

ADVANCED MEDIA WORKFLOW ASSOCIATION

EBU-AMWA FIMS Task Force Working Group Participation Agreement

This agreement ("Agreement") is entered into by Advanced Media Workflow Association, Inc. ("AMWA") and the entity named on the signature page ("Participant") as of the date it is accepted by AMWA. This Agreement grants participation rights only with respect to the EBU-AMWA FIMS (Framework for Interoperable Media Service) Task Force Working Group ("Working Group"), a joint project of AMWA and European Broadcasting Union ("EBU"). Participation in the Working Group is open to members of AMWA and EBU, and such non-members as may from time to time be agreed upon by AMWA and EBU. Any capitalized terms that are not defined in this Agreement shall have the same meanings as are given to them in the IPR Policy.

Background: AMWA maintains an intellectual property rights policy (as from time to time amended, "IPR Policy") with the stated goal of minimizing the possibility of inadvertent infringement of intellectual property rights ("IPR") by Members and third parties using or implementing any AMWA Specifications or other work product. AMWA and EBU have agreed that the Working Group shall operate under the terms of the IPR Policy, a copy of which is attached to this Agreement. The Participant desires to participate in one or more AMWA Working Groups, and in consideration of AMWA's granting permission to do so, the Participant agrees to the terms and conditions set forth below.

In consideration of the mutual benefits anticipated by the parties from Participant's participation in the Working Group, the parties agree as follows:

1. Applicability

If the undersigned is (initial the appropriate option):

_____ **a member of AMWA**, then the undersigned agrees that it shall be bound by all of its obligations under the IPR Policy as if the Working Group was a member-only activity of the AMWA;

_____ **a member of EBU**, then the undersigned agrees to be bound by the IPR Policy as if it were a member of the AMWA, to the extent of its participation in the Working Group;

_____ **a non-member of either AMWA or EBU that is permitted to participate in the Working Group**, then the undersigned agrees to be bound by the IPR Policy as if it were a member of AMWA, to the extent of its participation in the Working Group;

_____ ***a non-member of either AMWA or EBU that (i) submits any material of any kind with the intention that it be considered for inclusion in any deliverable of the Working Group, but (ii) does not participate otherwise in the Working Group;*** then the undersigned agrees to be bound by all of the terms of the IPR Policy as if such material was a "Contribution," as defined in the IPR Policy.

2. Knowledge

By signing this Agreement, the undersigned represents that it:

(a) understands that the IPR Policy includes, among other terms, obligations relating to the disclosure and licensing of its Necessary Claims, and confidentiality;

(b) has read the IPR Policy as attached to this Agreement, and understands the obligations that it is agreeing to under this Agreement;

(c) acknowledges that the IPR policy applies equally towards AMWA and EBU Members, and among these Members;

(d) understands that any deliverable of the Working Group will be considered to be a Specification under the IPR Policy, and that any such Specification shall be subject to the terms of the Memorandum of Understanding between AMWA and the EBU.

3. No Other Rights

No other rights, except those expressly stated in this Agreement or the IPR Policy, shall be deemed granted, waived, or received by either party by implication, estoppel, or otherwise by reason of the Participant's execution of this Agreement.

4. Term and Termination

Notwithstanding the terms of the IPR Policy, the term of this Agreement shall be for the life of the Working Group, subject to earlier termination by (a) either the Participant or AMWA at any time upon ten days written notice, or (b) immediately by AMWA, in the event of a breach of this Agreement by the Participant.

5. General

This Agreement: has been executed by an authorized representative of the Participant; shall be subject to the laws of Switzerland; and may only be amended in a writing signed by both parties. Any notice permitted or required under this Agreement shall be given by email to the address of the

appropriate party identified on this signature page, or to such subsequent address later supplied in the same manner.

This Agreement shall take effect as of the date of its signature by AMWA.

PARTICIPANT

ADVANCED MEDIA WORKFLOW
ASSOCIATION, INC.

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

Email (for notice purposes):

Email (for notice purposes):

Please return the duly signed Participation Agreement to AMWA at the following address, either by email, fax or mail (in the latter case, 2 copies and an original signed by AMWA will be sent back):

Barbara Main
Advanced Media Workflow Association
436 N. Westfield Rd.
Madison, WI 53717
barbara_main@amwa.tv
Voice: +1 608-833-9655
Fax: +1 608-833-0508

Title: Intellectual Property Policy of the Advanced Media Workflow Association, Inc.™ (“AMWA™”)

Source: Advanced Media Workflow Association

Version: 2.0

Effective Date: 11/14/2008

1. **About this Policy.** The policy described in this document (the “Policy”) is the complete and exclusive statement of the Advanced Media Workflow Association, Inc.’s (“AMWA”) intellectual property policy, consistent with the AMWA By-laws, and applies to and governs all of AMWA’s activity moving forward. All AMWA Members who have executed an AMWA Membership Application and all signatories of the Advanced Authoring Format Promoters’ Agreement, as amended, shall be subject to this Policy. This Policy supersedes any and all prior agreements, documentation, and interpretations regarding AMWA’s treatment of intellectual property issues, including, but not limited to, any version of the Advanced Authoring Format Promoters’ Agreement, any version of the Advanced Authoring Format Adopter’s Agreement created and/or executed prior to the effective date of this Policy, and any “IP Fact Sheet” or other documents attempting to explain or clarify such prior agreements or policies. Any future revisions to this Policy (or any document referenced herein) will become effective only upon approval of such revisions by the AMWA Board in accordance with the AMWA By-laws, and only after: (a) the Board takes reasonable measures to notify all Members in writing (such as by e-mail) of such revisions; (b) a clear and conspicuous link to the revised Policy (or referenced document), with the revisions highlighted, is posted on the home page of the AMWA website (currently www.amwa.tv) for all existing Members and potential new Members to see; and (c) Members are afforded at least thirty (30) days from the date of receiving notice of such revisions to withdraw from AMWA; provided, however, that ministerial changes to this Policy (or any referenced document), such as proofreading corrections or formatting changes, may be unilaterally executed by the AMWA Board and, upon AMWA Board approval, shall be immediately effective as to all existing and new Members, so long as a revised version of the Policy (or referenced document) containing such ministerial changes is posted on the home page of the AMWA website. Any Member that withdraws from AMWA pursuant to Section 9 prior to the end of this thirty (30)-day period will be subject to the version of the Policy that was in effect prior to the Board-approved revisions, in accordance with its terms and the withdrawal provisions of Section 9, but will not be subject to new or revised terms of the revised Policy (or referenced document). Any existing Member that does not withdraw from AMWA pursuant to Section 9 prior to the end of this thirty (30)-day period, and any new Member that joins AMWA during such thirty (30)-day period, will be deemed to have ratified and accepted the revised Policy (including any revisions to referenced document(s)) in its entirety even without written agreement to such revised Policy by such Member.
2. **Definitions.** The following terms, when used with initial capital letters, shall have the meanings set forth below.
 - 2.1. **“AMWA Group”** means an AMWA Technical Committee, its Sub-committees, Work Groups, or Special Interest Groups.
 - 2.2. **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. In the event such control ceases to exist, such Affiliate will be deemed to have withdrawn pursuant to the terms set forth in the withdrawal provisions in Section 9. “Control” means direct or indirect beneficial ownership of or the right to exercise (a) more than fifty percent (50%) of the voting stock or equity in an entity; or (b) more than fifty percent (50%) of the relevant ownership interest or decision-making

authority representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

- 2.3. **“Conformance Statement”** means a document approved by the AMWA Board specifying the requirements for compliance with a Specification or Update, which requirements may or may not include the administering of test suites. The Conformance Statement may also include other requirements and instructions for Members and Implementers, such as when a Member or Implementer may use the name “Advanced Authoring Format” or “AAF”, or the AAF logo, or when a Member or Implementer may label its product as “AAF Compliant” (or the like).
- 2.4. **“Contribution”** means any material, suggestion, or other submission offered by an eligible Member or other eligible participant (such as an invited expert) in the process of developing a Specification or Update for the purpose of incorporating such submission into such Specification or Update, provided that such submission is either (a) provided in writing or other tangible form of expression (including in electronic media); or (b) a verbal statement that is memorialized in written documentation (such as meeting minutes) and is either confirmed or not objected to by such Member or other eligible participant within fifteen (15) days after its receipt of such memorialization.
- 2.5. **“Fellow Implementers”** means all Members and all Implementers; provided, however, that no Member shall be required to implement any Specification or Update.
- 2.6. **“Implementer”** means any entity that has executed an identical copy of Attachment A and delivered the original of such executed Agreement to the AMWA Executive Director.
- 2.7. **“Licensee’s Product(s)”** means only those specific portions of products (hardware, software, or combinations thereof), not the product as a whole, that implement and are compliant with the relevant Required Portions of a Specification or Update.
- 2.8. **“Member” or “Members”**, standing alone, means all classes of AMWA membership as set forth in the AMWA By-laws, as well as all signatories of the Advanced Authoring Format Promoters’ Agreement, as amended. In addition, certain other parties that are not formal Members of AMWA may, from time to time, be invited to take part in AMWA Group activities. If any such party makes a Contribution to an AMWA Group or attends more than one (1) meeting of an AMWA Group (in person or by telephone), such party shall also be deemed to be an AMWA Member with respect to such AMWA Group, solely for purposes of the various rights and obligations set out in this Policy, and without voting rights or other benefits of membership, unless and until such party formally joins AMWA and pays the appropriate dues; provided, however, that such party’s obligation to license under Sections 3, 4.3, and 7.2 and to participate in the review period set forth in Section 4.2 shall be limited to the particular Specification(s) or Update(s) developed by the AMWA Group(s) in which such party is deemed to be a “Member” under this definition.
- 2.9. **“Necessary Claims”** means those claims of an issued patent or patent application that (a) are owned or controlled by a Member (or its Affiliate) now or at any future time; and (b) would be necessarily infringed by implementing a Specification or Update, wherein a patent claim is “necessarily infringed” only when there is no technically plausible non-infringing alternative for implementing the Required Portions of such Specification or Update. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims:

(i) that may be contained in the same patent as Necessary Claims but are not themselves Necessary Claims;

(ii) that cover solely any portions of any product and any combinations thereof that are not required for compliance with the Specification or Update;

(iii) that cover any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Specification or Update, but are not themselves expressly set forth in the Specification or Update (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, computers, networks, connectivity protocols, or the like);

(iv) that cover implementation examples (i.e., examples that may be included in the text of a Specification or Update which illustrate how the Specification or Update could be properly implemented); or

(v) that cover application programming interfaces, applications, or user interfaces, including the technology used to generate, display, or interact with a user.

- 2.10. **“Non-Contributed Necessary Claims”** means those Necessary Claims that cover not a Member’s own (or its Affiliate’s) Contribution but either: (a) the Contribution of another party; or (b) material that is otherwise included in the Specification or Update.
- 2.11. **“Representative”** means an individual who is identified to the AMWA Executive Director as having authority to participate in AMWA or an AMWA Group on behalf of a Member or a party that is not yet a Member of AMWA. Such notice may be conveyed to the AMWA Executive Director at any time either in writing or orally and by either the individual himself or herself or by the Member (or other party) at issue. The actions and statements of such individual(s) will be deemed to legally bind such Member (or such other party) and/or its Affiliates.
- 2.12. **“Required Portion”** means a portion of a Specification or Update that is required for an implementation to comply with a Specification or Update (also known as a “normative” or “mandatory” portion), as set forth in the Conformance Statement, but not including any elements that are required solely for conformance with any optional (i.e., “non-normative,” “non-mandatory”) portion(s) of a Specification or Update; provided, however, that where a Specification or Update contains a choice of two or more portions, one of which is required to be implemented to comply with the Specification or Update (i.e., mutually exclusive required options), each such portion shall be deemed to be a Required Portion.
- 2.13. **“Specification”** means any Advanced Media Workflow Association (“AMWA”) specification adopted and published by the AMWA Board of Directors in accordance with the AMWA By-laws. Specification shall include version 1.0 of the AAF specification, which was previously adopted by the AAF Promoters and governed by the Advanced Authoring Format Promoters’ Agreement and the Advanced Authoring Format Adopter’s Agreement. For purposes of this Policy, version 1.0 of the AAF specification shall be deemed to have been adopted and published by the AMWA Board of Directors as a Specification subject to the terms of this Policy.

2.14. **“Update”** means any new update, revision, version, protocol, or extension of a Specification adopted and published by the AMWA Board of Directors in accordance with the AMWA By-laws.

3. **Patent Licenses.** *Any Member that makes a Contribution to a Specification or Update, as well as any other Member (including any new Member that joins AMWA after such Specification or Update has been adopted), agrees that, upon request and subject to Sections 4.3 and 9, it will grant, and will cause its Affiliates to grant, to all Fellow Implementers and their Affiliates implementing such Specification or Update, a nonexclusive, compensation-free (i.e., no royalty or other fee), nontransferable, worldwide license, without rights to sublicense (except as part of the transfer of a Licensee’s Product to allow use of such product by an end-user) and on other reasonable and non-discriminatory terms and conditions under such Member’s (or its Affiliates’) Necessary Claims covering such Specification or Update, solely to make, have made, use, import, offer to sell, sell, lease, and otherwise distribute and dispose of Licensee’s Products that implement such Specification or Update; provided, however, that such commitment to license shall not apply to any Necessary Claims for which the Member does not have the right to license without obligation of payment of royalties or other material consideration to an unaffiliated third party. The grant of such license shall be conditioned (a) in the case of licensees other than a Member, on such licensee’s execution of the Implementer’s Agreement in Attachment A hereto (Members are not required to sign the Implementer’s Agreement); and (b) in the case of another Member, on such other Member’s commitment to the compensation-free and otherwise reasonable and non-discriminatory patent license specified in this Section 3. Notwithstanding the foregoing, any Member may decide that it will not require Fellow Implementers or their Affiliates to sign a license for some or all of its (or its Affiliates’) Necessary Claims, by indicating such intention to the AMWA Executive Director pursuant to Section 4.5.1. The commitment to license arising under this Section shall be effective as of the effective date of such Member’s membership in AMWA, or, in the case of a party such as an invited expert, the date such party was deemed to become a “Member” under Section 2.8.*

4. **Patent Disclosure Obligations, Review Period, and Patent Licensing Commitment for Non-Contributed Necessary Claims.**

4.1. **Ongoing Patent Disclosure Obligation.** If a Representative knows of a patent or patent application owned or controlled by himself or herself or by the Member on whose behalf the Representative is acting (or its Affiliate), and such Representative believes that such patent or patent application contains Necessary Claims covering a draft Specification or Update, then the Member (or the Representative) must disclose such patent or patent application to the AMWA Executive Director, in writing, as soon as reasonably possible and in all events prior to withdrawal pursuant to Section 9. While the ongoing disclosure obligation under this Section 4.1 applies directly to all Members, this obligation is triggered based on the actual and personal knowledge of the Member’s Representative(s), and no collective or aggregate knowledge of the Member (or its Affiliates or employees) on whose behalf the Representative(s) is acting regarding patent information will be imputed to such Representative(s). However, a Member is prohibited from intentionally isolating a Representative from potentially relevant patent information within the Member organization so as to avoid the disclosure duty and obligations set forth in this Section 4.1. All chairpersons of AMWA Groups shall remind participants of this ongoing disclosure duty at the beginning of each AMWA Group meeting and shall provide a copy of this Policy to any requesting party. Nothing in this Section or this Policy imposes any duty or obligation on any Representative or Member to perform a patent search or other search of intellectual property portfolios.

4.2. **Review Period.** To ensure that all Members review each proposed draft Specification or Update as a complete document for purposes of identifying Necessary Claims, the

AMWA Executive Director shall, at least forty-five (45) days prior to the date for the meeting at which the AMWA Board of Directors plans to vote on the adoption of the draft Specification or Update, notify all Members via e-mail, letter, and/or other means of written correspondence that a vote on the adoption of the draft Specification or Update by the AMWA Board of Directors is scheduled, and shall provide the draft Specification or Update as an attachment to such written correspondence. The AMWA Executive Director shall also post a notice of such review period in a prominent Members-only location on the AMWA website. Subject to Section 2.8, all Members shall be required to take part in the review period for such draft Specification or Update. During the review period, all Members shall: (a) review the draft Specification or Update; (b) disclose any Necessary Claims owned or controlled by such Member or its Affiliates (other than Necessary Claims previously disclosed pursuant to Section 4.1) that would cover such Specification or Update; and (c) in the case of a Member's (or its Affiliates') Non-Contributed Necessary Claims, state the Member's intention, pursuant to Section 4.5, whether to license or decline to license such Non-Contributed Necessary Claims (note, Necessary Claims that cover one's own (or one's Affiliates') Contributions must be licensed pursuant to Section 3); provided, however, that a Member that chooses to license its (and its Affiliates') Non-Contributed Necessary Claims must license them to all Fellow Implementers and their Affiliates implementing such Specification or Update on at least reasonable and non-discriminatory terms and conditions that are consistent with the requirements of Section 3 (except that such Member may charge a reasonable and non-discriminatory royalty or fee to such Fellow Implementers and their Affiliates), and a Member that declines to license its (or its Affiliates') Non-Contributed Necessary Claims (i.e., selects the option in Section 4.5.4) must comply with the heightened disclosure standard/obligation and the withdrawal requirement of Section 4.3 in order to avoid the licensing commitment for such Non-Contributed Necessary Claims arising under Section 3. The Members will reasonably cooperate to resolve any issues raised during the review period by any such disclosure. In the event that any such Member discloses its intention not to license certain of its (or its Affiliates') Non-Contributed Necessary Claims, or in a situation where a party (such as a non-Member of AMWA) alleged to have Necessary Claims refuses to provide a licensing declaration pursuant to Section 4.5, the AMWA Group that developed the affected Specification or Update will, in consultation with the AMWA Board of Directors, determine how best to proceed, such as by attempting to develop a revised version of the draft Specification or Update that works around the potentially blocking patent claims that the patent rights holder has declined to license to all Fellow Implementers and their Affiliates. If, after such review period ends, a draft Specification or Update is substantially modified, a subsequent review period shall be conducted, under the terms of this Section, before the revised draft Specification or Update is adopted and published as a final Specification or Update.

- 4.3. Licensing Commitment for Non-Contributed Necessary Claims Not Disclosed Prior to the End of the Review Period. Although there is no obligation on a Member to search its patent or other intellectual property portfolios, a Member shall be deemed to have committed to the compensation-free and otherwise reasonable and non-discriminatory licensing obligation that arose under Section 3 for any of its (and its Affiliates') Non-Contributed Necessary Claims that cover a final Specification or Update that is ultimately adopted and published following a review period (as if such Non-Contributed Necessary Claims were contained in such Member's own Contribution), unless, prior to the end of such review period: (a) the Member disclosed such Non-Contributed Necessary Claims and declared its intention not to license them at all (pursuant to Section 4.5.4) or to license them at least pursuant to the reasonable and non-discriminatory terms and conditions set out in Section 4.5.3; and (b) in the former case only (i.e., refusal to license), the Member withdrew from the AMWA Group that developed such Specification or Update or from AMWA

generally in accordance with Section 9. For the avoidance of doubt, the licensing commitment referenced in this Section 4.3 (which commitment actually arose under Section 3 and which the Member failed to avoid by complying with the disclosure and (if applicable) withdrawal provisions of this Section 4.3) applies to all of a Member's (and its Affiliates') undisclosed Non-Contributed Necessary Claims, despite the lack of actual and personal knowledge thereof by any individual Representative who participates in any AMWA Group on behalf of such Member.

- 4.4. Minimum Contents of Disclosure. With respect to issued patents and published patent applications subject to disclosure under this Policy, a Member must disclose, at a minimum, the identity of the patent rights holder and/or applicant and the patent number or application number. With respect to unpublished patent applications, a Member must disclose, at a minimum, the existence of the application containing the asserted Necessary Claims, but need not disclose identifying information (e.g., application number, application contents, relevant portion of the Specification or Update). However, if a Member has declared its unwillingness to license (pursuant to Section 4.5.4), or its willingness to license only on RAND terms (pursuant to Section 4.5.3), Non-Contributed Necessary Claims included in such Member's (or its Affiliates') unpublished patent application(s), such Member must also identify the portion(s) of the draft Specification or Update on which the asserted Non-Contributed Necessary Claim(s) of such unpublished patent application read(s). Nothing herein precludes broader disclosure of unpublished patent applications on a voluntary basis or pursuant to a non-disclosure agreement. If any disclosed patent or patent application contains Necessary Claims which, if licensed, would require a payment of royalties or other material consideration to an unaffiliated third party, the Member must also highlight this fact in its disclosure statement.
- 4.5. Licensing Declarations. At the same time that, or within a week after, a Member (or its Representative) discloses any of its (or its Affiliates') Necessary Claims that cover a particular Specification or Update (or, if a week is practically infeasible, then as soon as possible thereafter but in all events prior to the end of the review period), the Member shall also submit a written statement and assurances to the AMWA Executive Director, declaring that the Member selects one of the following licensing options for such Necessary Claims:
 - 4.5.1. No License Required for Fellow Implementers. The Member (and its Affiliates) will not require Fellow Implementers or their Affiliates to sign any license to such Necessary Claims in order to make, have made, use, import, offer to sell, sell, lease, or otherwise distribute or dispose of Licensee's Products that implement such Specification or Update; or
 - 4.5.2. Compensation-Free, Reasonable and Non-Discriminatory License to All Fellow Implementers. The Member is willing, upon request, to grant, and to cause its Affiliates to grant, a license to such Necessary Claims to all Fellow Implementers and their Affiliates that implement such Specification or Update without a requirement for monetary compensation (i.e., no royalty or other fee) and under other reasonable and non-discriminatory terms and conditions, pursuant to Section 3 (note, this licensing option is required at a minimum of Members with respect to their own (and their Affiliates') Contributions, though they may also select the option in Section 4.5.1); or
 - 4.5.3. Reasonable and Non-Discriminatory License to All Fellow Implementers. The Member is willing, upon request, to grant, and to cause its Affiliates to grant, a license to its (and its Affiliates') Non-Contributed Necessary Claims to all Fellow Implementers and their Affiliates that implement such Specification or Update on at least reasonable and non-discriminatory terms

and conditions that are consistent with the requirements of Section 3 (except that such Member may charge a reasonable and non-discriminatory royalty or fee to such Fellow Implementers and their Affiliates). This “RAND” license option is not available to a Member with respect to any Necessary Claims that cover such Member’s own (or its Affiliates’) Contribution(s). It is only available to a Member with respect to its (and its Affiliates’) Non-Contributed Necessary Claims; provided, however, that this “RAND” option shall not be available (a) as to any Specification or Update adopted by AMWA as a final Specification or Update for any Member joining AMWA after such Specification or Update has been adopted; (b) to any Member that fails to comply with the heightened disclosure standard/obligation of Section 4.3; or (c) to all Members as to version 1.0 of the AAF specification.

4.5.4. Unwilling to Commit to Any of the Above Options. The Member is unwilling to commit to the assurances in any of the above licensing declaration options. This option is not available to a Member with respect to any Necessary Claims that cover such Member’s own (or its Affiliates’) Contribution(s). It is only available to a Member with respect to its (and its Affiliates’) Non-Contributed Necessary Claims; provided, however, that this option shall not be available (a) as to any Specification or Update adopted by AMWA as a final Specification or Update for any Member joining AMWA after such Specification or Update has been adopted; (b) to any Member that fails to comply with both the heightened disclosure standard/obligation and the withdrawal requirement of Section 4.3; or (c) to all Members as to version 1.0 of the AAF specification.

4.6. Disclosure Regarding Third-Party Patents. Members have no obligation to disclose potentially relevant third-party patent rights, although such disclosure is encouraged, including during the review period set forth in Section 4.2. If any relevant third-party patent rights (of a Member or non-Member) are disclosed to an AMWA Group, the chairperson of such AMWA Group will promptly bring such disclosure to the attention of the AMWA Executive Director, so an appropriate course of action can be developed and pursued.

5. AMWA Processes / Statements Regarding Patent Disclosures.

5.1. AMWA Records of Patent Disclosures / Licensing Declarations. The AMWA Executive Director shall promptly provide to the AMWA Board of Directors, in writing, the information contained in any patent disclosure. The AMWA shall maintain a file, accessible by the public, which includes all patent disclosure statements and licensing declarations received for any Specification or Update. AMWA shall also provide such information to any Member, Fellow Implementer, or any other party, upon request, in order to facilitate such party’s ability to seek and obtain all known patent licenses necessary to implement the Specification or Update in a Licensee’s Product.

5.2. AMWA Patent Disclaimers. All published draft and final Specifications and Updates shall include the following disclaimers (or their equivalent) at the beginning of the Specification or Update:

“NOTES – The user’s attention is called to the possibility that implementation and compliance with this specification may require use of subject matter covered by patent rights. By publication of this specification, no position is taken with respect to the existence or validity of any claim or of any patent rights in connection therewith. The AMWA, including the AMWA Board of Directors, shall not be responsible for identifying patents for which a license may be

required by an AAF specification or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.”

In addition, when AMWA receives from a patent rights holder a written licensing declaration indicating that a license will be required from such patent rights holder by Fellow Implementers of a Specification or Update, then all such published draft and final Specifications and Updates shall also add the following statement to the end of the above disclaimer:

“Certain patent rights holders have filed a statement of willingness to grant a patent license to all implementers of this specification desiring to obtain such a license, consistent with the requirements of the AMWA Intellectual Property Policy. The AMWA, including the AMWA Board of Directors, makes no representation as to the reasonableness of any terms or conditions of the license agreements offered by such patent rights holders, and all negotiations regarding such terms and conditions must take place between the individual parties outside the context of the AMWA. Further information regarding those parties who have claimed patent rights in the specification and expressed their willingness to provide a license may be obtained from the AMWA Executive Director. The user should be aware, however, that it is also possible that other patent rights that have not been disclosed to the AMWA, including the AMWA Board of Directors, may be implicated by implementation and compliance with the specification.”

6. Permitted References to the AAF Name, the AAF Logo, or to AAF Compliance.

Members may only use the name “Advanced Authoring Format” or “AAF”, may only use the AAF logo, and may only identify any product that implements a Specification or Update as “AAF Compliant” (or the like) consistent with the requirements for such use and/or product identification that are set out in the Conformance Statement.

7. Copyright Ownership and Licenses.

7.1. Copyright Ownership in Specifications and Updates. AMWA shall own the copyright in draft and published final Specifications and Updates, subject to the underlying copyright rights of the contributing Members and other copyright owners. Any publication of a Specification or Update shall contain an appropriate copyright notice in the name of AMWA.

7.2. Copyright License for Contributions. Each Member grants to AMWA, and to each other Member, a non-exclusive, perpetual, irrevocable, compensation-free license under the Member’s (and its Affiliates’) copyright rights in any Member Contribution to reproduce, distribute, perform, display, and create derivative works of the Contribution, solely for the purpose of creating and promoting the draft Specification or Update for which such Contribution was submitted. AMWA is also authorized to grant to all Fellow Implementers and their Affiliates a nonexclusive, compensation-free, non-transferable, non-sublicenseable, worldwide, perpetual, limited copyright license covering such Contributions (as well as the Specification or Update as a whole) solely for the purpose of creating and distributing a Licensee’s Product(s) and any accompanying documentation. AMWA may also sublicense such copyright rights covering such Contributions (as well as the Specification or Update as a whole) to another standard development organization for the purpose of adopting the same or a substantially similar specification or standard as the Specification or Update into which the Contribution (or portion thereof) was originally incorporated.

8. Confidentiality. Specifications and Updates shall not be publicly disclosed until adopted by the AMWA Board of Directors. Subject to the non-disclosure provision in the previous

sentence, all information disclosed as a part of AMWA activities shall be deemed non-confidential except as otherwise agreed to in a written agreement between the affected parties.

9. Withdrawal/Termination.

- 9.1. Notice of Withdrawal/Termination. A Member may withdraw from AMWA, or from any AMWA Group, as set out in the AMWA By-laws. A Member may be terminated from AMWA for the reasons, and pursuant to the procedures and effective date, set out in the AMWA By-laws.
- 9.2. Effect of Withdrawal/Termination. Any licensing rights and obligations that have arisen with respect to a particular Specification(s) or Update(s) prior to the effective date of such withdrawal/termination (such as (a) licensing commitments with respect to the withdrawn/terminated Member's own (or its Affiliates') Contributions; (b) licensing commitments for any of the withdrawn/terminated Member's (or its Affiliates') Non-Contributed Necessary Claims that arose with regard to a particular Specification(s) or Update(s) under Section 3 and that were not avoided by such Member through its compliance with the disclosure and withdrawal provisions of Section 4.3; and (c) licensing commitments made to the withdrawn/terminated Member and its Affiliates) shall continue in effect with respect to such Specification(s) or Update(s) (but not with respect to any future Specification(s) or Update(s)), even after the Member's withdrawal/termination, and shall extend to entities who become Fellow Implementers (and their Affiliates and customers as provided in the license) even after such withdrawal/termination. Further, the licenses actually granted or received by such withdrawn/terminated Member (or its Affiliates) as of the effective date of such withdrawal/termination shall continue in full force and effect. Notwithstanding the foregoing, for backward compatibility purposes, it is intended that once a particular technology or Contribution is included in an adopted Specification or Update, if implementations of that technology or Contribution would necessarily infringe a particular patent claim under the terms of this Policy, all Fellow Implementers (and their Affiliates) will be able to continue to use that same technology or Contribution as set out in the Specification or Update in all future Updates, so long as such Updates are for AAF applications. Thus, such a technology or Contribution that was subject to a licensing commitment that arose under this Policy with respect to a particular Specification or Update before the withdrawal/termination of such Member shall continue to be licensed for Updates adopted after the withdrawal/termination to the extent the same patent claims apply to the technology or Contribution before the withdrawal/termination as after the withdrawal/termination.
- 9.3. Member Avoidance of Licensing Obligations Due to Substantial Change in Technical Scope of Specification or Update. Each AMWA Group must, at the outset of its work, carefully define the technical scope of its work and the expected output of such AMWA Group. If the final output of an AMWA Group's particular Specification or Update development effort differs substantially in technical scope from the technical scope that was documented at the time the AMWA Group commenced, then a Member (including a Member that has previously submitted its own Contribution to such AMWA Group) will have no obligations under Section 3, Section 4.3, or Section 7.2 in connection with such Specification or Update, provided that such Member withdraws promptly from such AMWA Group after first noticing such substantial change (and in all events prior to the end of the review period described in Section 4.2 for such Specification or Update) and cites such substantial change in technical scope in its withdrawal notice.

10. General.

- 10.1. No Other Licenses. Except for the rights expressly provided under this Policy, neither AMWA nor any Member (or its Affiliates) grants or receives, by implication, estoppel, or otherwise, any rights under any patents, copyrights, or other intellectual property rights.
- 10.2. No Software Code in Required Portions of Specifications or Updates. No draft or final Specification or Update, and no Contribution, may include software code, except for code that will be used for illustrative purposes only and will not be deemed to be a Required Portion of a Specification or Update.
- 10.3. Representations and Warranties. Each Member shall be deemed to represent, warrant, and covenant, at the time of a Contribution by such Member, that to the best of its knowledge and ability (a) it holds or has the right to grant all relevant licenses to any of its Contributions and that there are no limits to the Member's ability to make the grants, acknowledgments, and agreements herein; and (b) the Contribution does not subject any Contribution, Specification, Update, or implementations thereof, in whole or in part, to licensing obligations with additional restrictions or requirements inconsistent with those set forth in this Policy, or that would require any such Contribution, Specification, Update, or implementation, in whole or in part, to be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works (other than as set forth in Section 7.2); or (iii) distributed at no charge, except as set forth in Sections 3, 4.3, and 7.2. If a Member has knowledge that a Contribution made by any Member or any other party may subject any Contribution, Specification, Update, or implementation, in whole or in part, to one or more of the licensing obligations listed in this Section 10.3, such Member shall give prompt notice of the same to the AMWA Executive Director who shall promptly notify all Members.
- 10.4. No Other Warranties. ALL MEMBERS AND THEIR AFFILIATES AND REPRESENTATIVES ACKNOWLEDGE THAT, EXCEPT AS PROVIDED UNDER SECTION 10.3, THE SPECIFICATIONS AND UPDATES, AND ALL CONTRIBUTIONS TO SPECIFICATIONS AND UPDATES, ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE MEMBERS, THEIR AFFILIATES AND REPRESENTATIVES, THE AMWA EXECUTIVE DIRECTOR, THE AMWA BOARD OF DIRECTORS, AND AMWA EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR OR INTENDED PURPOSE, OR ANY OTHER WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION OR UPDATE, OR CONTRIBUTION, EXCEPT AS PROVIDED UNDER SECTION 10.3.
- 10.5. Limitation of Liability. IN NO EVENT WILL AMWA OR ANY OF ITS CONSTITUENT PARTS (INCLUDING, BUT NOT LIMITED TO, THE AMWA BOARD OF DIRECTORS THE AMWA EXECUTIVE DIRECTOR, MEMBERS, OR THEIR AFFILIATES OR REPRESENTATIVES) BE LIABLE TO ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF PROFITS, LOSS OF USE, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS POLICY OR ANY RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

- 10.6. Publicity. Each Member consents to the public disclosure and use of its name for purposes of publicly promoting the Specifications and Updates, including the use in statements regarding the compliance of the Member's Licensee's Products with a Specification or Update, unless such Member explicitly indicates in writing to the AMWA Executive Director such Member's refusal to consent to such public disclosure and use of its name.