

ETSI ISG Participant 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 participant specifically identified in Annex 1 hereof (hereinafter referred to as the "Participant").

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 Participant is, as specified in Annex 1 hereof, either a Counsellor, an Observer, or a person or legal entity which, even though it is not a full or associate member of ETSI or an applicant to full or associate ETSI membership, wishes to participate in the work of the Industry Specification Group identified in Annex 2 hereof (hereinafter, the "ISG");
- C. The Director-General has approved the creation of the ISG and its Terms of Reference;
- D. The Participant has applied to attend meetings of the ISG and has been invited or authorized by the Chairman of the ISG to attend such meetings on the condition that the Participant enter into this ISG Participant Agreement, which terms and conditions have been agreed to by the Participant.

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 4 of this ISG Participant Agreement and any authorized deviations from the ETSI Technical Working Procedures provided under Article 6 of this ISG Participant 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.

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) "Director-General" shall have the meaning ascribed to it in the presentation of the parties;
- (b) "Discretionary Decisions" shall have the meaning ascribed to it in Article 5.1 of this ISG Participant Agreement;
- (c) "ETSI Directives" shall have the meaning ascribed to it in Article 1.1 of this ISG Participant Agreement;
- (d) "ETSI IPR Policy" shall have the meaning ascribed to it in Article 2 of this ISG Participant Agreement;
- (e) "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;
- (f) "Member" shall have the meaning ascribed to it in the presentation of the parties; and
- (g) "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 Participant 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 Participant 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 Participant 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. Participant contribution

The Participant shall pay to ETSI a fee to attend each meeting of the ISG set forth in Annex 3 hereof, which may be invoiced by ETSI up to one 1 month prior to the occurrence of each meeting of the ISG which the Participant is scheduled to attend, and which shall be payable upon presentation of the invoice to the Participant.

The Participant agrees that such fee may be modified by a decision of the members of the ISG (for the purpose of this ISG Participant Agreement, the term "member" used in relation to the ISG shall not include Observers, Counsellors or any participants in the ISG who are neither full or associate members of ETSI nor applicants to full or associate ETSI membership authorized to participate in the work of the ISG by the Director-General). Such decision shall be taken pursuant to the general decision making process set forth under Article 5.2 of this ISG Participant Agreement and notified by the Chairman of the ISG to ETSI and the Participant and become effective as from the date of its receipt by the Participant.

4. Terms of attendance

4.1 No vote

The Participant may attend meetings of the ISG only pursuant to an invitation or authorization of the Chairman of the ISG, and is only authorized to access materials provided to the members of the ISG in relation to such meetings if such access is authorized by the Chairman of the ISG. The Participant shall not be entitled to vote or participate in any decision taken by the members of the ISG. The Participant may provide observations to the members of the ISG upon request from the Chairman of the ISG.

4.2 Confidentiality

- (a) The Participant undertakes that (unless the prior written consent of the members of the ISG shall first have been obtained pursuant to the general decision making process set forth under Article 5.2 of this ISG Participant Agreement) it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information disclosed to the Participant in relation to its attendance of the meetings of the ISG. For the purposes of this Article 4.2, "confidential information" shall include:
- (i) information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the members of the ISG or ETSI;
 - (ii) any information which is expressly indicated to be confidential or is imparted by one member of the ISG or ETSI in circumstances importing an obligation of confidence;
 - (iii) any information which the Participant may from time to time receive or obtain (orally or in writing or in disk or electronic form) as a result of entering into, or performing its obligations pursuant to, this ISG Participant Agreement or attending the meetings of the ISG (including but not limited to any meeting documents such as proposals, drafts, reports, etc.).
- (b) The consent of the members of the ISG under (a) above shall not be required for disclosure by the Participant of any confidential information:
- (i) to its officers, employees and agents, in each case, to the extent required to enable the Participant to carry out its obligations under this ISG Participant Agreement and who shall in each case be made aware by the Participant of its obligations under this ISG Participant Agreement and shall be required to observe the same restrictions on the use of the relevant information as are contained in this Article 4.2;
 - (ii) to its professional advisers who are bound to such party by a duty of confidence which applies to any information disclosed;
 - (iii) to the extent required by applicable law or by the regulations of an administrative or regulatory authority to which the Participant is subject or pursuant to any order of court or other competent authority or tribunal;
 - (iv) to the extent that the relevant confidential information is in the public domain otherwise than by breach of this ISG Participant Agreement by the Participant;
 - (v) which is disclosed to the Participant by a third party who is not in breach of any undertaking or duty as to confidentiality whether express or implied; or

- (vi) which the Participant can prove that it lawfully possessed prior to obtaining it from ETSI or a member of the ISG.
- (c) If the Participant becomes required, in circumstances contemplated by Article 4.2(b)(iii), to disclose any information, the Participant shall give to ETSI and the members of the ISG such notice as is practical in the circumstances of such disclosure and shall co-operate with ETSI and the members of the ISG and take such steps as they may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

5. **Decision making**

5.1 Discretionary Decisions

The Participant recognizes and accepts that 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 Specification, the Participant contribution pursuant to Article 3 of this ISG Participant 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 Article 1.1 of this ISG Participant Agreement, the Participant agrees that the Discretionary Decisions taken by the members of the ISG shall be binding upon the Participant 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.

6. **Authorized deviations from the ETSI Technical Working Procedures**

The Participant recognizes and accepts that 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 Participant under this ISG Participant Agreement are personal to the Participant 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 Participant 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 Participant under any circumstance arising from or in relation to this ISG Participant Agreement shall be limited to the amounts paid by the Participant to ETSI pursuant to this ISG Participant Agreement.

9. Term and termination

9.1 Date of Termination

This ISG Participant 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 Participant's resignation from the ISG, (iii) the date of the revocation of the invitation or authorization of the Chairman of the ISG pursuant to which the Participant was authorized to attend meetings of the ISG, (iv) the date of receipt of a notice of termination sent by ETSI at its discretion in the event that the Participant commits a material breach of any of its obligations under this ISG Participant Agreement (including the ETSI Directives and the Terms of Reference incorporated by reference pursuant to Article 1.1 of this ISG Participant Agreement) and fails to remedy the same within thirty (30) days after receiving notice to do so (hereinafter, the "Date of Termination"), and (v) the date of receipt by ETSI of an application sent by the Participant for full or associate membership in ETSI/[that the Participant becomes a full or associate ETSI member. 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 Participant may resign from 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 Participant'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 Chairman of the ISG may revoke at any time the invitation or authorization to attend meetings of the Participant by sending a notice of revocation to the Participant and the Director-General, and the date of the revocation shall be deemed to be the date of receipt of the notice of revocation by the Participant; and
- (d) the notice of termination sent by ETSI in the event of a material breach of its obligations by the Participant under this ISG Participant Agreement shall be sent to the Chairman of the ISG and the Participant, and the date of receipt of the notice of termination shall be deemed to be the date of its receipt by the Participant.

9.2 Effect of termination

Upon occurrence of the Date of Termination, this ISG Participant Agreement shall automatically terminate and the Participant shall cease to attend meetings of the ISG, and shall no longer receive any information as Participant of the ISG, it being provided however that termination of this ISG Participant 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 Participant shall remain bound to duly perform and complete any and all obligations which shall have arisen out of or in connection with this ISG Participant 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 Participant Agreement;
- (b) shall not affect any right or obligation of any party under Article 4.2 of this ISG Participant Agreement, which shall survive in full force and effect for a period of [five (5)] years after the Date of Termination; 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 Participant Agreement prior to the Date of Termination.

10. Notice

A notice (including any approval, consent, request, or other communication) in connection with this ISG Participant 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 Participant 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 Participant Agreement is deemed void or unenforceable due to applicable law, it shall be deemed to be deleted and the remaining provisions of this ISG Participant 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 Participant 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 Participant 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*)

As a condition to the Participant's attendance to meetings of the ISG, the Participant recognizes and accepts that all provisions of this ISG Participant Agreement concerning the members of the ISG, acting individually or collectively, are provided for their benefit, have been accepted by each such member pursuant to the terms of the ISG Agreement entered into between each member of the ISG and ETSI, and, as a result, are binding upon the Participant and may be enforced by the members of the ISG 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 Participant 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 Participant'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 Participant 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 Participant Agreement.

Made in two (2) originals

In [place of execution]

On [date]

For ETSI

For the Participant

Luis Jorge Romero
Director-General

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

Annex 1

Identification of the Participant

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

Address:

Facsimile:

Attention:

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

The Participant is [an Observer] / [not a full or associate member of ETSI or an applicant to full or associate ETSI membership].

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

Participant contribution

The Participant shall pay to ETSI a per-meeting attendance fee amounting to € 100.- per person and per meeting day, excluding taxes.

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.