibited by XXXXX. To accept the terms and conditions of this Agreement, members must first read carefully the provisions below, as well as the other information and provisions that are incorporated by reference (if any). By applying to become a member of XXXXX, or by renewing membership in the XXXXX, members expressly acknowledge that these terms, conditions, provisions and information are acceptable, and agree to become bound by the same.

Enrollment as a member of XXXXX or renewal of membership also represents acknowledgement of and consent to the terms of this Agreement as well as assent to the standard terms and conditions of use of XXXXX IP and membership in the XXXXX, found on the Website at www.XXXXX.org, each of which are incorporated herein and made a part hereof by reference, and concurrence that these terms and conditions are fair and reasonable. We will refer to ourselves in this contract as “XXXXX”, “we”, “us”, or our.

B. XXXXX IP is available only to persons who can form legally binding contracts under applicable law. This Agreement is not available to minors. Acceptance of this Agreement
by a business entity (i.e., not a natural person), constitutes a representation and warranty that: (i) the business entity is validly formed and in good standing under the laws of the state of its formation, (ii) all company action has been taken by its management and ownership to authorize the acceptance of, and performance under, this Agreement, and (iii) upon acceptance by the business entity, this Agreement will be a valid and binding agreement with it, enforceable by XXXXX against it.

C. Certain aspects or features of the XXXXX IP that are available to members may contain additional terms, codes of conduct, or guidelines that govern member use of those features or tools, or member participation in those events (and we refer to all of these, collectively, as “Additional Terms”). If any terms in this Agreement conflict with any Additional Terms, then the terms in this Agreement will control as applied to XXXXX IP and the member’s legal relationship with XXXXX. Nothing in any Additional Terms will increase our legal liability or change the member’s relationship with us (unless we are the contracting party identified in the Additional Terms, and we state, in the Additional Terms, our intent to modify the terms of this contract). The Additional Terms may, however, form an additional contract between a member and a third party (for example, a third party that is offering content to or working together with a member in a Workgroup). Any dealings between a member and such a third party are solely between the member and the third party, and the member’s relationship with the third party may be governed by the Additional Terms. We do not endorse and will not be responsible or liable for any aspect of any such dealings.

D. In using the XXXXX IP, members will: (a) obey the law; (b) obey any codes of conduct or other notices we provide; (c) keep their account information secret; and (d) promptly notify us of a known security breach, infringement, misuse or misappropriation of or related to the XXXXX IP, or any portion thereof.

E. Members are responsible for all of their use and acquisition of XXXXX IP, and agree that they will use any part or portion of XXXXX IP at their own risk.

F. If we change this Agreement, then we will require members to agree to a new Agreement that includes such changes in order to continue to use and enjoy XXXXX IP. If members do not want to agree to the new contract, they may suspend and terminate their use of XXXXX IP. Continued use of the XXXXX IP will be deemed acceptance of and agreement to the new contract.

G. The terms of this Agreement will continue to apply until terminated by either the member of XXXXX as set forth below.

   a. If a member wants to terminate their agreement with XXXXX, the member may do so by (i) notifying XXXXX at any time and (ii) closing any accounts for all of XXXXX IP in use, where XXXXX has made this option available. Member notice should be sent, in writing, to XXXXX main address set forth on the Website.

   b. XXXXX may at any time terminate its agreement with a member if:

      i. The member has breached any provision of the terms hereof (or has acted in a manner that clearly shows the member does not intend to, or is unable to, comply with the Terms);

      ii. XXXXX is required to do so by law;

      iii. XXXXX has elected to discontinue the XXXXX (or any part thereof); or

   c. Upon termination of member membership with XXXXX.
d. Members agree that all terminations for cause shall be made in the XXXXX sole discretion and that XXXXX shall not be liable to members or any third party for any termination of an account, or access to the XXXXX, including Member Content (Section V, Paragraph C).

III. Duty to Disclose Patents

A. Disclosure of Essential Patents\(^1\) is governed by the principle that “each Member’s representative represents that he has disclosed the existence of any Essential Patents that are reasonably and personally known to him.” The Member’s representative does not represent that he personally knows of all potentially pertinent proprietary and intellectual property rights owned or claimed by the organization he represents (if any) or third parties. No Member is required to undertake any internal or external patent search to comply with these guidelines. Any failure on the part of a Member’s representative to disclose an Essential Patent does not affect the Member’s obligation to license or covenant not to assert Essential Patents in accordance with Section III, A, below. Members are obligated to license or covenant not to assert Essential Patents whether or not the Member’s representative has disclosed them.

B. Each Member that contributes materials for the XXXXX Specifications, or any subsequent adopted or proposed standard, or other documents developed by XXXXX (the “Contribution”), will promptly disclose to the other Members, any Essential Patents personally known to the Member’s representative that cover the Contribution, and the type of agreement (reasonable and non-discriminatory license (RAND), royalty-free license or non-assertion covenant) under which users of the proposed Specifications would be authorized to use such Essential Patents.

C. Each Member will promptly disclose to the other Members the existence of any patents that the Member’s representative personally knows to be Essential Patents to the XXXXX Specifications or to a subsequent adopted or proposed standard.

D. When a Member is aware that a patent application, if granted, would become an Essential Patent, the Member will promptly disclose the existence of the patent application along with the availability and terms under which additional patent application information would be made available to the Association members involved in the development of the relevant standard.

E. XXXXX invites any interested party to bring to its attention any patents, patent applications, or other proprietary rights that may cover technology that may be required to practice the XXXXX Specifications or any subsequent proposed or adopted standard developed by XXXXX. Please address the information to the XXXXXX (title).

\(^1\) “Essential Patents” are patent claims of a Member Organization or its Subsidiaries that are unavoidably practiced in the implementation of the XXXXX Specifications or any subsequent proposed or adopted standard developed by the Association. “Essential Patents” does not include any claims: (i) other than those set forth above even if contained in the same patent or patent application as Essential Patents; (ii) covering any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a XXXXX Specification(s), but are not themselves expressly set forth in a XXXXX Specifications (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, basic network operating system technology or the like); (iii) covering optional implementation examples in the Specifications; (iv) covering the implementation of other published specifications not developed by or for XXXXX, but referred to in the body of a Specifications; or (v) covering application programming interfaces (APIs), applications, device drivers, device driver models, peripheral control languages and peripheral devices, except for those portions thereof that are expressly required in order for an implementation to be compliant with XXXXX Specifications.
F. XXXXX takes no position regarding the validity or scope of any intellectual property or other rights that might be claimed to pertain to the implementation or use of the technology described in this document or the extent to which any license under such rights might or might not be available; neither does it represent that it has made any effort to identify any such rights.

IV. Obligation to License or Covenant Not to Assert Essential Patents

A. Each Member agrees to make available its Essential Patents to other Members and to all implementers of XXXXX Specifications or any subsequent standard developed by the XXXXX, for the purpose of permitting the use, sale, offer for sale, and importation of products implementing the XXXXX Specifications or subsequent standard developed by the XXXXX adopted prior to withdrawal from the XXXXX by a Member, in accordance with the type of agreement (reasonable and non-discriminatory license (RAND), royalty-free license or non-assertion covenant) per Member’s Duty to Disclose, addressed above.

B. Each Member who makes a contribution to a particular standard developed by XXXXX including the XXXXX Specifications, agrees to make available to other Members and to all implementers of the standard its Essential Patents that cover their contribution for the purpose of permitting the use, sale, offer for sale, and importation of products implementing the particular standard developed by XXXXX, in accordance with the type of agreement (reasonable and non-discriminatory license (RAND), royalty-free license or non-assertion covenant) per Member’s Duty to Disclose, addressed above.

C. Licenses made available to any implementer of XXXXX Specifications or any standard developed by XXXXX must be conditioned on such implementer’s agreement to grant licenses to all Members and other implementers under their Essential Patents.

D. Each Member hereby represents and warrants that to the best of its knowledge (a) it holds or has the right to grant relevant licenses to or non-assertion covenants respecting any of its Contributions and that there are no limits to the Member’s ability to make the agreements herein; and (b) it will not knowingly submit, through XXXXX representing the Member, Contributions that may subject the XXXXX Specifications or subsequent standards developed by XXXXX, in whole or in part, to licensing obligations with additional restrictions or requirements that would require any portion of the Contribution or implementation of the XXXXX Specifications or subsequent standards developed by XXXXX to be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) distributed at no charge.

V. Obligation to License Copyrights to XXXXX and Right to Copy

A. To the extent that materials contributed for the XXXXX Specifications or any subsequent standard developed by XXXXX are or may be subject to copyrights owned by the contributing Member, the contributing Member shall grant an unlimited perpetual, non-exclusive, royalty-free, world-wide right and license to the XXXXX under any copyrights in the Contribution. Such a license shall include the right to copy, publish and distribute the Contribution in any way and to prepare and have prepared derivative works that are based on or incorporate all or part of the Contribution, the license to such derivative works to be of the same scope as the license of the original Contribution.
B. Except for documents determined by XXXXX membership to be 'Members-only documents', the following copyright notice shall be included in all documentation related to XXXXX Specification(s) or other materials produced by the Association:

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This document and translations of it may be copied and furnished to others, and derivative works that comment on or otherwise explain it or assist in its implementation may be prepared, copied, published and distributed, in whole or in part, without restriction of any kind, provided that the above copyright notice and this paragraph are included on all such copies and derivative works. However, this document itself may not be modified in any way, such as by removing the copyright notice or references to XXXXX, or its committees, except as needed for the purpose of developing XXXXX standards using procedures approved by XXXXX, or as required to translate it into languages other than English.

The limited permissions granted above are perpetual and will not be revoked by XXXXX or its successors or assigns.

VI. Ownership of Rights:

A. Copyright in XXXXX Specifications, and in any other final related works of authorship produced for or originated through XXXXX working groups, committees, boards and any other teams organized by XXXXX, shall be owned by XXXXX.

B. The trademarks, logos and service marks displayed on the Website (the “Marks”) are the property of XXXXX or third parties. Members are not permitted to use the Marks without the prior consent of XXXXX or the third party that may own the Marks.

C. Members may be able to submit materials, works of authorship, technology, ideas, concepts and other forms of intellectual property for use in connection with XXXXX IP, including but not limited to those instances during which members are participating in a XXXXX-organized Workgroup (“Member Content”). Members understand that XXXXX does not control or endorse the content that members and others post or provide in connection with the use of XXXXX IP. Except for content that we license, provide or otherwise make available to members, we do not claim ownership of the materials members post or provide when using the XXXXX IP. However, with respect to content or intellectual property of any kind members post, provide, disseminate or otherwise make available to XXXXX members and other users of the XXXXX IP, members grant to XXXXX, those members of the XXXXX and those users of the XXXXX IP, free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission to: (a) use, modify, copy, distribute, and display Member Content or intellectual property in connection with the service and other XXXXX IP, and other products and services; and (b) to grant these rights to others. If the submission is a photograph or other digital image, members also expressly waive any and all rights of privacy and publicity with respect to the image. Members understand that we may need to make copies, change the format, transcode, or otherwise process Member Content posted on or submitted when using any XXXXX IP. This section only applies to legally permissible content and only to the extent that use and publishing of legally permissible content does not violate the law. Members understand that sharing content that violates others’ copyrights, privacy, publicity, or other intellectual property rights breaches this Agreement. We will not pay members for their content. We may refuse to publish Member Content, and we may remove Member Content from the XXXXX IP at any time.

If members participate in any group and post, provide, publish, disseminate or otherwise make available to members of such group any proprietary content or intellectual property
of any form or format whatsoever, those members grant to XXXXX, and those members of the group a free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission and license to: (a) use, modify, copy, distribute, and display the proprietary content or intellectual property in connection with the goals, objectives, strategies and purposes of the particular group; and (b) to grant these rights to others. It is a member’s sole responsibility to determine what limitations, if any, are placed on shared group content that the member distributes within their group. Members agree that XXXXX has no liability of any kind should members of a group modify, destroy, corrupt, copy or distribute the shared group content in violation of the limitations that may be imposed on its use.

Members represent and warrant that: (i) they own the intellectual property rights, or have obtained all necessary license(s) from the owners of the intellectual property rights, to use Member Content in keeping with their use in connection with the Site, the Services or as otherwise permitted by the Terms; (ii) they have the rights necessary to grant the license and sublicenses described in this Agreement; and (iii) they have received consent from any and all persons depicted in Member Content to use Member Content as set forth in this Agreement, including distribution, public display, public performance and reproduction of Member Content.

VII. Disclaimer

The following disclaimer shall be included in all documentation related to XXXXX Specifications or other materials produced by the XXXXX immediately after the copyright notice:

This document and the information contained herein is provided on an "AS IS" basis and XXXXX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY THAT THE USE OF THE INFORMATION HEREIN WILL NOT INFRINGE ANY RIGHTS OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VIII. Limitation on Liability

A. NO MEMBER, ITS AFFILIATES, OR THE XXXXX BOARD OF DIRECTORS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF THE MEMBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. We provide the XXXXX IP “as-is,” “with all faults,” and “as available.” We do not guarantee the accuracy or timeliness of information available from the XXXXX IP. XXXXX gives no express warranties, guarantees, or conditions under or in relation to the XXXXX IP, this Agreement or its subject matter. Members may have additional rights under local laws that this contract cannot change. We exclude any implied warranties, including those of merchantability, fitness for a particular purpose, workmanlike effort, and non-infringement. Further, we are in no way liable for member use or misuse of the XXXXX IP, or the theft of any data or intellectual property of any sort or form.

C. Members can recover from XXXXX for any and all claims they may have only direct damages up to a total, aggregate amount equal to XXXXX membership fee, pro-rated for one month of a year’s membership. Members cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages. This limitation applies to anything related to: (a) the XXXXX IP; (b) third party content (including code), third party programs, or third party conduct; (c) viruses or other disabling features that affect member access to or use of the XXXXX IP; (d)
incompatibility between the XXXXX IP and other services, software, and hardware; (e) claims for breach of contract; breach of warranty, guarantee, or condition; strict liability; negligence; or other tort. This policy also applies even if: (i) this remedy does not fully compensate members for any losses, or fails of its essential purpose; or (ii) the XXXXX knew or should have known about the possibility of damages.

THE XXXXX SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM MEMBER USE OF THE WEBSITE AND XXXXX IP, OR MEMBER PARTICIPATION IN ANY WORKGROUP. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE XXXXX IP IS ACCESSED AT A MEMBER'S OWN DISCRETION AND RISK, AND MEMBERS WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THEIR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. THE XXXXX ASSUMES NO LIABILITY FOR ANY COMPUTER VIRUS OR SIMILAR CODE THAT IS DOWNLOADED TO A MEMBER’S COMPUTER FROM THE SITE OR ANY OF THE SERVICES.

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MEMBERS, HOSTS, PARTICIPANTS, MODERATORS AND OTHER THIRD PARTIES ARE NOT AUTHORIZED XXXXX SPOKESPERSONS, AND THEIR VIEWS DO NOT NECESSARILY REFLECT THOSE OF THE XXXXX. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE XXXXX WILL HAVE NO LIABILITY RELATED TO USER CONTENT ARISING UNDER INTELLECTUAL PROPERTY RIGHTS, LIBEL, PRIVACY, PUBLICITY, OBSCENITY OR OTHER LAWS. THE XXXXX ALSO DISCLAIMS ALL LIABILITY WITH RESPECT TO THE MISUSE, LOSS, MODIFICATION OR UNAVAILABILITY OF ANY USER CONTENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO SOME MEMBERS.

D. Unless expressly agreed to by the XXXXX in writing elsewhere, the XXXXX has no obligation to store any materials, information, data or content that members upload, post, email, transmit or otherwise make available (collectively, “Materials”). The XXXXX has no responsibility or liability for the deletion or accuracy of any Materials, including member content, the failure to store, transmit or receive transmission of Materials, or the security, privacy, storage or transmission of other communications originating with or involving use of the XXXXX IP. Members are solely responsible for applying the appropriate level of access to their Materials.

IX. Agreement / Signature

As the duly appointed representative of my organization, I the undersigned do hereby agree that my organization will abide by the requirements and restrictions set forth in this document.
Name Printed

Signature

Organization Name & Title

Email Address