

ETSI Industry Specification Group Agreement

relating to ISG MOI

(Measurement Ontology for IP traffic)

between

The European Telecommunications Standards Institute (hereinafter referred to as "ETSI"), a French non-profit making *association* organized under the law of July 1, 1901, located at 650 route des Lucioles, 06921 Sophia Antipolis Cedex, France, represented by its Director-General, Luis Jorge Romero (hereinafter referred to as the "Director-General")

and

The member specifically identified in Annex 1 hereof (hereinafter referred to as the "Member").

Whereas:

- A. ETSI is a standard-setting organization in the field of telecommunications, officially recognized by the European Commission as a European Standards Organisation;
- B. The Member is, as specified in Annex 1 hereof, either (i) a full or associate member of ETSI wishing to participate in the work of the Industry Specification Group identified in Annex 2 hereof (hereinafter, the "ISG"), or (ii) has applied for full or associate ETSI membership and has been authorized by the Director-General to participate in the work of the ISG;
- C. The Director-General has approved the creation of the ISG and its Terms of Reference;
- D. The Member wishes to participate in the work of the ISG as a member (as this term is defined below) and, in accordance with clause 3.4 of the ETSI Technical Working Procedures, has agreed to enter into and be bound by the terms of this Industry Specification Group Agreement (hereinafter, the "ISG Agreement").

It is agreed as follows:

- 1. **Incorporation by reference and definitions**
- 1.1 Incorporation by reference

Subject to Discretionary Decisions, the decision making processes set forth in Article 5 of this ISG Agreement and any authorized deviations from the ETSI Technical Working Procedures provided under Article 6 of this ISG Agreement, the parties hereby agree to be bound by and comply with the terms and rules relating to the creation, organization, operation and cessation applicable to Industry Specification Groups set forth in the ETSI Directives of January 2009, including the ETSI Guidelines for Antitrust Compliance, and their subsequent versions and evolutions (hereinafter, the "ETSI Directives", available at <http://portal.etsi.org/directives/home.asp>), and the Terms of Reference, which shall be incorporated by reference and form an integral part hereof. All capitalized terms and expressions not otherwise defined herein shall have the meaning ascribed to them in the ETSI Directives.

1.2 Definitions

In this ISG Agreement, all capitalized terms and expressions not otherwise defined herein shall have the meaning ascribed to them in the ETSI Directives, and, unless otherwise required by the context:

- (a) "Additional Costs" shall have the meaning ascribed to it in Article 3.1(c) of this ISG Agreement;
- (b) "budget year" shall mean a calendar year, it being provided that the first budget year shall mean the period between the date of the approval of the creation of the ISG and the Terms of Reference by the Director-General and December 31 of that year;
- (c) "Director-General" shall have the meaning ascribed to it in the presentation of the parties;
- (d) "Discretionary Decisions" shall have the meaning ascribed to it in Article 5.1 of this ISG Agreement;
- (e) "ETSI Directives" shall have the meaning ascribed to it in Article 1.1 of this ISG Agreement;
- (f) "ETSI IPR Policy" shall have the meaning ascribed to it in Article 2 of this ISG Agreement;
- (g) "Initial Resource Requirements" shall have the meaning ascribed to it in Article 3.1(a) of this ISG Agreement;
- (h) "ISG Budget" shall have the meaning ascribed to it in Article 3.1(b) of this ISG Agreement;
- (i) "member" shall mean, when used in relation to the ISG, any person or legal entity participating in the work of the ISG other than an Observer or a Counsellor and who is a full or associate member of ETSI or an applicant to full or associate ETSI membership authorized to participate in the work of the ISG by the Director-General;
- (j) "Member" shall have the meaning ascribed to it in the presentation of the parties; and
- (k) "Terms of Reference" shall mean those Terms of Reference (as such expression is defined in the ETSI Directives) approved by the Director-General on the date set forth in Annex 2 hereof as well as their subsequent versions and evolutions, setting out, *inter alia*, the purpose, scope, initial resource requirements and organization of the ISG.

2. Intellectual property

The Member agrees to the terms of, and shall abide by, the ETSI IPR Policy set forth in Annex 6 of the ETSI Rules of Procedure of 26. November 2008 and their subsequent versions and evolutions (hereinafter, the "ETSI IPR Policy"), and to treat any specifications produced by the ISG as Technical Specifications under the ETSI IPR Policy. Upon request of ETSI, the Member shall promptly execute any documents and do all things that are required or desirable in order to give effect to, perfect or enforce the assignments or licenses of intellectual property rights provided for or contemplated under the ETSI IPR Policy. The Member agrees that its undertakings under the ETSI IPR Policy and this Article 2 may receive specific performance and waives any right to claim the benefit of the provisions of Article 1142 of the French Civil Code in this respect.

3. Operational costs

3.1 Budget

The costs of operation of the ISG shall comprise the following elements:

- (a) initial resource requirements for the first budget year as set forth in the Terms of Reference (hereinafter, the "Initial Resource Requirements");
- (b) a budget setting out the costs of operation of the ISG (beyond the costs of basic administrative support provided by the ETSI Secretariat pursuant to Article 4 of this Agreement) established for each budget year by the members of the ISG (hereinafter, the "ISG Budget"), which the Chairman of the ISG shall notify to ETSI at the latest on November 30 of each year;
- (c) additional costs not accounted for in the ISG Budget which the members of the ISG may agree to incur during the course of each budget year (hereinafter, the "Additional Costs"), which shall be notified to ETSI by the Chairman of the ISG.

ETSI shall incur the costs provided for in the Initial Resource Requirements and the ISG Budget, provided however that (i) ETSI shall only incur the costs provided for in the ISG Budget under the condition that such ISG Budget has been notified to ETSI pursuant to Article 3.1(b) of this ISG Agreement, and (ii) ETSI may, at its discretion, refuse to incur costs under certain items provided for in the ISG Budget to the extent that they bear no direct relationship to the purpose or scope of the ISG set forth in the Terms of Reference.

ETSI shall only incur Additional Costs at its discretion.

The members of the ISG shall be responsible for any costs provided for in the ISG Budget or any Additional Costs which have not been approved by ETSI or which ETSI has refused to incur, pursuant to separate arrangements among them. The Member shall be solely liable for any cost it incurs in relation to the ISG and expressly acknowledges that ETSI shall have no liability in that regard and no obligation to reimburse such costs.

Any costs incurred by ETSI under the Initial Resource Requirements, the ISG Budget and the Additional Costs shall be invoiced by ETSI to the members of the ISG pursuant to Article 3.3 of this ISG Agreement.

Except as expressly provided above or in Article 4 of this ISG Agreement, ETSI shall have no obligation to incur any costs for the operation the ISG.

3.2 Allocation of costs

Unless otherwise provided for in Annex 3 hereof, the Member agrees that all members of the ISG shall contribute equally to the Initial Resource Requirements, the ISG Budget and the Additional Costs, and that ETSI shall be entitled to invoice the Member on that basis pursuant to Article 3.3 of this ISG Agreement.

[The parties however agree that the members of the ISG may decide to modify the allocation of costs among the members of the ISG. Such decision shall be notified by the Chairman of the ISG to ETSI and become effective as from the date of its receipt by ETSI.]

In the event that the Member joins the ISG during the course of a budget year, its contribution to the costs of the operation of the ISG for the remainder of the budget year shall be decided by the members of the ISG pursuant to a decision taken in accordance with the process set forth in Article 5.3 of this ISG Agreement in which the Member shall take part and which shall be notified by the Chairman of the ISG to ETSI and become effective as from the date of its receipt by ETSI.

3.3 Invoices

ETSI shall invoice quarterly the amounts owed by the Member corresponding to its contribution to the Initial Resource Requirements or the ISG Budget.

ETSI shall be entitled to invoice the amounts owed by the Member corresponding to its contribution to the Additional Costs as from the first day of the month after which the Additional Costs have been notified to ETSI by the Chairman of the ISG.

The amounts invoiced by ETSI shall be payable by the Member upon presentation of the invoice to the Member.

4. **Secretariat support**

The ETSI Secretariat shall provide, at no additional cost to the members of the ISG, basic administrative support as described in the Terms of Reference.

The Chairman of the ISG may request that the ISG receive additional administrative support from the ETSI Secretariat, provided that ETSI agrees and:

- (a) either the members of the ISG agree to provide voluntary contributions to cover the costs of such additional support and the ETSI Secretariat shall only provide the requested additional administrative support after receipt by ETSI of all payments corresponding to such contributions;
- (b) or resources corresponding to such additional support are approved by the ETSI Board upon petition by the Chairman of the ISG.

5. **Decision making**

5.1 Discretionary Decisions

The ISG shall be operated pursuant to the rules set forth in the ETSI Technical Working Procedures, provided however that the members of the ISG may take decisions on issues concerning its organizational structure, the Terms of Reference of its Working Groups, the approval of draft ETSI Group Specifications, the operational costs of the ISG pursuant to Article 3 of this ISG Agreement, and more generally, any matter which is left at their discretion under the ETSI Directives (hereinafter, the "Discretionary Decisions").

5.2 General decision making process

In accordance with clause 3.7 of the ETSI Technical Working Procedures, and subject to the provisions of Articles 5.3 and 1.1 of this ISG Agreement, the Member agrees that the Discretionary Decisions taken by the members of the ISG shall be binding upon the Member when taken according to the rules laid down in clause 1.7 of the ETSI Technical Working Procedures for Technical Bodies, except for any variations provided for in Annex 4 hereof. The Member undertakes to comply with all applicable laws and regulations, including Community and national competition laws and regulations, and to refrain from implementing any discriminatory or exclusionary decision making process in the context of the ISG.

5.3 Decisions concerning operational costs

Decisions concerning (i) the ISG Budget under Article 3.1(b) of this ISG Agreement, (ii) Additional Costs under Article 3.1(c) of this ISG Agreement, and (iii) the allocation of costs among members of the ISG under Article 3.2 of this ISG Agreement, shall be binding upon the Member when taken by the members of the ISG pursuant to a unanimous decision.

6. Authorized deviations from the ETSI Technical Working Procedures

The ISG shall operate pursuant to the rules set forth in the ETSI Technical Working Procedures, with the exceptions provided in Annex 5 hereof.

7. No assignment

The rights and obligations of the Member under this ISG Agreement are personal to the Member and shall not be assigned (whether absolutely or by way of security and whether in whole or in part), sub-contracted, delegated, transferred, pledged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever (each of the above an "assignment") and any such purported assignment in contravention of this clause shall be ineffective.

8. Limitation of liability

ETSI, its officers, employees and agents shall have no liability to the Member in respect of any actual or expected loss of profits, loss of revenue, loss of goodwill, loss of opportunity, loss of business, or increased costs or expenses. ETSI's total liability to the Member under this ISG Agreement shall be limited to the amounts paid by the Member to ETSI pursuant to this ISG Agreement in the budget year during which the Member's claim against ETSI arose.

9. Term and termination**9.1 Date of Termination**

This ISG Agreement shall enter into force as from the date of its execution by the parties and shall remain effective until the earlier of (i) the date of cessation of the ISG, (ii) the date of the Member's resignation from the ISG, (iii) the date of the Member's resignation or expulsion from ETSI, (iv) the date of receipt of a notice of termination sent by ETSI at its discretion in the event that the Member commits a material breach of any of its obligations under this ISG Agreement (including the ETSI Directives and the Terms of Reference incorporated by reference pursuant to Article 1.1 of this ISG Agreement) and fails to remedy the same within thirty (30) days after receiving notice to do so (hereinafter, the "Date of Termination"). For the purpose of determining the Date of Termination:

- (a) the date and conditions of cessation of the ISG shall be decided by the Director-General pursuant to Article 8.3.9 of the ETSI Rules of Procedure and clause 3.2 of the ETSI Technical Working Procedures;
- (b) the Member may resign as member of the ISG at any time by sending a notice of resignation to the Chairman of the ISG and the Director-General, and the date of the Member's resignation from the ISG shall be deemed to be the date of receipt of the notice of resignation by the Director-General;
- (c) the date of the Member's resignation or expulsion from ETSI shall be determined pursuant to Article 1.4 of the ETSI Rules of Procedure;
- (d) the notice of termination sent by ETSI in the event of a material breach of its obligations by the Member under this ISG Agreement shall be sent to the Chairman of the ISG and the Member, and the date of receipt of the notice of termination shall be deemed to be the date of its receipt by the Member.

9.2 Effect of termination

Upon occurrence of the Date of Termination, this ISG Agreement shall automatically terminate and the Member shall cease to participate in the work of the ISG and to contribute to the costs of operation of the ISG in accordance with the provisions of Article 3 of this ISG Agreement, and shall no longer receive any benefit or information as member of the ISG, it being provided however that termination of this ISG Agreement for any reason:

- (a) shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the Date of Termination and the Member shall remain bound to duly perform and complete any and all obligations which shall have arisen out of or in connection with this ISG Agreement prior to the Date of Termination, including any transfer or license of intellectual property rights (or undertakings to transfer or license intellectual property rights) pursuant to the ETSI IPR Policy and Article 2 of this ISG Agreement;
- (b) shall not affect any right or obligation of any party under the ETSI Directives, which shall continue into force after the termination of this ISG Agreement (except in the event of the Member's resignation or expulsion from ETSI, in which case the provisions of Article 1.4 of the ETSI Rules of Procedure shall apply); and
- (c) shall not prejudice the rights or remedies which any party may have in respect of any breach of the terms of this ISG Agreement prior to the Date of Termination.

9.3 Cessation of the ISG

In the event of cessation of the ISG, the parties agree that:

- (a) any amounts provided for in the Initial Resource Requirements, the ISG Budget, the Additional Costs or Article 4(a) of this ISG Agreement which have been contributed by the members of the ISG but have not yet been committed to be paid by ETSI prior to the date of cessation of the ISG (as determined pursuant to Article 9.1(a) of this ISG Agreement) shall be distributed among the members of the ISG pro rata according to the share of each member's contribution;
- (b) the members of the ISG shall, prior to the date of cessation of the ISG (as determined pursuant to Article 9.1(a) of this ISG Agreement), submit to the Director-General recommendations concerning the maintenance of the ETSI deliverables produced by the ISG.

10. Notice

A notice (including any approval, consent, request, or other communication) in connection with this ISG Agreement must be in writing, in the English language, and left at the address of the addressee or sent by pre-paid registered delivery with return receipt requested/express mail (air mail if posted from or to a place outside France) to the address of the addressee or sent by facsimile to the facsimile number of the addressee, and marked for the attention of the person so specified, or to such other address or facsimile number, and/or marked for the attention of such other person as the relevant party may from time to time specify by notice given in accordance with this clause, and, for the avoidance of doubt, must not be sent by e-mail.

The relevant details of the Member are set forth in Annex 1 hereof and the relevant details of ETSI are as follows:

Address: 650 route des Lucioles, 06921 Sophia Antipolis Cedex, France

Facsimile:

Attention:

In the absence of evidence of earlier receipt, a notice shall take effect and be deemed received:

- (a) in the case of a notice left at the address of the addressee, upon delivery at that address;
- (b) in the case of a posted letter, the seventh day after posting; and
- (c) in the case of a facsimile, on production of a transmission report from the machine

from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

A notice received or deemed to be received on a day which is not a Business Day or after 5 p.m. on any Business Day according to local time in the place of receipt, shall be deemed to be received on the next following Business Day. For the purposes of this clause, "Business Day" shall mean a day not being a Saturday on which trading banks are generally open for business in the place where the notice is received.

11. **Severance/unenforceable provisions**

If any provision or part of this ISG Agreement is deemed void or unenforceable due to applicable law, it shall be deemed to be deleted and the remaining provisions of this ISG Agreement shall continue in full force and effect.

12. **Variation and waiver**

12.1 Variation

Subject to the ETSI Directives and the Terms of Reference, this Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof. No variation (including any supplement, deletion or replacement, however effected) of this ISG Agreement shall be effective unless it is in writing (which for this purpose, does not include e-mail) signed by or on behalf of each of the parties to this ISG Agreement.

12.2 Waiver

The rights and remedies of the parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the parties. No single or partial exercise of any right or remedy prevents any further or other exercise thereof or the exercise of any other right or remedy.

13. **Third party beneficiary (*stipulation pour autrui*)**

The Member shall have sight of and shall accept the terms and conditions provided for the benefit of members of the ISG in any agreement (hereinafter, the "ISG Participant Agreement") entered into between ETSI and any Observer, person or legal entity who is not a full or associate member of ETSI and which has been invited or authorized by the Chairman of the ISG to attend the meetings of the ISG (hereinafter, the "Participant"). As a result of such acceptance, all provisions of such ISG Participant Agreement provided for the benefit of the members of the ISG, acting individually or collectively, shall be binding upon the Participant and may be enforced by the Member pursuant to Article 1121 of the French Civil Code.

14. **Governing law, jurisdiction and service of process**

14.1 Governing law

This Agreement shall be governed by and interpreted in accordance with French law.

14.2 Jurisdiction

Each party irrevocably agrees for the benefit of ETSI that the *Tribunal de Grande Instance de Grasse* shall have jurisdiction in relation to any claim, dispute or difference concerning this ISG Agreement and any matter arising therefrom.

The submission to the jurisdiction of the *Tribunal de Grande Instance de Grasse* shall not (and shall not be construed so as to) limit the right of ETSI to bring legal proceedings in any other court of competent jurisdiction including without limitation the courts having jurisdiction by

reason of the Member's domicile. Legal proceedings by ETSI in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether by way of substantive action on the merits, emergency or provisional relief, injunction, enforcement or otherwise.

14.3 Service of process

Each party agrees that without preventing any other mode of service, any document in an action (including, but not limited to, a claim form or any other document to be served pursuant to the provisions of the French Code of Civil Procedure) may be served on any party at its address for service of notices under this ISG Agreement and each party undertakes to notify the other party in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices this ISG Agreement.

Made in two (2) originals
In [place of execution]
On [date]

For ETSI

For the Member

Luis Jorge Romero
Director-General

[signatory's name]
[signatory's title]

Annex 1

Identification of the Member

- Full name of the organization:
- Nationality:
- Legal form:
- Identification number:
- Notification details:

Address:

Facsimile:

Attention:

The Member represents and warrants that it is [a [full]/[associate] member of ETSI] / [has applied for [full]/[associate] ETSI membership and has been authorized by the Director-General to participate in the work of ISG on a provisional basis].

The representative of the Member whose name and title appear on the signature page of this ISG Agreement has been duly authorized for the purposes hereof.

Annex 2

Identification of the ISG

- Name of the ISG: MOI (Measurement Ontology for IP traffic)
- Names of the founding members of the ISG:
 - Consorzio Nazionale Interuniversitario per le Telecomunicazioni
 - Telefónica
 - Universidad Autónoma de Madrid
 - Universidad Pública de Navarra
 - Waterford Institute of Technology
- Date of approval of the creation of the ISG and the Terms of Reference by the Director-General:

Annex 3

Allocation of the costs of operation among members of the ISG

No costs foreseen for the year 2009.

Annex 4**Variations in the general decision making process****TWP 3.7 Decision Making**

The decision making procedures as detailed in clause 1.7 shall be used, with the following modifications:

1.7 Decision making**1.7.1 Principles of decision making**

The MOI ISG shall endeavour to reach Consensus on all issues, including the approval of draft ETSI deliverables and the adoption of Group Specifications. If Consensus cannot be achieved, the Chairman can decide to take a vote which may be performed by a secret ballot. Votes may be conducted during an ISG meeting provided its subject is included in the meeting agenda otherwise the vote must be postponed to the next meeting and scheduled in the agenda thereof. Vote results shall be evaluated by the Chairman on the basis of one ISG member, one vote. Technical decisions will be approved provided either

- Equal or more than 90% votes of the ballot agree without any quorum consideration.
- Equal or more than 50% votes issued by the members participating in the meeting agree whenever this corresponds to more than 33% of the total members included in the ISG MOI membership list.

Decisions concerning (i) the election of MOI ISG Officials, (ii) the ISG Budget under Article 3.1(b) of the ISG Agreement, (iii) Additional Costs under Article 3.1(c) of the ISG Agreement, and (iv) the allocation of costs among members of the ISG under Article 3.2 of the ISG Agreement, require unanimous support. Otherwise, a proposal shall be deemed to be approved if 66 % of the votes cast are in favour whenever the casted votes represent more than 50% the total members of the ISG MOI. Failure to submit a vote and invalid votes shall not be included in determining the number of votes cast.

For interpreting the result of an **election** for the ISG MOI, more than 50% of the total members included in the MOI ISG membership list must agree.

MOI ISG members are eligible as MOI ISG Officials only if they have participated in at least one of the two meetings preceding the one in which the ballot takes place, except for the first MOI ISG meeting.

Observers and participants do not have the right to vote.

1.7.1.1 Voting during a MOI Industry Specification Group meeting

The following procedures apply for voting during a MOI ISG meeting:

- Before voting, a clear definition of the issues shall be provided by the chairman.
- Voting members shall only be entitled to one vote per member.
- If a member has more than one representative present, only one representative may vote.
- MOI ISG members are eligible (for Technical bodies) only if they have participated in at least one of the two meetings preceding the one in which the ballot takes place, except for the first MOI ISG meeting.
- In the case of electing ISG Technical Body members, when more than one candidate is presented, the Chairman is responsible for running a secret ballot.
- The result of the ballots shall be recorded in the meeting report.
- Voting by correspondence is not allowed.

Annex 5**Authorized Deviations from the ETSI Technical Working Procedures**

The ISG shall use as its working procedures the ETSI Technical Working Procedures, with the following modifications:

TWP 3.4 Participation in the work of the Industry Specification Group

The text of clause 3.4 of the ETSI Technical Working Procedures is modified as indicated below:

On an exceptional and temporary basis, Observers and non-members which have applied to attend MOI ISG meetings, may be invited or authorized by the Chairman to attend its meetings, provided that the presence of this Observer or non-member is justified by a legitimate interest with regard to the work currently in progress.

The application to attend MOI ISG meetings should be done in writing by the Observer, together with a positive recommendation of one member of the MOI ISG, addressed to the Chairman of the ISG MOI.

The authorization or refusal of the Chairman shall be made to such an applicant in writing and shall contain appropriate justification of the Chairman's decision. The Industry Specification Group Chairman shall notify the ETSI Director-General of the decision. Observers or non-members authorized to attend Industry Specification Group meetings may participate without the right to vote and shall pay a "per meeting fee" as specified in this document (**Dues** section).

Observers or non-members of ETSI must agree to the ISG Participant Agreement. This Agreement will be terminated if the participant has not participated in any meetings of the ISG in a 18 month period. A revocation notice will be sent to the participant in this case. The ISG Chairman will periodically review the participation record of authorized Participants. In addition, ETSI members of the ISG MOI and the ETSI Director-General can promote a specific revocation for an Observer of the MOI ISG by addressing a written notification to the Chairman of the ISG MOI. The final decision about the concerned Observer participation in the ISG MOI will be voted by its members.