1. IPR in General

1.1 Purpose

The Postsecondary Electronic Standards Council ("PESC") has adopted this Intellectual Property Rights Policy ("IP") and related Policies and Procedures Manual for the Standards Forum for Education ("Manual") in order to minimize the possibility of inadvertent infringement of the IP of Members of PESC and third parties using or implementing any PESC Approved Standards.

1.2 Applicability

All Members, all Member Representatives and all third parties attending any Data Summit and/or participating in any technical development workgroup or meeting are subject to this IP Policy and Manual.

2. Definitions

Data Summit A formal gathering of PESC Members, Non-Members, Task Forces, User Groups and Workgroups.

Draft/Candidate Standard A technical specification and/or revision to a currently existing standard that has been authorized under the Manual but has not yet been approved for final release.

Implementers Those Members and non-Members who desire to utilize a PESC Approved Standard.

IP An abbreviation of “Intellectual Property Rights” and including claims made in patents and patent applications, copyrights, trademarks and trade secrets.

Member A dues-paying organization that has joined PESC.

Necessarily Infringed Unavoidable infringement by an implementation of any required element of a PESC Approved Standard, there being no technically reasonable alternative way to implement the Standard without resulting in such infringement.

Necessary Claims Those claims under patents and/or patent applications anywhere in the world that would Necessarily Infringed by the implementation of required elements of a PESC Approved Standard. Necessary Claims do not include: 1) claims covering any enabling technologies that are not themselves expressly set forth in a PESC Approved Standard; 2) claims covering reference implementations or implementation examples; or 3) claims covering the implementation of other published specifications not developed by or for PESC, but referred to in the body of a PESC Approved Standard.
Participant

Any Member or, as permitted by the Manual, non-Member, that participates in a Workgroup, Task Force or User Group.

Patent Call

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PESC Approved Standard

A final specification that has been processed, approved and ratified according to the Manual.

RAND

Reasonable and non-discriminatory.

Representative

Any individual that acts on behalf of a Member or other entity in connection with the technical process, or in the completion of any form to be delivered to PESC pursuant to the Manual.

Required Element

Any element of a draft standard or PESC Approved Standard.

Specification

A technical document, or any other work product of Task Force, User Group and/or Workgroup.

Submission

A document or artifact or other contribution made to a Task Force, User Group or Workgroup in written form or electronic form, and accompanied by a Submission of Technology Form (Appendix A), for consideration for inclusion in a PESC Approved Standard. A Submission may occur, for example, as a result of an unsolicited offer to PESC of existing technology by a Member or third party, or in response to a request for contributions.

Submitters

Both Members, as well as any representative(s) of a Member, and any other person or entity making a Submission.

Task Force

A formal entity or group of PESC Members and non-Members established under PESC and the Manual to establish common operational procedures.

User Group

A formal entity or group of PESC Members and non-Members established under PESC and the Manual to track and monitor changes in that User Group’s specific sector.

Workgroup

A formal entity or group of PESC Members and non-Members established under PESC and the Manual to develop PESC Approved Standards.

3. Necessary Claims

3.1 Member and Third Party Obligations Regarding Necessary Claims

In order to reduce the possibility of adopting a PESC Approved Standard that would, if used or implemented, infringe any Member of third party Necessary Claims, PESC will, in accordance with the Manual, require all Participants and Submitters, whether or not the Submitter is a Participant, to conform to the following rules:

3.2 Licensing Elections at Time of Submission

(A) Any Submitter making a Submission must elect one of the following at the time of making a Submission:
(i) **Royalty-free RAND License**: Agree that if the Draft Standard in connection with which the Submission is made is finally approved by PESC, the Submitter and each of its related parties (collectively for this paragraph, “it”) will provide a license to all Necessary Claims owned by it or which it has the right to license, and inherent in its Submission on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such PESC Approved Standards; provided that such license need not extend to features of a product that do not constitute Required Elements; or

(ii) **RAND License with Royalty**: Agree to the same terms, but reserving the right to charge a royalty or other fee on RAND terms.

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

3.3 Licensing Elections at Contributing Member/Developers Network Draft

(A) Each Representative that is a Participant but not a Submitter must elect one of the following on a single occasion (except as provided in Section 3.3(B) below), which occasion shall be not later than the earlier of a) the time that a Draft Standard is first posted as a draft, and b) 60 days from the date of Submission.

(i) **Royalty-free RAND License**: Agree that if the Draft Standard is finally approved by PESC, it and each of its related parties (collectively for this paragraph, “it”) will provide a license to all Necessary Claims owned by it or which it has the right to license, on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such Standard; provided that such license need not extend to any Necessary Claims identified with particularity as specified in (iii) below, or to features of a product that do not implement Required Elements; or

(ii) **RAND License with Royalty**: Agree to the same terms, but reserving the right to charge a royalty or other fee on RAND terms; or

(i) **Withholding of License as to Identified Necessary Claims**: Identify those Necessary Claims under the Draft Standard, in its then-current form, owned or licensed by it or any of its related parties (collectively for this paragraph, “it”), and the portion of the Draft Standard 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 all cases) as to such Necessary Claims; provided that, with respect to any of such Necessary Claims that are not specifically identified for this purpose, the Member shall make available licenses in accordance with the licensing terms the Member has elected under (i) or (ii) above.

[Note: A Member may elect option (i) or (ii) as to some Necessary Claim(s), and this option as to other Necessary Claim(s).

Provided, however, that a) in the case of patent claims under on-public patent applications, the Member need not describe any such claims at a level of detail that would disclose any of its valuable trade secrets, and b) an election form returned pursuant to this Section 3.3 by a Member that was a Submitter shall only apply to those portions of a Draft Standard that do not derive from such Member’s own Submission.]
Electronic notification of the date elections are required will be sent to each Participant no less than 60 days prior to the time that a Draft Standard is first posted as Draft. All elections by Participants shall be made pursuant to a written election in the form of Appendix B to this Policy. In the event that a decision is made to amend a technical element of a Draft Standard such that it no longer would fall within the original charter for such Draft Standard, and that decision is made after licensing elections have already been made, then the process described in (A) and (B) above shall be repeated when the revised Draft Standard is once again posted as Draft. In such event, the new elections shall relate only to those portions of the Draft Standard that have been revised since the previous elections were made, and the elections previously made shall remain binding as to the unrevised portions of the Draft Standard.

3.4 Patent Calls

Representatives participating in a Task Force, User Group and/or Workgroup are expected to inform the chair and/or co-chairs of any patent claims that they think may be Necessary Claims under a Draft Standard that is under development by that Task Force, User Group and/or Workgroup. Accordingly, at the beginning of every in-person meeting and teleconference of every Task Force, User Group and/or Workgroup, and at any other appropriate time in the course of electronic collaboration as may be provided for under the Manual, a Patent Call shall be made. The scope of Patent Calls shall be limited to potential Necessary Claims personally known to an individual Representative, and not to the knowledge of that Representative’s employer. The text to be employed in making Patent Calls is set forth in Appendix C to this Policy.

3.5 Sanctions for Failure to Respond or to Knowingly Withhold IP

In the event that:

i) any Representative of a Participant 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 3.3 above, or

iii) a Participant (a) does return a signed and completed election form, but later asserts a Necessary Claim(s) against an implementer of the Specification in question, and (b) 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 Participant 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 (ii) above), or the Necessary Claim(s) in question (in the case of (i) or (iii) above), with the terms to be as set forth in Section 3.3(A)(i) above.

3.6 Document Notations

3.6.1 Notation when no Necessary Claims have been Identified

All Draft Standards that are subject to comment and all Standards 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 Standard set forth in this document, and to provide supporting documentation.

“PESC 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 r 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. Information on PESC’s procedures with respect to the rights of PESC Approved Standards can be found on the PESC website at http://www.PESC.org.

“Copyright © PESC 2012. All Rights Reserved.

“If you wish to distribute this document or use this document to implement a product or service, you must complete a valid registration with PESC and receive an email from PESC granting license. To register, please follow the instructions provided on the PESC website at http://www.PESC.org.

“This document may be copied and furnished to others by Licensee organizations registered on the PESC website provided that the above copyright notice and this paragraph are included on all such copies. However, this document itself may not be modified in any way, such as by changing the details of the Standard, removing the copyright notice or references to PESC, except as needed for the purpose of developing PESC Approved Standards under the auspices of a Task Force, User Group or Workgroup.

“Use of this Standard to develop products and/or services is governed by the licensee with PESC found on the PESC website at http://www.PESC.org.

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

All Standards shall additionally include the following introductory language:

“This STANDARD IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NONINFRINGEMENT IS EXPRESSLY DISCLAIMED. ANY OF THIS SPECIFICATION SHALL BE MADE ENTIRELY AT THE IMPLEMENTERS OWN RISK, AND NEITHER PESC, 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 STANDARD.”

3.6.2 Notation when Necessary Claim(s) are Identified

(A) When Necessary Claim(s) have been identified for Draft Standards, or thereafter with respect to already published Standards, a notice substantially as follows shall also be included in the introductory language:

“PESC draws attention to the fact that it is claimed that compliance with this Standard may involve the use of a patent concerning {Subject Matter} given in {Subclause}. PESC takes no position concerning the evidence, validity or scope of such patent rights.

“The patent holder has assured PESC that it is willing to license patent rights it owns or controls
which would necessarily be infringed by an implementation of this Standard to those licensees (Members and non-Members alike) desiring to implement this specification. The statement of the patent holder to such effect has been filed with PESC. 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 Standard may be the subject of patent rights other than those identified above. PESC shall not be responsible for identifying any or all such patent rights.”

In the event that the owner of any IP has asserted that infringement would result from the implementation of a Draft Standard or Approved Standard, and such owner has refused to grant a license under the terms of this Policy, then second paragraph of the above notice shall be replace or supplemented, as appropriate, with the following:

“The holder of patent rights has refused a request by PESC that it agree to make a license available for the purpose of implementing this Standard. Information may be obtained from:

[Name of Holder of Right]
[Address]

3.7 Patent Searches

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

3.8 Patent Claims Revealed After Publication

In the event that a Necessary Claim is first revealed by a Member or third party following adoption and publication of a Standard, and such Necessary Claim is not already subject to a licensing or non-assertion obligation under Section 3.2, Section 3.3, or Section 3.5 above, such holder will be asked to license the Necessary Claim in the manner outlined in Section 3.2 or Section 3.3 above. If such request is refused, the Standard in question shall be referred back to the authorizing body as outlined in the Manual for further consideration, as appropriate.

4. Copyrights

4.1 Copyright in Specifications

The copyright for all Specifications and other work product of PESC shall belong to PESC, and may bear a copyright notice in PESC’s name.

4.2 Contributions of Copyrighted Materials

Each Submitter who contributes copyrighted materials to PESC shall retain copyright ownership of its original work, while at the same time granting PESC 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 Standard or Standard under PESC’s own copyright.
5. **Trade Secrets**

Information provided by Participants and other Members will not be treated as confidential by PESC, nor will any Member be required to treat the same as confidential. Consequently, Participants and other Members will not be expected to reveal trade secret information in the course of participation in any PESC activity, nor will they be asked by PESC to sign non-disclosure agreements. PESC 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 **PESC Trademarks**

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

6.2 **Non-Consortium Trademarks**

PESC’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.

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