SECTION 1: DEFINITIONS

This Intellectual Property Rights Policy ("IPR Policy") will apply solely to documents or code developed by the O-RAN Alliance to describe key components of a Radio Access Network and their interconnections and performance, including in particular, but not limited to, the functions, behaviors, and requirements for systems, subsystems, software modules, and hardware modules, and the details of the interfaces and APIs that interconnect these components to each other or to external systems and components as well as future amendments or revisions thereto, if any ("Specifications"). Except as otherwise defined, all capitalized terms will have the meaning defined for them in the O-RAN Constitution.

The following definitions apply to this IPR Policy:

1.1 “Adopter(s)” means all entities, who are not Members, Contributors or Academic Contributors, including their Affiliates, who wish to download, use or otherwise access O-RAN Specifications.

1.2 “Compliant Implementation” means any system, device, method or operation (whether implemented in hardware, software or combinations thereof) that fully conforms to a Final Specification.

1.3 “Contribution” means a proposed submission by a Member, Contributor or Academic Contributor proposing a Draft Specification or an addition to or modification of a Draft
Specification, that is submitted to the Alliance by a Member, Contributor or Academic Contributor either: (a) in writing (including a writing in electronic medium) and clearly marked as a “Contribution”, or (b) orally, so long as the Contribution is: (i) memorialized in substance in the formal written minutes of the meeting where it was proposed, (ii) correctly attributed in the meeting minutes to the Member, Contributor or Academic Contributor, and (iii) not withdrawn (but may be corrected in writing) by the Member, Contributor or Academic Contributor before or at the time that the meeting minutes are approved at a subsequent meeting.

1.4 “Draft Specification” means a document in development or under consideration for adoption as a Final Specification, including amendments to existing Final Specifications which amendments have not been adopted and approved for release by the O-RAN Alliance in accordance with Section 2.

1.5 “Final Specification” means a document designated by the O-RAN Alliance as a “Final Specification” that has been adopted and approved for release by the Alliance in accordance with Section 2.

1.6 “Necessary Claims” means those claims of all present and future patents and patent applications, other than design patents and design registrations, throughout the world, which (i) are owned or otherwise licensable by a Member, Contributor or Academic Contributor during the term of its Member, Contributor or Academic Contributorship; (ii) such Member, Contributor or Academic Contributor has the right to grant a license without the payment of consideration to a third party; and (iii) are necessarily infringed by a Compliant Implementation (without considering any Contributions not included in the Final Specification). A claim is necessarily infringed only when it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the date any Final Specification was published by the O-RAN Alliance or the date the patent claim first came into existence, whichever last occurred, to make, sell, lease, otherwise dispose of, repair, use or operate a Compliant Implementation without infringing that claim. For the avoidance of doubt in exceptional cases where a Final Specification can only be implemented by technical solutions, all of which infringe patent claims, all such patent claims shall be considered Necessary Claims.

1.7 “FRAND” means Fair Reasonable and Non-discriminatory.

SECTION 2: SPECIFICATION REVIEW AND NOTICE

2.1 Draft Specifications

The “Technical Steering Committee” chartered by the Board of Directors will have the responsibility for drafting and developing the Draft Specifications. At such time as a Technical Steering Committee determines that the Draft Specification is ready for final review, the Technical Steering Committee will send the Draft Specification to the Board of Directors for their approval. If the Board of Directors approves the Draft Specification, they will send complete copies of the Draft Specification to all Members, Contributors and Academic Contributors for review pursuant to Section 2.2. If the Board of Directors does not approve such Draft Specification, the Draft Specification is returned to the Technical Steering Committee.
2.2 Draft Specifications Review Period

Each Member, Contributor or Academic Contributor will have a period of sixty (60) days beginning from the date that the Board of Directors sends the Draft Specification to the Members, Contributors and Academic Contributors for review pursuant to Section 2.1 to elect its licensing commitment with respect to the Draft Specification, as follows:

(A) With respect to any Contributions made by a Member, Contributor or Academic Contributor to the Draft Specification, the Member, Contributor or Academic Contributor is committed to the election it shall make according to Sections 4.1 and 4.2.

(B) With respect to any portion of the Draft Specification that is not a Contribution made by a Member, Contributor or Academic Contributor, the Member, Contributor or Academic Contributor shall elect its licensing commitment as set forth in Section 4 and the Member, Contributor or Academic Contributor is deemed to have committed to its licensing election with regard to Necessary Claims if and when the Draft Specification is approved by the Board of Directors as a Final Specification.

(C) With respect to any portion of the Draft Specification that is not a Contribution made by a Member, Contributor or Academic Contributor, if the Member, Contributor or Academic Contributor provides a notice of withdrawal during the 60-day review period for the Draft Specification, then the Member, Contributor or Academic Contributor shall elect to withhold licensing of Necessary Claims identified as set forth in Section 2.3.

2.3 Withdrawal

A Member, Contributor or Academic Contributor may provide written notice to the Board of Directors that it withdraws from participation in the O-RAN Alliance pursuant to Sections 2.9 and 2.17 of the Constitution. The notice must specify any Necessary Claims of the Member, Contributor or Academic Contributor that it does not wish to license as to any Final version of the Draft Specification.

In the event that a Member, Contributor or Academic Contributor submits a notice of withdrawal within the review period set forth in Section 2.2, such Member, Contributor or Academic Contributor will not be required to grant a license under Section 4 for the identified Necessary Claims, unless those Necessary Claims were (1) implicated by a Contribution made by that Member, Contributor or Academic Contributor, or (2) implicated in a Draft Specification previously available for review by the Member, Contributor or Academic Contributor pursuant to Sections 2.1 and 2.2 without the Member, Contributor or Academic Contributor having delivered, within the review period set forth in Section 2.2 for such previous Draft Specification, a written notice of withdrawal specifying such Necessary Claims in accordance with Section 2.2 (c).

2.4 Reacting to any Notice of Withdrawal; Subsequent Draft Specification Reviews

Any and all notices of withdrawal timely received by the Board of Directors will be immediately forwarded to all Directors and the Technical Steering Committee. Either the full Technical Steering Committee, or an ad-hoc subcommittee thereof, will review and evaluate each notice
of withdrawal, as well as alternative design options or recommendations for the Draft Specification.

The Technical Steering Committee or subcommittee thereof will deliver to the Board of Directors the results of its findings within a reasonable period of time. Should the Technical Steering Committee or ad-hoc subcommittee thereof recommend material changes to the Draft Specification, then the Technical Steering Committee will commence the necessary modifications to the Draft Specification.

Once modified, the Draft Specification review process started in Section 2.1, will commence again with a review period of thirty (30) days. Should the Technical Steering Committee or ad-hoc subcommittee thereof recommend that no material changes be made to the Draft Specification, then the Draft Specification will proceed for final approval pursuant to Section 2.5.

2.5 Approval & Release of Final Specifications

After completion of the Draft Specification review process stated in Sections 2.1 through 2.4, the Technical Steering Committee will submit such Draft Specification to the Board of Directors for final review.

If the Board of Directors approves such Draft Specification via an affirmative vote of the Board of Directors with qualified majority, the Draft Specification will become a Final Specification of the Alliance immediately upon release to the Members, Contributors and Academic Contributors.

In the event that the Board of Directors fails to approve such Draft Specification as a Final Specification, such Draft Specification will be returned to the Technical Steering Committee.

2.6 Notice of any request for change to an O-RAN Specification shall be returned to the O-RAN Alliance in a timely manner and in the format then applicable for receiving such Contribution.

SECTION 3: COPYRIGHT LICENSE

3.1 The ownership of copyright in Draft and Final Specifications shall vest in the O-RAN Alliance. By submitting a Contribution, a Member, Contributor and Academic Contributor (or its Affiliates) represents and warrants that it has sufficient rights and permissions to assign to the O-RAN Alliance and hereby assigns to the O-RAN Alliance copyrights in Contributions, or part thereof, that are included in such Draft or Final Specification as necessary for O-RAN Alliance to publish and deal with its Draft and Final Specifications. Upon assignment of such copyrights to the O-RAN Alliance, the O-RAN Alliance grants back to that Member, Contributor, or Academic Contributor or its Affiliates a royalty-free nonexclusive, fully transferable, irrevocable, sublicensable both directly and indirectly, worldwide copyright license to download or otherwise access, copy, adapt or modify, and distribute such Contributions.

3.2 O-RAN Alliance grants to Members, Contributors and Academic Contributors (or their Affiliates) a royalty-free nonexclusive, non-transferable, irrevocable, non-sublicensable,
limited as described in Sections 3.3 and 3.6, worldwide copyright license to download or otherwise access, copy, adapt or modify Final Specifications to make, sell, lease, otherwise dispose of, repair, use or operate any implementations which comply with a Final Specification but not to further distribute the Final Specifications in any other way (“Limited Purpose”).

3.3 Members, Contributors and Academic Contributors (or its Affiliates) shall have no right to use, copy or modify a Final Specification, or part thereof, other than in accordance with Section 3.2 unless expressly authorized in writing by the O-RAN Board.

3.4 Subject to Section 3.1, by submitting a Contribution, nothing in this IPR Policy restricts or alters any copyright owned by the Member, Contributor or Academic Contributor (or its Affiliates) in its own Contribution, nor any copyright owned by another third party, at the time of submitting its Contribution.

3.5 O-RAN Alliance is prepared to grant a license to Adopters wishing to download or otherwise access, copy, adapt or modify a Final Specification for the Limited Purpose according to the license agreement in Appendix C.

3.6 Members, Contributors and Academic Contributors (or its Affiliates) and Adopters shall not use Final Specifications and Draft Specifications except as expressly set forth in this IPR Policy or in a separate written agreement.

3.7 Ownership of copyrights in that portion of any Final Specification that is collaboratively created in the course of the Alliance’s technical process (i.e., that is not a formal Contribution) shall belong to the Alliance.

SECTION 4: FRAND PATENT LICENSING COMMITMENT

4.1 Each Member, Contributor or Academic Contributor, on behalf of itself and its Affiliates, shall:

(a) Agree to be prepared to grant under Fair Reasonable And Non-Discriminatory (FRAND) terms and conditions to the other Members, Contributors or Academic Contributors and their Affiliates, and Adopters, a nonexclusive, nontransferable, irrevocable (but subject to Defensive Suspension as defined below), non-sublicensable, worldwide patent license under their Necessary Claims to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Implementations; provided, however, that such agreement to license shall not extend: (i) to any part or function of a product in which a Compliant Implementation is incorporated that is not itself part of the Compliant Implementation; or (ii) to any Member, Contributor or Academic Contributor or its Affiliates, or Adopter if that other Member, Contributor or Academic Contributor or its Affiliates or Adopter is not making a reciprocal grant to the granting Member, Contributor or Academic Contributor and its Affiliates. For the avoidance of doubt, the foregoing licensing commitment include the distribution by the Member’s, Contributor’s or Academic Contributor’s (or its Affiliates’) or Adopter’s distributors, and the use by the Member’s, Contributor’s or Academic Contributor’s (or its Affiliates’) or Adopter’s customers, of such licensed Compliant Implementations; and
(b) Elect, at the time of making a Contribution, the royalty regime for the FRAND License to be either (i) with or (ii) without compensation (royalties). Such election shall be made pursuant to a written declaration in the form of Appendix A hereto.

If a Member, Contributor or Academic Contributor or one of its Affiliates later owns one or more additional Necessary Claims that implement the Final Specification that are such by reason of the incorporation of such Member, Contributor or Academic Contributor’s Contribution, in whole or in part, into such Final Specification, such Member, Contributor or Academic Contributor will be deemed to have elected the same option with respect to such Necessary Claims as it initially elected under this Section 4.1.

(c) A Member, Contributor or Academic Contributor, on behalf of itself and its Affiliates, may elect one option with respect to one or some of the Necessary Claim(s) that implement the Final Specification and another option with respect to other Necessary Claim(s) that implement the Final Specification.

(d) Notwithstanding the above, if a Member, Contributor or Academic Contributor has elected the option to license its Contributions without compensation and negotiates with any Member, Contributor or Academic Contributor that has elected to license its Contributions subject to payment of a royalty or other compensation, then such Member, Contributor or Academic Contributor is entitled to unilaterally and retroactively change from a royalty-free to a royalty-bearing FRAND license regime with respect to such Member, Contributor or Academic Contributor. In such case, such Contributor shall be able to collect such royalty from the Member, Contributor or Academic Contributor retroactively commencing on the date such Member, Contributor or Academic Contributor has elected to license such Necessary Claims subject to payment of a royalty or other compensation.

4.2 The preceding commitments apply:

(a) to the extent the Final Specification includes Contributions made by a Member, Contributor or Academic Contributor;

(b) to the extent the Final Specification includes elements of Draft Specifications that were present during a Member, Contributor or Academic Contributor’s formal review process pursuant to Section 2.2 and no withdrawal or withholding notice was given in accordance with Section 2.3 or Section 4.5; and

(c) to the extent a subsequent version of the Final Specification incorporates (a) or (b) and is backwards-compatible with the earlier Final Specification.

4.3 Within six (6) weeks after joining the Alliance, each new Member, Contributor or Academic Contributor shall elect the royalty regime under Section 4.1 (b) with respect to each existing Final Specification.

4.4 No later than sixty (60) days from the date that a respective Draft Specification has been posted for final comments to all Members, Contributors and Academic Contributors (unless a different date is specified by the Alliance) each Member, Contributor or Academic Contributor may elect the royalty regime under Section 4.1 (b) with respect to this Draft Specification.
4.5 A Member, Contributor or Academic Contributor may withhold a license as to Necessary Claims that it identifies as Necessary Claims owned by it and/or its Affiliates under the Draft Specification in its then-current form (or any Final Specification with respect to a new Member, new Contributor or new Academic Contributor), provided it does so within the time period set forth in Section 4.4 (or Section 4.3 for the new Member, new Contributor or new Academic Contributor) and such identification reasonably identifies the portion of such document that would result in such infringement and indicates that no guarantee of a FRAND license is being made (or that such rights will in fact be denied in some or all cases) as to such Necessary Claims. In the case of Necessary Claims under non-public patent applications, the disclosure of such claims need not be in such detail as would disclose any trade secrets.

4.6 Elections according to Sections 4.3, 4.4 or 4.5 shall be made pursuant to a written declaration in the form of Appendix B hereto.

4.7 Subject to Section 4.9, any Member, Contributor or Academic Contributor participating in a Work Group must make an election, as regards any of that Work Group Specifications, under Section 4.4. This election shall remain in effect even if such Member, Contributor or Academic Contributor leaves that Work Group.

4.8 In the event that any Final Specification is withdrawn by the Alliance, then all obligations of Members, Contributors or Academic Contributors under existing licenses based on this IPR Policy to Necessary Claims with respect to such Final Specification shall remain in force, but the Board of Directors may decide to release all obligations to provide future licenses on FRAND terms, with such obligations to terminate on a date to be approved by the Board of Directors.

4.9 In the event that a Member, Contributor or Academic Contributor does not timely return a signed and completed election form as required by Section 4.1 (b), 4.3, 4.4 and 4.7, then such Member, Contributor or Academic Contributor shall be deemed to have elected to license, or to cause its Affiliate(s) to license, all of its Necessary Claims (including those owned by its Affiliates) under the Final Specification in question, with the terms to be as set forth in Section 4.1 (b)(i) (in the case of a Contribution by a Member, Contributor or Academic Contributor) or Section 4.3 (in the case of a new Member, new Contributor or new Academic Contributor) or Section 4.4 (in the case of any Member, Contributor or Academic Contributor) or Section 4.7 (in the case of a Member, Contributor or Academic Contributor participating in a Work Group). In the event that such Member, Contributor or Academic Contributor, or any of their Affiliates, later brings an infringement action against any Member, Contributor or Academic Contributor, or any of their Affiliates, with respect to such Necessary Claim(s), the Alliance shall have no obligation to intervene, but upon such action such Member, Contributor or Academic Contributor and their Affiliates against whom the infringement action is brought shall be entitled to claim protection against such action, under this IPR Policy, including this Section 4.9, as an intended third party beneficiary.

SECTION 5: NO OTHER LICENSE

The Member, Contributor or Academic Contributors agree that no license, immunity or other right is granted or may otherwise arise under this IPR Policy by any Member, Contributor or Academic Contributor or its Affiliates to any other Member, Contributor or Academic
Contributors or their Affiliates, either directly or by implication, estoppel, or otherwise, other than the agreements to grant licenses expressly set forth herein.

SECTION 6: TRANSFER OF NECESSARY CLAIMS

Each Member, Contributor or Academic Contributor agrees that it will not assign or transfer, and has not assigned or transferred, its patents or patent applications having Necessary Claims for the purpose of circumventing such Member, Contributor or Academic Contributor’s obligations under this Intellectual Property Rights Policy. In the event a Member, Contributor or Academic Contributor assigns or transfers any of its patents or published patent applications containing Necessary Claims, the Member, Contributor or Academic Contributor agrees to condition the assignment or transfer on the assignee’s or transferee’s agreement: (a) that such patents or published patent applications will continue to be subject to the licensing provisions of Section 4; and (b) to oblige subsequent assignees or transferees to similarly respect this obligation.

SECTION 7: SURVIVAL OF AGREEMENT TO GRANT LICENSE

Notwithstanding the dissolution or winding-up of the O-RAN Alliance or a Member, Contributor or Academic Contributor’s termination, withdrawal, or non-renewal of its participation in the Alliance, a Member, Contributor or Academic Contributor’s agreement to grant a license as provided in Section 4 shall remain in full force and effect for: (a) any Necessary Claim to a Contribution made to a later adopted Final Specification or any Necessary Claim to a Final Specification adopted before the effective date of dissolution or winding-up or before the effective date of a Member, Contributor or Academic Contributor’s termination, withdrawal, or expiration of participation; and (b) any Necessary Claims to a Final Specification adopted by the O-RAN Alliance after the effective date of the Member, Contributor or Academic Contributor’s termination, withdrawal or expiration of participation that are necessary for the future Final Specification to be backwards compatible with the Final Specifications subject to (a), provided that subject matter licensed under the new Final Specification are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the subject matter under the prior Final Specification for which the Member, Contributor or Academic Contributor is obligated to grant licenses. In no event will a withdrawn, terminated, or nonrenewed Member, Contributor or Academic Contributor be obligated to license any additional Necessary Claims under this Section 9. A withdrawn, terminated, or nonrenewed Member, Contributor or Academic Contributor and its Affiliates will remain entitled to reciprocity pursuant to Section 4 so long as that withdrawn, terminated, or nonrenewed Member, Contributor or Academic Contributor remains obligated to license any Necessary Claims under this Section 9. This agreement to the survival of reciprocal licensing will extend to all Members, Contributors or Academic Contributors and their Affiliates, including any Member, Contributor or Academic Contributor who becomes a Member, Contributor or Academic Contributor after the effective date of a departing Member, Contributor or Academic Contributor’s termination, withdrawal or nonrenewal.

SECTION 8: RIGHT TO MAKE VOLUNTARY DISCLOSURES OF NECESSARY CLAIMS
Nothing in this IPR Policy will be construed as prohibiting the Member, Contributor or Academic Contributors from voluntarily disclosing the presence of Necessary Claims of such Member, Contributor or Academic Contributor or its Affiliates, or of any Adopter, that are found in Draft Specifications or Final Specifications. Such disclosure will not, however, be deemed as a waiver of that Member, Contributor or Academic Contributor’s rights under Section 2. Other than as specifically set forth herein, nothing in this IPR Policy requires a Member, Contributor or Academic Contributor, or Adopter, to disclose or otherwise identify Necessary Claims of such Member, Contributor or Academic Contributor, or Adopter, or any of their Affiliates.

SECTION 9: DEFENSIVE SUSPENSION

For the purposes of any license grant pursuant to Section 4.1, Member, Contributor or Academic Contributor, Adopter, or any of their Affiliates, may have the discretion to include in their license a term allowing the licensor to suspend the license against a licensee who brings a patent infringement suit against the licensing Member, Contributor or Academic Contributor, Adopter, or any of their Affiliates.

SECTION 10: OBLIGATION OF GOOD FAITH

The Member, Contributor or Academic Contributor, or Adopter, acknowledge and agree that the obligations of this IPR Policy will be governed by the principles of good faith and fair dealing.

Section 11: Law and Regulation

The IPR Policy shall be governed by the laws of Germany. However, no Member, Contributor, Academic Contributor or Adopter shall be obliged by the IPR Policy to commit a breach of the laws or regulations of its country or to act against supranational laws or regulations applicable to its country insofar as derogation by agreement between parties is not permitted by such laws.
Appendix A

O-RAN ALLIANCE CONTRIBUTION OF TECHNOLOGY FORM

NOTE: All blanks must be completed in order for this Contribution to be given consideration. This contribution is subject to the Intellectual Property Rights Policy (the “IPR Policy”) of the O-RAN Alliance and any policies and procedures adopted by the Board of Directors and any applicable Work Group Procedures or Work Group Specific Procedures (“Policies and Procedures”).

All capitalized terms used in this form have the meanings given to them in the O-RAN IPR Policy.

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<th>Name of Individual Completing this Form on Behalf of Member, Contributor or Academic Contributor (“Representative”):</th>
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A. The Representative hereby represents the following on behalf of him/herself and the Member, Contributor or Academic Contributor, as the context requires:

1. The Representative is authorized to make the Contribution attached hereto as Exhibit A on behalf of the Member, Contributor or Academic Contributor, and to make the following representations and warranties.

2. The Member, Contributor or Academic Contributor has reviewed any Policies and Procedures and agrees that its Contribution is being made in full compliance with the same.

B. The Member, Contributor or Academic Contributor and each of its Affiliates hereby irrevocably agrees that if its Contribution is incorporated, either in whole or in part, into the Draft Specification and if the Draft Specification in connection with which the Contribution is made is finally approved by the O-RAN Alliance, that on request it will license IPR on the following terms:
NOTE: ELECTIONS MADE BY MEMBER, CONTRIBUTOR OR ACADEMIC CONTRIBUTOR MAY NOT BE REVOKED OR CHANGED AFTERWARDS

1. The Member, Contributor or Academic Contributor and each of its Affiliates will grant under Fair Reasonable And Non-Discriminatory (FRAND) terms and conditions to the other Members, Contributors or Academic Contributors and their Affiliates, and Adopters, a nonexclusive, nontransferable, irrevocable (but subject to Defensive Suspension as described in Section 9), non-sublicensable worldwide patent license under their Necessary Claims to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Implementations; provided, however, that such agreement to license will not extend: (a) to any part or function of a product in which a Compliant Implementation is incorporated that is not itself part of the Compliant Implementation; or (b) to any Member, Contributor or Academic Contributor or its Affiliates, or Adopter if that other Member, Contributor or Academic Contributor or its Affiliates or Adopter is not making a reciprocal grant to the granting Member, Contributor or Academic Contributor and its Affiliates. For the avoidance of doubt, the foregoing licensing commitment includes the distribution by the Member’s, Contributor’s or Academic Contributor’s (or its Affiliates’) or Adopter’s distributors, and the use by the Member’s, Contributor’s or Academic Contributor’s (or its Affiliates’) or Adopter’s customers, of such licensed Compliant Implementations; and

2. The Member, Contributor or Academic Contributor and each of its Affiliates elects that the royalty regime for the FRAND License to be either (a) with or (b) without compensation (royalties) as indicated in Exhibit B. (Note: A Member, Contributor or Academic Contributor must elect one of the foregoing (a) or (b) using Exhibit B)

3. A Member, Contributor or Academic Contributor may elect (On Exhibit B) one option with respect to one or some Necessary Claim(s) and another option with respect to other Necessary Claim(s). In the case of Necessary Claims under non-public patent applications, the disclosure of such Necessary Claims need not be in such detail as would disclose any trade secrets.

4. The Member, Contributor or Academic Contributor hereby contributes its Contribution and the copyrighted materials contained therein to the O-RAN Alliance. The Member, Contributor or Academic Contributor shall retain copyright ownership of its original work, while at the same time granting the O-RAN Alliance a royalty-free nonexclusive, transferrable, irrevocable, sublicensable, worldwide copyright license to copy, adapt and modify, and distribute its contents in a Final Specification solely for O-RAN to distribute the Final Specification as explicitly permitted under Sections 3.2 and 3.5 of the IPR Policy of the O-RAN Alliance. This agreement shall not in any way deprive the Member, Contributor or Academic Contributor of any patent claims or other intellectual property rights relating to the technology to which its Contribution relates.

5. With respect to all Necessary Claims of the Member, Contributor or Academic Contributor or any of its Affiliates that become such by reason of the incorporation of this Contribution, in whole or in part, in the Final Specification, Member, Contributor or Academic Contributor will be deemed to have elected the same option (i) or (ii) as per Section B(2).
B. The O-RAN Alliance, in accepting this Contribution, acknowledges the following:

EXCEPT AS SPECIFICALLY PROVIDED FOR ABOVE, THIS CONTRIBUTION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED.

EXCEPT TO THE EXTENT OF KNOWING FALSITY IN ANY STATEMENT MADE ABOVE, ANY IMPLEMENTATION OF ANY FINAL SPECIFICATION INCORPORATING THIS CONTRIBUTION IN WHOLE OR IN PART SHALL BE MADE ENTIRELY AT THE MEMBER’S, CONTRIBUTOR’S OR ACADEMIC CONTRIBUTOR’S OWN RISK, AND THE MEMBER, CONTRIBUTOR OR ACADEMIC CONTRIBUTOR SHALL HAVE NO LIABILITY WHATSOEVER TO ANY MEMBER, CONTRIBUTOR OR ACADEMIC CONTRIBUTOR OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER DIRECTLY OR INDIRECTLY ARISING THERE FROM, EXCEPT AS A RESULT OF ANY KNOWING FALSITY IN ANY STATEMENT MADE ABOVE.

This Contribution has been made on , 2018.

Name of Member, Contributor or Academic Contributor

By:

Name:

Signature of Representative:

Exhibit Index:

A: Contribution
B: FRAND Declaration
Exhibit A: CONTRIBUTION

Insert description of Contribution in such detail as may from time to time be required under the Policies and Procedures:
Exhibit B: FRAND Declaration

Please select one of the following:

☐ The Member, Contributor or Academic Contributor and each of its Affiliates elects the royalty regime for the above FRAND License in Section B(1) to be with compensation (royalties).

☐ The Member, Contributor or Academic Contributor and each of its Affiliates elects the royalty regime for the above FRAND License in Section B(1) to be without compensation (royalties).
NOTE: All blanks must be completed in order for this election form to be given consideration. This election form is subject to the Intellectual Property Rights Policy (the “IPR Policy”) of O-RAN ALLIANCE and any policies and procedures adopted by the Board of Directors and any applicable Work Group Procedures or Work Group Specific Procedures (“Policies and Procedures”). All capitalized terms used in this form have the meanings given to them in the IPR Policy of the O-RAN ALLIANCE.

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<td>Name of Representative Completing this Form on Behalf of Member, Contributor of Academic Contributor (“Representative”):</td>
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<td>Email Address of Representative:</td>
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<td>Draft Specification to which this Election Form relates:</td>
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A. The Representative hereby represents the following on behalf of him/herself and the Member, Contributor or Academic Contributor as the context requires:

1. The Representative is authorized to complete and submit this Election Form on behalf of the Member, Contributor or Academic Contributor and to make the following representations and warranties.

2. The Representative and the Member, Contributor or Academic Contributor have each reviewed any Policies and Procedures, and agree that this Election Form is being completed and submitted in full compliance with the same.

B. The Member, Contributor or Academic Contributor and each of its Affiliates hereby irrevocably agree that if the Draft Specification referred to above is finally adopted as a Final Specification, that on request it will license IPR on the following terms:
NOTE: ELECTIONS MADE BY MEMBER, CONTRIBUTOR OR ACADEMIC CONTRIBUTOR MAY NOT BE REVOKED OR CHANGED AFTERWARDS

1. The Member, Contributor or Academic Contributor and each of its Affiliates is prepared to grant under Fair Reasonable And Non-Discriminatory (FRAND) terms and conditions to the other Members, Contributors or Academic Contributors and each of their Affiliates and Adopters a nonexclusive, non-transferable, irrevocable (but subject to Defensive Suspension), non-sublicensable worldwide patent license under their Necessary Claims to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Implementations; provided, however, that such agreement to license shall not extend: (i) to any part or function of a product in which a Compliant Implementation is incorporated that is not itself part of the Compliant Implementation; or (ii) to any Member, Contributor or Academic Contributor or its Affiliates, if that other Member, Contributor or Academic Contributor or its Affiliates is not making a reciprocal grant to the granting Member, Contributor or Academic Contributor and its Affiliates. For the avoidance of doubt, the foregoing licensing commitment includes the distribution by the Member’s (or its Affiliates’) or Adopter’s distributors, and the use by the Member’s, Contributor’s or Academic Contributor’s (or its Affiliates’) or Adopter’s customers, of such licensed Compliant Implementations; or

2. The Member, Contributor or Academic Contributor and each of its Affiliates elects that the royalty regime for the FRAND License to be either (a) with or (b) without compensation (royalties) as indicated in Exhibit B. (Note: A Member, Contributor or Academic Contributor must elect one of the foregoing (a) or (b) using Exhibit B).

3. Sections B(1) and B(2) do not apply to Necessary Claims identified in Exhibit A as Necessary Claims as owned by Member, Contributor or Academic Contributor and/or its Affiliates under the Draft Specification in its then-current form, provided Member, Contributor or Academic Contributor reasonably identifies in Exhibit A the portion of the Draft Specification that would result in such infringement, and indicates that no guarantee of a FRAND license is being made (or that such rights will in fact be denied in some or all cases) as to such Necessary Claims. In the case of Necessary Claims under non-public patent applications, the disclosure of such claims need not be in such detail as would disclose any trade secrets.

4. A Member, Contributor or Academic Contributor may elect (on Exhibit B) one option with respect to one or some Necessary Claim(s) and another option with respect to other Necessary Claim(s) In case of Necessary Claims under non-public patent applications, the disclosure of such Necessary Claims need not be in such detail as would disclose any trade secrets.

5. With respect to all Necessary Claims under the Draft Specification referred to above, that are later owned by Member, Contributor or Academic Contributor or any of its Affiliates, the Member, Contributor or Academic Contributor will be deemed to have elected the same option (i) or (ii) as per Section 3.

This Election Form has been submitted on , 2018.

Name of Member, Contributor or Academic Contributor

By:

Signature of Representative:
Exhibit A

FRAND Declaration

1. Please select one of the following:

☐ The Member, Contributor or Academic Contributor and each of its Affiliates elects the royalty regime for the above FRAND License in Section B(1) to be with compensation (royalties).

☐ The Member, Contributor or Academic Contributor and each of its Affiliates elects the royalty regime for the above FRAND License in Section B(1) to be without compensation (royalties).

2. Please indicate if selected:

☐ The Member, Contributor or Academic Contributor will identify all Necessary Claims owned by it and/or its Affiliates under the Draft Specification in its then-current form, as well as reasonably identify the portion of such Draft Specification that would result in such infringement. Member, Contributor or Academic Contributor and their Affiliates do not make any guarantee of a FRAND license is being made and such rights may in fact be denied in some or all cases as to such Necessary Claims. In the case of Necessary Claims under non-public patent applications, the disclosure of such claims need not be in such detail as would disclose any trade secrets.

3. List below all Necessary Claim(s), which shall be subject to option (2) by identifying such specific Necessary Claim(s) and by reasonably identifying the portion(s) of said Draft Specification, to which such Necessary Claim(s) relate.

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Appendix C

O-RAN ADOPTER LICENSE AGREEMENT

BY DOWNLOADING, USING OR OTHERWISE ACCESSING ANY O-RAN SPECIFICATION, ADOPTER AGREES TO THE TERMS OF THIS AGREEMENT.

This O-RAN Adopter License Agreement (the “Agreement”) is made by and between the O-RAN Alliance and the entity that downloads, uses or otherwise accesses any O-RAN Specification, including its Affiliates (the “Adopter”).

This is a license agreement for entities who wish to adopt any O-RAN Specification.

SECTION 1: DEFINITIONS

1.1 “Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with another entity, so long as such control exists. For the purpose of this Section, “Control” means beneficial ownership of fifty (50%) percent or more of the voting stock or equity in an entity.

1.2 “Compliant Implementation” means any system, device, method or operation (whether implemented in hardware, software or combinations thereof) that fully conforms to a Final Specification.

1.3 “Adopter(s)” means all entities, who are not Members, Contributors or Academic Contributors, including their Affiliates, who wish to download, use or otherwise access O-RAN Specifications.

1.4 “Minor Update” means an update or revision to an O-RAN Specification published by O-RAN Alliance that does not add any significant new features or functionality and remains interoperable with the prior version of an O-RAN Specification. The term “O-RAN Specifications” includes Minor Updates.

1.5 “Necessary Claims” means those claims of all present and future patents and patent applications, other than design patents and design registrations, throughout the world, which (i) are owned or otherwise licensable by a Member, Contributor or Academic Contributor during the term of its Member, Contributor or Academic Contributorship; (ii) such Member, Contributor or Academic Contributor has the right to grant a license without the payment of consideration to a third party; and (iii) are necessarily infringed by a Compliant Implementation (without considering any Contributions not included in the Final Specification). A claim is necessarily infringed only when it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the date any Final Specification was published by the O-RAN Alliance or the date the patent claim first came into existence, whichever last occurred, to make, sell, lease, otherwise dispose of, repair, use or operate a Compliant Implementation without infringing that claim. For the avoidance of doubt in exceptional cases where a Final Specification can only be implemented by technical solutions, all of which infringe patent claims, all such patent claims shall be considered Necessary Claims.

1.6 “Defensive Suspension” means for the purposes of any license grant pursuant to Section 3, Member, Contributor, Academic Contributor, Adopter, or any of their Affiliates, may
have the discretion to include in their license a term allowing the licensor to suspend the license against a licensee who brings a patent infringement suit against the licensing Member, Contributor, Academic Contributor, Adopter, or any of their Affiliates.

SECTION 2: COPYRIGHT LICENSE

2.1 Subject to the terms and conditions of this Agreement, O-RAN Alliance hereby grants to Adopter a nonexclusive, nontransferable, irrevocable, non-sublicensable, worldwide copyright license to obtain, use and modify O-RAN Specifications, but not to further distribute such O-RAN Specification in any modified or unmodified way, solely in furtherance of implementations of an O-RAN Specification.

2.2 Adopter shall not use O-RAN Specifications except as expressly set forth in this Agreement or in a separate written agreement with O-RAN Alliance.

SECTION 3: FRAND LICENSE

3.1 Members, Contributors and Academic Contributors and their Affiliates are prepared to grant based on a separate Patent License Agreement to each Adopter under Fair Reasonable And Non-Discriminatory (FRAND) terms and conditions with or without compensation (royalties) a nonexclusive, non-transferable, irrevocable (but subject to Defensive Suspension), non-sublicensable, worldwide patent license under their Necessary Claims to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Implementations; provided, however, that such license shall not extend: (a) to any part or function of a product in which a Compliant Implementation is incorporated that is not itself part of the Compliant Implementation; or (b) to any Adopter if that Adopter is not making a reciprocal grant to Members, Contributors and Academic Contributors, as set forth in Section 3.3. For the avoidance of doubt, the foregoing licensing commitment includes the distribution by the Adopter’s distributors and the use by the Adopter’s customers of such licensed Compliant Implementations.

3.2 Notwithstanding the above, if any Member, Contributor or Academic Contributor, Adopter or their Affiliates has reserved the right to charge a FRAND royalty or other fee for its license of Necessary Claims to Adopter, then Adopter is entitled to charge a FRAND royalty or other fee to such Member, Contributor or Academic Contributor, Adopter and its Affiliates for its license of Necessary Claims to its licensees.

3.3 Adopter, on behalf of itself and its Affiliates, shall be prepared to grant based on a separate Patent License Agreement to each Members, Contributors, Academic Contributors, Adopters and their Affiliates under Fair Reasonable And Non-Discriminatory (FRAND) terms and conditions with or without compensation (royalties) a nonexclusive, non-transferable, irrevocable (but subject to Defensive Suspension), non-sublicensable, worldwide patent license under their Necessary Claims to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Implementations; provided, however, that such license will not extend: (a) to any part or function of a product in which a Compliant Implementation is incorporated that is not itself part of the Compliant Implementation; or (b) to any Members, Contributors, Academic Contributors, Adopters and their Affiliates that is not making a reciprocal grant to Adopter, as set forth in Section 3.1. For the avoidance of doubt, the foregoing licensing commitment includes the distribution by the Members’, Contributors’, Academic Contributors’, Adopters’ and their Affiliates’ distributors and the use by the Members’, Contributors’, Academic Contributors’, Adopters’ and their Affiliates’ customers of such licensed Compliant Implementations.
SECTION 4: TERM AND TERMINATION

4.1 This Agreement shall remain in force, unless early terminated according to this Section 4.

4.2 O-RAN Alliance on behalf of its Members, Contributors and Academic Contributors may terminate this Agreement if Adopter materially breaches this Agreement and does not cure or is not capable of curing such breach within thirty (30) days after being given notice specifying the breach.

4.3 Sections 1, 3, 5 - 11 of this Agreement shall survive any termination of this Agreement. Under surviving Section 3, after termination of this Agreement, Adopter will continue to grant licenses (a) to entities who become Adopters after the date of termination; and (b) for future versions of O-RAN Specifications that are backwards compatible with the version that was current as of the date of termination.

SECTION 5: CONFIDENTIALITY

Adopter will use the same care and discretion to avoid disclosure, publication, and dissemination of O-RAN Specifications to third parties, as Adopter employs with its own confidential information, but no less than reasonable care. Any disclosure by Adopter to its Affiliates, contractors and consultants should be subject to an obligation of confidentiality at least as restrictive as those contained in this Section. The foregoing obligation shall not apply to any information which is: (1) rightfully known by Adopter without any limitation on use or disclosure prior to disclosure; (2) publicly available through no fault of Adopter; (3) rightfully received without a duty of confidentiality; (4) disclosed by O-RAN Alliance or a Member, Contributor or Academic Contributor to a third party without a duty of confidentiality on such third party; (5) independently developed by Adopter; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that Adopter provides reasonable prior written notice to O-RAN Alliance, and cooperates with O-RAN Alliance and/or the applicable Member, Contributor or Academic Contributor to have the opportunity to oppose any such order; or (7) disclosed by Adopter with O-RAN Alliance’s prior written approval.

SECTION 6: INDEMNIFICATION

Adopter shall indemnify, defend, and hold harmless the O-RAN Alliance, its Members, Contributors or Academic Contributors, and their employees, and agents and their respective successors, heirs and assigns (the “Indemnitees”), against any liability, damage, loss, or expense (including reasonable attorneys’ fees and expenses) incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, investigations, actions, demands or judgments arising out of Adopter’s use of the licensed O-RAN Specifications or Adopter’s commercialization of products that comply with O-RAN Specifications.

SECTION 7: LIMITATIONS ON LIABILITY; NO WARRANTY

EXCEPT FOR BREACH OF CONFIDENTIALITY, ADOPTER’S BREACH OF SECTION 3, AND ADOPTER’S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY OR THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, IN EACH CASE WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
O-RAN SPECIFICATIONS ARE PROVIDED “AS IS” WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THE O-RAN ALLIANCE AND THE MEMBERS, CONTRIBUTORS OR ACADEMIC CONTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SECURITY, SATISFACTORY QUALITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, ERROR-FREE OPERATION, OR ANY WARRANTY OR CONDITION FOR O-RAN SPECIFICATIONS.

SECTION 8: ASSIGNMENT

Adopter may not assign the Agreement or any of its rights or obligations under this Agreement or make any grants or other sublicenses to this Agreement, except as expressly authorized hereunder, without having first received the prior, written consent of the O-RAN Alliance, which consent may be withheld in O-RAN Alliance’s sole discretion. O-RAN Alliance may freely assign this Agreement.

SECTION 9: THIRD-PARTY BENEFICIARY RIGHTS

Adopter acknowledges and agrees that Members, Contributors and Academic Contributors (including future Members, Contributors and Academic Contributors) are entitled to rights as a third-party beneficiary under this Agreement, including as licensees under Section 3.

SECTION 10: BINDING ON AFFILIATES

Execution of this Agreement by Adopter in its capacity as a legal entity or association constitutes that legal entity’s or association’s agreement that its Affiliates are likewise bound to the obligations that are applicable to Adopter hereunder and are also entitled to the benefits of the rights of Adopter hereunder.

SECTION 11: GENERAL

This Agreement is governed by the laws of Germany without regard to its conflict or choice of law provisions.

This Agreement constitutes the entire agreement between the parties as to its express subject matter and expressly supersedes and replaces any prior or contemporaneous agreements between the parties, whether written or oral, relating to the subject matter of this Agreement.

Adopter, on behalf of itself and its Affiliates, agrees to comply at all times with all applicable laws, rules and regulations with respect to its and its Affiliates’ performance under this Agreement, including without limitation, export control and antitrust laws. Without limiting the generality of the foregoing, Adopter acknowledges that this Agreement prohibits any communication that would violate the antitrust laws.

By execution hereof, no form of any partnership, joint venture or other special relationship is created between Adopter, or O-RAN Alliance or its Members, Contributors or Academic Contributors. Except as expressly set forth in this Agreement, no party is authorized to make any commitment on behalf of Adopter, or O-RAN Alliance or its Members, Contributors or Academic Contributors.

In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provisions will be deemed stricken from the contract, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect.
Any failure by a party or third party beneficiary to insist upon or enforce performance by another party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise by law shall not be construed as a waiver or relinquishment to any extent of the other parties’ or third party beneficiary’s right to assert or rely upon any such provision, right or remedy in that or any other instance; rather the same shall be and remain in full force and effect.

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