



## POLICY REGARDING INTELLECTUAL PROPERTY

Effective February 20, 2008

### 1. INTRODUCTION

#### 1.1. Purpose of this Policy

ODVA seeks to ensure that, to the greatest extent practicable, the technical specifications and technical standards (collectively, the "Specifications") it develops, as well as the other work product it develops, including, but not limited to, white papers or other publications, test plans, software applications, and developer toolkits ("Other ODVA Material"), remain vendor- neutral, open, and vibrant, while at the same time recognizing and protecting the legitimate intellectual property rights of its Members and other contributors of intellectual property. The purpose of this policy pertaining to intellectual property ("Policy") is to provide clear rules regarding the rights and obligations of all ODVA Members and other ODVA contributors regarding intellectual property as it relates to ODVA Specifications and Other ODVA Material, in order to promote the development, adoption, and the widest possible deployment of the best Specifications and Other ODVA Material by Licensed Vendors.

#### 1.2. Scope of this Policy

This document is the complete and exclusive statement of the ODVA Policy, consistent with the Bylaws, and applies to and governs all ODVA activities. All ODVA Members shall be subject to this Policy. This Policy supersedes: (a) any previous version of this Policy, including, but not limited to, the "Guidelines for ODVA Members Concerning Intellectual Property Ownership" first published by ODVA in 1995, and the "ODVA Intellectual Property Policy" first published by ODVA in 1997; (b) any previous version of ODVA's Participation Agreement for Special Interest Groups (also known as a "Special Interest Group Participation Agreement" or a "SIG Participation Agreement"); (c) any previous version of ODVA's Participation Agreement for Joint Special Interest Groups (also known as a "Joint Special Interest Group Participation Agreement" or a "JSIG Participation Agreement"); (d) all similarly named or similarly intended prior agreements, documents, and policies; and (e) any other documents attempting to define, interpret, explain, or clarify such prior agreements, documents, or policies. In addition, in order to ensure that all Members have uniform rights and responsibilities as Licensed Vendors of the Final Specifications in Compliant Products, for any Members that also are parties to one or more of any previous version of ODVA's Terms of Usage Agreement ("Previous TOU"), this Policy supersedes such Previous TOU and all such Members will be entitled to the rights and subject to the obligations of the ODVA Revised Terms of Usage Agreement then in effect as of the Effective Date or any subsequent version of the Revised Terms of Usage Agreement to which such Member agrees; provided, however, that, in the event of any inconsistency between this Policy and any Revised Terms of Usage Agreement, this Policy shall govern. Notwithstanding the foregoing, ODVA may have entered into, and may in the future enter into, other intellectual property assignment, licensing, or other agreements with Members and/or other Persons that operate independently of this Policy, and this Policy shall not affect the validity or enforceability of such other agreements in any respect.

#### 1.3. Effect of Changes to this Policy

The Board of Directors of ODVA ("Board") may amend and restate this Policy at any time or from time to time. Any such revised Policy shall become effective only after: (a) ODVA notifies all Members in writing of such revisions, which notice shall include reasonable detail concerning the nature of the revisions; (b) ODVA makes reasonable efforts to notify all registered Participants in writing of such revisions, which notice shall include reasonable

detail concerning the nature of the revisions; and (c) ODVA posts a link to the revised Policy on the ODVA website (currently <http://www.ODVA.org/>) for all existing Members and Participants and potential new Members and Participants to consider. The effective date of the revised Policy shall be the date the foregoing three conditions are met or, if later, the date specified by the Board. ODVA shall clearly indicate the effective date of the revised Policy in its notices to Members and Participants under (a) and (b) above, alongside the website link under (c) above, and in the revised Policy itself. The above-written notice requirement may be satisfied by delivery via e-mail sent to the contact addresses for a Member or Participant on file with ODVA, or by any other regular means of communication to a Member's or Participant's address on file with ODVA. Notwithstanding the effective date of any revised Policy, ODVA shall afford existing Members at least thirty (30) calendar days from the date of ODVA's delivery of notice of such revisions before existing Members will become bound by the revised Policy. Any existing Member that does not provide written notice to ODVA withdrawing its membership in ODVA prior to the end of this 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 any express, written agreement to such revised Policy by such Member. Any existing Member that withdraws or that is terminated from ODVA, pursuant to the terms of Section 7.1, prior to the end of this thirty (30)-day period will remain bound by the terms of the Policy as it was in effect prior to the effective date of the revised Policy. Any entity becoming a Member after the effective date of such revised Policy shall become bound by the revised Policy immediately upon becoming a Member. However, ministerial changes to this Policy, such as proofreading corrections or formatting changes, may be executed by ODVA and shall be immediately effective as to all Members and Participants, so long as a revised version of the Policy containing such ministerial changes is promptly posted on the ODVA website.

#### **1.4. Good Faith and Fair Dealing Requirement**

All Members, Participants, and other Persons involved in ODVA activities are required to act in good faith at all times; to understand and comply with the rules and obligations of this Policy; to avoid fraudulent, deceptive, or like behavior; and, to the greatest extent possible, to work towards developing Specifications or Other ODVA Material that are embraced and widely deployed by the marketplace.

## **2. DEFINITIONS**

**2.1. "Affiliate"** means, without limitation, any individual, corporation, partnership, sole proprietorship, joint venture, business unit or division, employee benefit plan, trust, or other enterprise that, directly or indirectly through one or more intermediaries, 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 from ODVA pursuant to the terms set forth in the withdrawal provisions in Section 7. "Control" means: (a) direct or indirect beneficial ownership of or the right to exercise decision-making authority with respect to (i) more than fifty percent (50%) of the voting stock or equity in an entity; or (ii) 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; or (b) actual working control of an entity, in whatever manner exercised, including, but not limited to, the right, through a management agreement or otherwise, to direct how the intellectual property of an entity is protected, used, or licensed to others or how the day-to-day operations of the entity are conducted.

**2.2. "Bylaws"** means ODVA's bylaws, which are available on the ODVA website (currently <http://www.ODVA.org/>), as they may be amended from time to time.

- 2.3. "Compliant Products"** means only those specific portions of products (hardware, software, or combinations thereof), not necessarily the product as a whole, that implement and conform with all relevant required portions of a Final Specification.
- 2.4. "Contribution"** means any material, concept, data, suggestion, or other submission made to an ODVA group including, but not limited to, Special Interest Groups, in the process of developing a Specification or Other ODVA Material, for the purpose of proposing a new Draft Specification or Other ODVA Material, or proposing an addition to or modification of an existing Draft Specification, Final Specification, or Other ODVA Material (or portion thereof), regardless of where or how meetings are convened or work is conducted (such as physical meetings anywhere in the world, telephonic meetings or conference calls, Internet-based electronic meetings, discussion forums, or direct e-mail exchange), provided that the submission is in writing or other tangible form of expression (including in an e-mail or other electronic medium).
- 2.5. "Derivative Work"** means a work that is based upon a preexisting work protected under applicable copyright law, such as a revision, modification, translation, abridgement, condensation, expansion, compilation, or any other form in which such preexisting work may be recast, transformed, or adapted, and which, if prepared without authorization of the owner(s) of the copyright in such preexisting work, would constitute a copyright infringement.
- 2.6. "Draft Specification"** means any technical specification, specification enhancement, or other technical standard developed by a SIG or other ODVA group as it exists at any stage in its development prior to approval by the TRB as a Final Specification.
- 2.7. "Effective Date"** means the effective date of this Policy, as set forth at the beginning of this Policy.
- 2.8. "Essential Claims"** means all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of a Final Specification. A patent claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no commercially reasonable non-infringing alternative for implementing the Final Specification. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the Final Specification is first published by ODVA.

Notwithstanding the foregoing, the following are expressly excluded from and shall not be deemed to constitute Essential Claims:

- (a) any claims that may be contained in the same patent or patent application as Essential Claims but are not themselves Essential Claims as defined above;
- (b) claims that would be infringed only by:
  - (i) portions of any product and any combination of products (or portions of products) that are not necessary for conformance with any element of the Final Specification, including, but not limited to, any "required," "optional," or "suggested" element referred to in the Final Specification;
  - (ii) enabling technologies that may be necessary to make or use any product or portion thereof that conforms with the Final Specification and are not themselves expressly set forth in the Final Specification (*e.g.*, semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology, and the like); or

- (iii) the implementation or use of technology, specifications, or standards developed elsewhere (*i.e.*, outside of ODVA) and merely incorporated by reference into the body of the Final Specification; and
  - (c) design patents and design registrations (for purposes of explanation, "design patents" and "design registrations" refer to the branch of intellectual property law that protects the appearance of a product, apart from its usefulness or functionality, and would therefore not be "essential" for an implementer wishing to conform with the Final Specification).
- 2.9. "Final Specification"** means any technical specification or other technical standard adopted and approved for publication by the TRB as a final specification in accordance with the Bylaws and other specification development/adoption procedures (*e.g.*, DeviceNet™ Specification, EtherNet/IP™ Specification, CompoNet™ Specification, ControlNet™ Specification, and CIP Safety™ Specification).
- 2.10. "Identity Guidelines"** means the guidelines available on the ODVA website (currently <http://www.ODVA.org/>) that have been developed by ODVA to ensure the accurate and consistent use of its trademarks, logos, and other identity elements by third parties.
- 2.11. "Licensed Vendor"** means any Person that has executed or otherwise become bound by a Revised Terms of Usage Agreement, either by signing it and returning it to ODVA or through other means of assent specified by ODVA, including failure to opt out of such agreement after notice and a specified review period. All Members are deemed to be Licensed Vendors.
- 2.12. "Member"** means any company, organization, or other entity that applies for and is accepted by ODVA into any class of voting or nonvoting membership in accordance with the Bylaws. In addition, certain other Persons that are not formal Members of ODVA may, from time to time, be invited to take part in ODVA activities ("Invited Experts"). If any such Invited Expert makes a Contribution to a SIG or other ODVA group or attends a meeting of any SIG or other ODVA group (in person or by telephone), such Invited Expert (and any company, organization, or other entity s/he represents) shall also be deemed to be a "Member" solely for purposes of this Policy and to have, subject to Section 3.2.6, the responsibilities hereunder applicable to a Member, without voting rights or other benefits of ODVA membership, unless and until such Invited Expert's represented company, organization, or other entity formally becomes a Member of ODVA. Unless the context dictates otherwise (for example, in Section 1.3), use of the term "Member" in this Policy shall be deemed to include all of the Member's Participants.
- 2.13. "Non-Contributed Essential Claims"** means those Essential Claims that cover not a Member's *own* Contribution but either: (a) the Contribution of another party; or (b) material that is otherwise included in a Specification. Put differently, these are Essential Claims covering technology that a Member did not itself contribute to a Specification but which nonetheless became part of a Specification, such as through the Contribution of another Member.
- 2.14. "ODVA"** means ODVA, Inc.
- 2.15. "Other ODVA Material"** means any document that a SIG or other ODVA group may develop or receive from Members or other Persons from time to time, including, but not limited to, white papers or other publications, test plans, conformance plans, software applications, and developer toolkits, which are designed to assist in various ways with the development, explanation, testing, implementation, or other aspects of Draft Specifications or Final Specifications.
- 2.16. "Participant"** means an individual who is properly identified to the ODVA Executive Director as having authority to participate in ODVA or an ODVA group on behalf of the

Member organization (or an entity that is not yet a Member of ODVA) by which s/he is employed. Such notice may be conveyed to the ODVA Executive Director at any time by the Member (or other entity) at issue using ODVA's standard documents and/or procedures. The actions and statements of such individual(s) will be deemed to legally bind such Member (or such other entity) and/or its Affiliates.

- 2.17. **"Person"** means any individual, corporation, partnership, sole proprietorship, joint venture, trust, limited liability company, business association, governmental entity, or other entity.
- 2.18. **"RAND-R Patent License"** means a patent license that provides reasonable and non-discriminatory (*i.e.*, "RAND") terms and conditions and may also charge a reasonable fee, royalty (*i.e.*, "-R"), or other compensation to the licensee.
- 2.19. **"RAND-Z Patent License"** means the patent license granted by Members to ODVA (and, in turn, as a sublicense by ODVA to Licensed Vendors) under the reasonable and non-discriminatory (*i.e.*, "RAND") terms and conditions specified in Section 3.2.1, and by Licensed Vendors to ODVA (and, in turn, as a sublicense by ODVA to other Licensed Vendors) as specified in Section 3.2.3. The "-Z" extension indicates that this license requires "zero" royalties or other compensation.
- 2.20. **"Revised Terms of Usage Agreement"** means the agreement published by ODVA for use on or after the Effective Date, as set forth on the ODVA website (currently <http://www.ODVA.org/>), or any subsequent version of that agreement, that contains the licensing rights and obligations and other terms of use to which a Person must agree as a Licensed Vendor in order to implement a Final Specification in a Compliant Product.
- 2.21. **"Special Interest Group"** means a group approved by the TRB and consisting of two or more Members working on Specifications and/or Other ODVA Material in accordance with a work plan approved by the TRB. The term "Special Interest Group" also includes reference to ODVA's "Joint Special Interest Groups" and may be abbreviated by the acronym "SIG" for purposes of this Policy.
- 2.22. **"Specification,"** standing alone, means both Draft Specifications and Final Specifications.
- 2.23. **"TRB"** means the Technical Review Board of ODVA.

### 3. PATENT PROVISIONS

#### 3.1. Patent Disclosure

- 3.1.1. **Ongoing Duty to Disclose Non-Contributed Essential Claims.** All Members shall have an ongoing obligation to disclose the patent rights described in this Section 3.1.1 that are held by themselves or their Affiliates. Specifically, if the Member's Participant knows of a qualifying patent or patent application, the Member or the Participant must disclose the patent or patent application, in writing, using ODVA's standard documents and/or procedures, for consideration by the TRB, as soon as reasonably possible after the Participant becomes aware of it. This obligation is triggered when the Member's Participant actually and personally knows about a patent or patent application that s/he believes contains a Non-Contributed Essential Claim owned, controlled, or licensable by the Participant, the Member s/he represents, or an Affiliate, that covers a Draft Specification or a Final Specification. No collective or aggregate knowledge of the Member, its Affiliates, or employees on whose behalf the Participant is acting will be imputed to such Participant. However, a Member is prohibited from intentionally isolating a Participant from potentially relevant patent information within the Member or Affiliate organization to avoid this patent disclosure obligation. No disclosure obligation will apply for inventions until a patent application is filed. For purposes

of applying the disclosure obligations in this Section and in Section 3.3, references to disclosures of Non-Contributed Essential Claims covering a Draft Specification shall be understood to assume that the Draft Specification at issue would ultimately be adopted, without modification, as a Final Specification.

- 3.1.2. No Intellectual Property Search Required.** Nothing in this Section or in this Policy imposes any duty or obligation on any Member or Participant, or on ODVA, to perform a patent search or other search of intellectual property portfolios.
- 3.1.3. Minimum Contents of Disclosure.** The following minimum contents are required for any disclosure made pursuant to Section 3.1.1 or Section 3.3:

**3.1.3.1. *Issued Patents and Published Patent Applications.***

With respect to issued patents and published patent applications, the Member must disclose at a minimum: (a) the name of the patent rights holder/applicant; (b) contact information for licensing terms; (c) the patent number or application number; (d) the countries throughout the world where such patents have issued or patent applications have been filed; and (e) the Specification(s) to which the disclosure relates.

**3.1.3.2. *Unpublished Patent Applications.***

With respect to unpublished patent applications, the Member must disclose at a minimum: (a) the name of the patent rights applicant; (b) contact information for licensing terms; (c) the fact that an application exists containing the asserted Non-Contributed Essential Claims; (d) the countries throughout the world where such patent application has been filed; and (e) the Specification(s) to which the disclosure relates. The disclosure need not contain or describe any other identifying information about the unpublished patent application (*e.g.*, application number, patent claims, relevant portion of the Draft Specification, etc.).

**3.1.3.3. *Duty to Update Disclosures.***

If an unpublished patent application previously disclosed by a Member becomes a published patent application, the Member shall, within a reasonable period of time, update its prior disclosure to provide ODVA with the application number. If a published patent application previously disclosed by a Member becomes an issued patent, the Member shall, within a reasonable period of time, update its prior disclosure to provide ODVA with the patent number.

- 3.1.4. Disclosure Exemption.** A Member will be exempt from the ongoing disclosure obligation described in this Section with respect to all Specifications if it irrevocably commits in writing to ODVA, using ODVA's standard documents and/or procedures, to provide the RAND-Z Patent License specified in Section 3.2.1 for *all* of its and its Affiliates' Essential Claims, including all of its and its Affiliates' Non-Contributed Essential Claims, covering any Final Specification.
- 3.1.5. Disclosure of Third-Party Patent Rights.** Members and their Participants have no obligation to disclose to ODVA potentially relevant third-party patents or published patent applications, although such disclosure is strongly encouraged. If a Member's (or its Affiliate's) Essential Claims are independently disclosed by another Member (or its Participant) or by any other Person, such independently disclosed claims will continue to be treated as they were prior to such disclosure -- namely, as either the Member's Non-Contributed Essential Claims or as Essential Claims that the Member itself contributed -- under the applicable provisions of this

Policy. If Essential Claims of a third party that is not a Member and not a Licensed Vendor of a Final Specification covered by such Essential Claims are disclosed, the relevant chairperson of the SIG or ODVA group or the ODVA Executive Director will attempt to have the third party confirm whether it has Essential Claims covering the Specification and, if so, that it will commit to providing the RAND-Z Patent License for such Essential Claims set forth in Section 3.2.1.

- 3.1.6. ODVA Records of Patent Disclosures.** ODVA shall maintain a file that includes all patent disclosure statements received for any Draft Specification or Final Specification. ODVA shall also provide such information to any party, upon request.

### **3.2. Patent Licensing**

- 3.2.1. RAND-Z Patent Licenses.** Subject to Sections 3.2.2, 3.2.4, 3.2.5, 3.2.6, and 7.2, each Member hereby grants to ODVA a worldwide, nonexclusive, nontransferable (except to a successor to substantially all of ODVA's business), compensation-free patent license ("RAND-Z Patent License") under such Member's (and its Affiliates') Essential Claims in any issued patent covering any Final Specification (including Final Specifications adopted before the Effective Date), with the right for ODVA (but no other Person) to sublicense same to Licensed Vendors of such Final Specification(s), solely to allow such Licensed Vendors to make, have made, use, import, offer to sell, sell, lease, market, and otherwise distribute and dispose of Compliant Products that implement such Final Specification(s). Such RAND-Z Patent License is under the terms of this Section 3.2.1 (with no additional terms permitted). For the avoidance of doubt, this RAND-Z Patent License extends to all of a Members' and its Affiliates' Essential Claims in any issued patent covering any Final Specification, including any Non-Contributed Essential Claims; provided, however, that the license shall not apply to any Essential Claims for which the Member (or its Affiliate) does not have the right to license without obligation of payment of royalties or other material consideration to an unaffiliated third party; and provided further that a Member can avoid this RAND-Z Patent License solely for its and/or its Affiliates' *Non-Contributed Essential Claims* to the extent that the Member satisfies the disclosure requirements specified in Section 3.3. For the avoidance of doubt, subject to Sections 3.2.4 and 3.2.5, Essential Claims that cover a Member's own Contributions must be licensed to ODVA under the RAND-Z Patent License of this Section 3.2.1. Members are prohibited from working together to contribute one or the other of such Members' patented technology to a Specification in an attempt to allow either of such parties to avoid the RAND-Z Patent License obligation; any such behavior is a violation of this Policy and grounds for termination of such Members' membership in ODVA, in addition to any other remedies that may be available at law or in equity.

- 3.2.2. RAND-R Patent Licenses for Certain Non-Contributed Essential Claims.** ODVA strongly prefers its Members to license any of their and their Affiliates' Essential Claims covering a Specification under the RAND-Z Patent License of Section 3.2.1, although it recognizes that RAND-R Patent Licenses may also be acceptable in certain situations solely with respect to a Member's Non-Contributed Essential Claims as spelled out in this Policy. If, pursuant to Section 3.3, ODVA permits a Member to use a RAND-R Patent License for certain of its Non-Contributed Essential Claims, any such RAND-R Patent License shall be negotiated directly between such Member and each Licensed Vendor (as opposed to provided directly to ODVA for sublicensing to Licensed Vendors as with the RAND-Z Patent Licenses granted under Section 3.2.1) and shall be subject to all of the applicable requirements and provisions for RAND-Z Patent Licenses specified in Section 3.2.1, except that the Member may include a reasonable and non-discriminatory royalty/fee in its license to Licensed Vendors.

- 3.2.3. Reciprocal Patent Licensing Obligation for Licensed Vendors.** In any Revised Terms of Usage Agreement, ODVA will condition all sublicenses of the RAND-Z Patent License described in Section 3.2.1 to non-Member Licensed Vendors of a Final Specification (*i.e.*, "Sublicensees") upon such Sublicensee's grant of a reciprocal RAND-Z Patent License to all Members and all other Licensed Vendors of such Final Specification for all Essential Claims owned, controlled, or licensable by the Sublicensee (or its Affiliates) that cover: (a) such Final Specification (even if the Sublicensee only implemented such Final Specification in the past and no longer implements it); or (b) the Common Industrial Protocol ("CIP™") currently in "Volume One" of the ODVA Specifications.
- 3.2.4. Limited Right for ODVA Members to Seek Reciprocal RAND-R License.** If ODVA permits (pursuant to Section 3.3) a Member to license certain Non-Contributed Essential Claims on a RAND-R basis, any Licensed Vendor that is also a Member and that is thereby faced with paying a royalty or fee in connection with its implementation of a Final Specification may also use a reciprocal RAND-R Patent License and charge a royalty/fee back to the Member for such Member's past and future use of the Licensed Vendor's (or its Affiliates') own Essential Claims covering the same Final Specification (including Essential Claims covering the Member's own Contributions, which would otherwise be licensed on a RAND-Z basis pursuant to Section 3.2.1).
- 3.2.5. Limited Defensive Suspension Right.** If a Licensed Vendor of a Final Specification initiates or threatens to initiate a lawsuit against ODVA or any Member (the "Essential Claim Owner"), or against the Essential Claim Owner's Affiliate, relating to the Licensed Vendor's (or its Affiliate's) Essential Claim(s) covering such Final Specification (or CIP), the Essential Claim Owner may revoke the patent license granted by ODVA to such Licensed Vendor pursuant to Section 3.2.1 with respect to the Essential Claim Owner's (or its Affiliates') Essential Claims covering such Final Specification (or CIP) (the "Terminated Essential Claims"), and/or may retroactively convert a RAND-Z Patent License for such Terminated Essential Claims (including Essential Claims covering the Member's own Contributions, which would otherwise be licensed on a RAND-Z basis pursuant to Section 3.2.1) to a RAND-R Patent License, including the possibility of imposing a reasonable royalty/fee for past and/or future use of the Essential Claim Owner's or its Affiliates' Terminated Essential Claims by such Licensed Vendor. Members and ODVA will be named as third-party beneficiaries in any Revised Terms of Usage Agreement between ODVA and Licensed Vendors for the purpose of enforcing this defensive suspension right.
- 3.2.6. Invited Experts' Patent Licensing Obligations.** The obligation of an Invited Expert and its Affiliates to license under this Section 3.2 and to participate in the review period set forth in Section 3.3 shall be limited to the particular Specification(s) or Other ODVA Material developed by the ODVA group(s) of which such Invited Expert is deemed to be a "Member" under Section 2.12.
- 3.2.7. Member Power Over Affiliates.** Each Member hereby represents and warrants that it has the power to cause all patents owned or controlled by it and all of its Affiliates to be licensed as set forth in this Policy and that it and its Affiliates have ownership rights in all patents and patent applications covering inventions made by their employees in the course of their employment. If a Member breaches the foregoing representation and warranty such that the patents owned or controlled by any such Affiliate are not licensed as set forth in this Policy, then such Member shall, subject to Section 3.2.2, indemnify and hold harmless ODVA and any Licensed Vendors of any affected Final Specification from and against any royalties/fees, liability, or damage incurred by ODVA or such Licensed Vendors as a result of the failure to obtain such patent license. Member shall be liable for all

acts or omissions of its Affiliates, such that any breach of this Policy by such Affiliates shall be deemed a breach hereof by Member.

**3.2.8. New Members' Patent Licensing Obligations.** New Members that join ODVA at any point in time shall be subject to the RAND-Z Patent License described in Section 3.2.1 for all of their (and their Affiliates') Essential Claims covering any Final Specification adopted before the new Member became a Member.

**3.2.9. Restrictions on the Transfer of Patent Rights.** No Member or any of its Affiliates may assign or otherwise transfer a patent including an Essential Claim covering any Specification for the purpose of circumventing this Policy. Any transfer of a patent including an Essential Claim shall be expressly conditioned by the Member or its Affiliate upon the transferee's ("First Transferee") obligation to: (a) provide all the licenses specified in this Policy; (b) bind any of the First Transferee's own transferees to all the licenses specified in this Policy; and (c) inform any other subsequent transferee which the First Transferee becomes aware has acquired a patent including an Essential Claim of the obligation to provide all the licenses specified in this Policy. All prospective licensees of the Essential Claims required to be licensed under this Policy are deemed to be intended third-party beneficiaries of the requirement that transfers of patents containing such Essential Claims comply with this Section 3.2.9.

**3.3. Patent Review Period.** In order to ensure that all Members working on a Draft Specification and other Members of ODVA have the opportunity to review such Draft Specification, prior to its adoption as a Final Specification, ODVA shall provide a patent review period during which Members may identify Non-Contributed Essential Claims. The review period shall run for a minimum of forty-five (45) calendar days, and ODVA shall provide written notice of this review period to all Members to the addresses on file with ODVA. To prepare for the review period, ODVA shall incorporate all standalone Specification enhancements developed by a SIG or other ODVA group into any applicable existing Specification(s) to form an "integrated Draft Specification" that will be the subject of the review period. During the review period, each Member may: (a) review the integrated Draft Specification in English (the official language of ODVA); and (b) disclose, pursuant to the requirements of Section 3.1.3, any of its and its Affiliates' Non-Contributed Essential Claim(s) covering any incremental new material in such integrated Draft Specification that the Member is not willing to license to all Licensed Vendors of the resulting Final Specification under the RAND-Z Patent License of Section 3.2.1. Upon receiving such disclosure, ODVA may, in its sole discretion, discuss the possibility of the Member committing to at least grant the RAND-R Patent License under Section 3.2.2 for such Non-Contributed Essential Claims or may attempt to have the SIG or other ODVA group work around such claims by changing the integrated Draft Specification. If, as a result of the disclosure of any Non-Contributed Essential Claim(s) covering such integrated Draft Specification during the review period, or for any other reason, the integrated Draft Specification is substantially modified, then the notification process described in this Section shall recommence with a new review period for the modified integrated Draft Specification. If a Member fails to review the integrated Draft Specification or fails to disclose one or more of its (or its Affiliates') Non-Contributed Essential Claims prior to the end of the review period, then the RAND-Z Patent License under Section 3.2.1 will apply for such undisclosed claim(s) (note: Essential Claims that cover one's *own* Contributions must be licensed under the RAND-Z Patent License pursuant to Section 3.2.1, subject only to Sections 3.2.4 and 3.2.5). For the avoidance of doubt, this RAND-Z Patent License applies to all of a Member's and its Affiliates' undisclosed Non-Contributed Essential Claims covering the Final Specification ultimately resulting from the integrated Draft Specification under review, despite the lack of actual and personal knowledge thereof by any individual Participant who participates in any SIG or other ODVA group on behalf of such Member.

### **3.4. Ownership and Licensing of Inventions Arising from ODVA Activities.**

- 3.4.1. Ownership.** Ownership of all inventions that arise from ODVA activities shall be governed by the patent laws of the United States of America. In the event that two or more Members and/or other Persons (including ODVA employees) jointly own an invention arising from an ODVA activity, such joint owners shall agree among themselves to suitably apportion the costs and responsibilities for the preparation, filing, and prosecution of patent applications, if any, to be filed by the joint owners, and to the maintenance and enforcement of intellectual property rights that result therefrom. For the avoidance of doubt, inventions arising from ODVA activities are distinct from inventions, technology, intellectual property, or the like made, developed, and/or owned by any Member or Person *prior to* such ODVA activities/membership, which such Member/Person will continue to own/hold, subject to its ODVA licensing obligations.
- 3.4.2. Compensation-Free Licenses.** All inventions arising under Section 3.4.1 shall be treated as a Contribution by the applicable owner or joint owners of such inventions. Essential Claims covering any such Contribution shall be subject to the RAND-Z Patent License of Section 3.2.1 (and any applicable copyright and trademark rights shall be subject to the compensation-free copyright and trademark licenses of Sections 4.1 and 5.1).
- 3.4.3. Restrictions on Competing and Incompatible Uses.** In order to preserve ODVA's ability to manage the Specifications and Other ODVA Material that rely on inventions arising under Section 3.4.1, no Member or Person that owns such invention may distribute or license such invention to any other party (including, but not limited to, an existing or new standards development organization that competes with ODVA), nor may it permit any party other than ODVA to do so; provided, however, that the foregoing restriction shall not in any way restrict any owner's internal use of such invention or its licensing of such invention to third parties or sale of products for uses that do not compete with the functionality of products that implement any of the Final Specifications managed by ODVA. Any transfer of ownership to inventions arising under Section 3.4.1 shall be made subject to the licenses and restrictions of Sections 3.4.2 and 3.4.3.

## **4. COPYRIGHT PROVISIONS**

- 4.1. Compensation-Free Copyright License to Contributions.** Each Member and any other Person that submits a Contribution, either as a new Draft Specification or Other ODVA Material or for incorporation into an existing Specification or Other ODVA Material, thereby grants to ODVA, and to all Members and their Affiliates and Participants, a worldwide, fully paid-up, compensation-free, irrevocable, perpetual, non-exclusive, non-transferable (except to a successor to substantially all of ODVA's business) copyright license to reproduce, publish, use, execute, display, distribute, and perform the Contribution, and to create Derivative Works that are based on or incorporate all or part of the Contribution, solely for the purpose of developing, publishing, documenting, explaining, distributing, implementing, and testing the Specifications and/or Other ODVA Material, including the right by ODVA to sublicense some or all the foregoing rights to third parties for the purpose of creating and distributing Compliant Products that implement such Specifications and any accompanying documentation. ODVA may also sublicense the foregoing rights covering such Contributions to another standards development organization for the purpose of adopting the same or a substantially similar specification or standard as the Specification into which the Contribution (or portion thereof) is incorporated. Contributions owned or developed by a Member or other contributing Person shall remain the property of such Member/Person, and no interest in the ownership of the Contributions shall be assigned or transferred to ODVA or to any other Member or party.

- 4.2. **ODVA Copyright Ownership of Specifications.** ODVA shall own the copyright in all Specifications and Other ODVA Material, subject to the underlying copyright rights of the contributing Members and other Persons as set forth in Section 4.1. Any publication of a Specification or Other ODVA Material shall contain an appropriate copyright notice in the name of ODVA, as well as any limitations of liability, and other such statements contained in the original. ODVA may exercise any and all rights of copyright ownership in the Specification and Other ODVA Material and will be authorized to license such rights to Licensed Vendors of the Specification.

## 5. TRADEMARK, LOGO, AND NAME PROVISIONS

- 5.1. **Trademark License to ODVA.** Each Member and any other Person that submits a Contribution for incorporation into a Specification or Other ODVA Material thereby grants to ODVA a non-exclusive, non-transferable (except to a successor to substantially all of ODVA's business), compensation-free license to reference within a Specification or Other ODVA Material any trademarks, service marks, names, logos, or the like included in such Contribution.
- 5.2. **Respect for ODVA's Marks, Logos, and Names.** No Member or other Person may assert any ownership rights in any ODVA trademark, other mark, name, or logo by assuming, reserving, registering, using, or otherwise claiming any mark, logo, or name (including any Internet domain name) owned or already being used by ODVA (or that is confusingly similar to any such ODVA-owned/used mark, logo, or name) as their own, whether as a trademark, service mark, certification mark, trade name, domain name, or "doing business as" name ("d/b/a"), alone or in combination with such organization's or individual's own trademarks or service marks.
- 5.3. **Other Matters.** Other matters relating to the use of ODVA's or others' marks, logos, or names will be addressed and handled: (a) in other agreements and documents of ODVA, such as the Revised Terms of Usage Agreement or the Identity Guidelines; and/or (b) as they arise on a case-by-case basis according to the circumstances surrounding the issue.

## 6. CONFIDENTIALITY / TRADE SECRET PROVISIONS

- 6.1. **No Confidentiality Obligation with Respect to Contributing Members/Persons.** Members acknowledge that neither ODVA nor any Member or other Person that receives a Contribution or other information disclosed in the context of a Specification development effort or any other ODVA activity will have any obligation to keep such Contribution/information confidential for the benefit of the contributing Member or Person, unless confidential treatment is required by application of a non-disclosure agreement separately negotiated by such contributing Member/Person with such recipients. Members and their Participants are therefore advised to carefully consider whether they wish to submit or disclose any Contribution/information for which they wish to maintain trade secret protection.
- 6.2. **Confidentiality Obligation for the Benefit of ODVA.** Notwithstanding the foregoing, unless otherwise approved by a specific chairperson or the ODVA Executive Director, all proceedings, information, and materials of particular SIGs or other ODVA groups (including Draft Specifications, Contributions, and Other ODVA Material) are required to be maintained in confidence for the benefit of ODVA. Specifically, none of the Members or Participants in the particular SIG or ODVA group, or consulting SIGs appointed by the TRB to work with such SIG/ODVA group, may disclose or describe such proceedings, information, or materials to any party other than Members, Participants, Persons, or ODVA employees engaged in the activities of the particular SIG(s) or other ODVA group(s) in question); provided, however, that Specification enhancements and other Draft Specifications from particular SIGs or other ODVA groups may be incorporated into the integrated Draft Specification that is the subject of the patent review by all Members as described in Section 3.3, and into a Final Specification. This Section 6.2 shall not restrict

ODVA's ability to make any disclosures it deems necessary or appropriate, including, but not limited to, any disclosures required pursuant to Section 3.1.6. The confidentiality obligation in this provision shall continue indefinitely and shall survive a Member's withdrawal from ODVA; provided, however, that such confidentiality obligation shall not apply to any information or material that is already in the public domain at the time of disclosure other than by breach of this provision (*e.g.*, ODVA may, in its discretion, discuss Specification enhancements currently under development at press conferences, in presentations, or in technical papers authored by contributors).

## 7. WITHDRAWAL / TERMINATION

**7.1. Process.** A Member may withdraw from ODVA in accordance with the Bylaws and application for membership. Withdrawal shall be effective upon receipt of such written notice by ODVA. In addition, violation by a Member, or by any Participant that represents such Member, of any material agreement with ODVA, or of any of its policies, including without limitation the Bylaws, this Policy, or any Revised Terms of Usage Agreement to which such Member has agreed, may result, in the discretion of the Board, in the Member being removed from membership.

**7.2. Effect of Withdrawal/Termination.** Notwithstanding a Member's withdrawal or termination, and except (as applicable) as provided in Section 3.3, the Member's obligation to grant a patent license under Section 3.2 (as applicable) shall remain in full force and effect for:

- (a) Essential Claims covering a Contribution made by the withdrawing/terminated Member that is incorporated into any Final Specification (even if such Final Specification is adopted after such Member's withdrawal/termination); or
- (b) Non-Contributed Essential Claims covering a Final Specification as such Final Specification (or the Draft Specification from which it arose) existed on the date of withdrawal/termination (even if such Final Specification is adopted after such Member's withdrawal/termination); and
- (c) Essential Claims (or Non-Contributed Essential Claims) covering a Final Specification adopted by ODVA after the effective date of the Member's withdrawal/termination that: (i) are necessary for the later-adopted Final Specification to be backwards compatible with a prior Final Specification; and (ii) are used in a substantially similar manner, extent, and result as such Essential Claims (or Non-Contributed Essential Claims) were used in such prior Final Specification for which the Member or its Affiliate is obligated to grant licenses.

All rights and obligations of the withdrawn/terminated Member other than those specifically referenced in this Section 7.2 or in Sections 4.1, 5.1, and 6.2 shall cease upon such withdrawal/termination. Members that withdraw or are terminated from ODVA retain any continuing obligations they may have under any Revised Terms of Usage Agreements to which they have agreed, particularly to the extent they remain a Licensed Vendor of Final Specifications after such withdrawal or termination.

## 8. ODVA REVIEW OF "PROPOSED" CONTRIBUTIONS IN SPECIAL CIRCUMSTANCES

If a Member or non-Member believes that a potential Contribution would significantly advance the efforts of a particular Specification development effort but is unwilling to contribute it to ODVA in accordance with this Policy without first discussing the matter with ODVA, such party may invoke the following process: The Member/non-Member should approach the ODVA Executive Director and describe its idea or proposal before submitting it as a Contribution to a SIG or other ODVA group as part of the Specification development process. Any such party can discuss a potential Contribution with the Executive Director without having the submission be deemed at that point a "Contribution" for purposes of this Policy (and thus, for example, subject to the compensation-free

copyright license under Section 4.1 and the RAND-Z Patent License under Section 3.2.1), provided that the party clearly identifies the potential Contribution as a "discussion document: not a Contribution" in writing in advance of the discussion and has not yet become a documented Member in the SIG or other ODVA group developing the Specification to which the potential Contribution would likely be submitted. If, after such discussion with the Executive Director, such party proceeds to submit such proposed Contribution to a SIG or other ODVA group in connection with a Specification development effort, such submission shall be deemed a Contribution and be subject to the various licensing obligations specified in this Policy. Members and non-Members are strongly advised to invoke this mechanism only in very limited circumstances -- primarily when the party has a *substantial* new technology idea or proposal to be considered and is genuinely unsure as to the best way to introduce this idea/proposal into the ODVA process. It should not be used in an attempt to avoid the RAND-Z Patent License associated with Contributions, to delay the Specification development process, or for any other purpose.

## 9. MISCELLANEOUS

- 9.1. **No Other Licenses.** Except for the rights expressly provided under this Policy, neither ODVA nor any Member or Participant grants or receives, by implication, estoppel, or otherwise, any rights under any patents, copyrights, or other intellectual property rights.
- 9.2. **No Warranties/Disclaimers.** ALL MEMBERS, PARTICIPANTS, AND OTHER PERSONS ACKNOWLEDGE THAT ALL DRAFT SPECIFICATIONS AND FINAL SPECIFICATIONS, ALL OTHER ODVA MATERIAL, AND ALL CONTRIBUTIONS THERETO, ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND ALL MEMBERS, PARTICIPANTS, THE ODVA EXECUTIVE DIRECTOR, BOARD OF DIRECTORS, TRB, AND ODVA EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR OR INTENDED PURPOSE, OR ANY OTHER WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, FINAL SPECIFICATION, DRAFT SPECIFICATION, OTHER ODVA MATERIAL, OR CONTRIBUTION.
- 9.3. **Limitation of Liability.** IN NO EVENT WILL ODVA OR ANY OF ITS CONSTITUENT PARTS (INCLUDING, BUT NOT LIMITED TO, THE ODVA MEMBERS, PARTICIPANTS, EXECUTIVE DIRECTOR, BOARD OF DIRECTORS, OR TRB) BE LIABLE TO ANY OTHER PERSON FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST BUSINESS, LOST DATA, OR LOSS OF USE; OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, 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.
- 9.4. **Publicity.** Each Member consents to the public disclosure and use of its name for purposes of publicly promoting Final Specifications, including the use in statements regarding the conformance of the Member's Compliant Products with a Final Specification.
- 9.5. **Governing Law / Jurisdiction / Arbitration / Venue / Language.** This Policy shall be construed and controlled by the laws of the State of Michigan, without giving effect to conflict-of-law principles. The parties agree that all disputes arising in any way out of this Policy that cannot be resolved by good faith discussion will be settled by final and binding arbitration in Ann Arbor, Michigan, U.S.A., under the then-current Commercial Arbitration Rules of the American Arbitration Association with the reasonable costs of such arbitration split equally between such parties and with the prevailing party therein entitled to recover its reasonable legal fees and costs thereby incurred, including attorneys' and experts' fees. Any such arbitral award may be enforced in a court of competent jurisdiction. For purposes of enforcement, the parties irrevocably consent to jurisdiction and venue in the state and Federal courts of the State of Michigan. This Policy has been written in the English language, and it may be translated into other languages by Members or other Persons at their own cost and for their own convenience and internal purposes. However,

the official version of this Policy and the one that shall govern and prevail in all cases, including the case of any difference or disagreement with any such translation, is the English language version.

- 9.6. **ODVA Successors.** The terms and provisions of this Policy will be binding upon and inure to the benefit of ODVA's successors and assigns.
- 9.7. **Writing Requirements Satisfied by E-mail and Other Electronic Means.** Any provision in this Policy that requires or permits a written notice or written document to be used may be satisfied through the use of e-mail, the posting of a document to a website, or other suitable electronic means under the circumstances.