



# **VSO Policies and Procedures**

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## VITA STANDARDS ORGANIZATION - POLICIES AND PROCEDURES

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## **1.0 Introduction**

The VITA Standard Organization (VSO) was formed in the fall of 1993 to provide VITA members with a method of developing and promoting open technology specifications. One of the first projects of the VSO was the development of a new specification for the VMEbus. That specification was based on the original VMEbus specification written by Motorola, Mostek, and Signetics and placed into the public domain in the early 1980's. Once the VSO completed its work, the specification was submitted to the ANSI ballot process and VITA 1, VME64, was recognized as an American National Standard in 1995. Since that time the VSO has continued to develop and promote open specifications for the bus and board industry.

The procedures to develop specifications within the VSO are outlined in this document. Once a document has completed the VSO process, its sponsors may decide to seek further recognition through any of a variety of national or international standards organizations or the sponsors may decide to leave the specification within the VSO.

These Policies and Procedures have been treated like a standards document and have been constructed by the group as a whole. Any rights given to any individuals or associated organizations have been given by a majority ballot of the VSO membership. It is the philosophy of the VSO that it starts with all the rights, and votes powers and rights away, shares rights, or maintains rights exclusively.

### **1.1 Changing this document**

Changes to this document require a 2/3 majority vote of the votes cast at a duly called VSO meeting of VITA members who meet the voting eligibility requirements as stated in section 5.0.

### **1.2 References**

1. ANSI Essential Requirements: Due process requirements for American National Standards (<http://www.ansi.org>)
2. Procedures for the Development of American National Standards within the VITA Standards Organization (<http://www.vita.com>)
3. Robert's Rules of Order Newly Revised (<http://www.robertsrules.com>)

### **1.3 Electronic Communications**

Any reference to documents or communications in these procedures should be understood to include the use of electronic means unless stated otherwise. For example, a requirement that something be provided "in writing" may be submitted via electronic means such as email.

## **2.0 Structure and Membership**

The VSO is an independent organization within VITA that reports directly to the VITA Secretariat. The Secretariat is responsible for insuring due process, developing consensus, and providing administrative support. The technical director of VITA shall hold the position of VITA Secretariat.

### **2.1 Membership**

Membership in the VSO is by individual and is open to any individual or consultant employed by an organization that is a VITA corporate member (regular, senior, or sponsor).

### **2.2 Non-VITA Members**

Individuals who are not employed by VITA member companies may attend VSO meetings at the discretion of the VSO Chair.

### **3.0 Officers**

All officers of the VSO shall be individuals from regular, senior, or sponsor members of VITA. The officer positions shall be:

- a. Chair
- b. Vice Chair
- c. Secretary

The chair and vice-chair are elected positions. The secretary may be appointed by the chair at each meeting. If the chair does not appoint a secretary, then it shall be the responsibility of the VITA technical director to take the meeting minutes and post the minutes after the meeting.

#### **3.1 Term**

The term of each elected officer shall be from April 1 until March 31 of the following year.

#### **3.2 Vacancies**

In the event that the chair position becomes vacant, the vice-chair will assume the chair position and serve out the remainder of the chair's term. In the event that the chair position becomes vacant and the vice-chair is not able to serve, the VITA Secretariat will appoint a nominating committee from the VSO membership and call an election at the next scheduled meeting to elect the chair position.

#### **3.3 Officer Removal**

The VITA Secretariat has the responsibility to monitor the performance of any of the officers of the VSO and, based on their inability to fulfill their roles in a manner that concurs with the stated goals of the VSO, terminate their term subject to 3/4 majority agreement of the voting membership.

#### **3.4 Responsibilities of the Officers**

The responsibilities and duties of the officers of the VITA Standards Organization shall include, but not be limited to:

Chair (elected position)

- Schedule meetings
- Prepare agenda
- Chair meetings
- Keep informed of technical status of all related standards activities
- Present status report for all activities at each meeting
- Provide leadership and guidance to working groups in the development of standards
- Accept appeals and serve on appeals board (See Section 13)
- Coordinate activities with VITA office as required

Vice Chair (elected position)

- Act in the absence of the Chair
- Consult with Chair on all matters relevant to the VSO
- Coordinate activities with VITA office as required

Secretary (appointed position)

- Takes minutes of all VSO meetings
- Use appropriate means to provide a copy of the minutes to the members.
- Make revisions to the minutes as required.

#### **4.0 Election of Officers**

A nominations committee composed of three VSO members shall be appointed by the chair at least 60 days prior to the election. The committee shall solicit candidates from the VSO membership and shall present one or more candidates for the offices of chair and vice-chair at least 45 days before the election.

Balloting for the election will start 31 days prior to the March VSO meeting or on March 1 if no VSO meeting is scheduled for March. The balloting for the election will conclude one day prior to the March VSO meeting or on March 30 if no VSO meeting is scheduled for March. The results will be tabulated and announced at the VSO meeting or on March 31 if no VSO meeting is held in March.

The balloting will be conducted via email. Eligible balloters will consist of VSO members who have attended two (2) out of the previous four (4) VSO meetings. The ballot will consist of the list of candidates put forth by the nominations committee and will contain a space for one write-in candidate. Balloters will be able to vote for one candidate each for each office presented.

In the case that no candidate receives a majority of the ballots cast, an immediate runoff election will be held at the March VSO meeting between the two candidates with the most votes. In the event that no meeting is held in March, a two-week runoff election will be held via email starting on April 1 and finishing on April 14 between the two candidates with the most votes.

#### **5.0 Voting**

##### **5.1 Eligibility**

VSO members are entitled to vote at a VSO regular or special meeting if they have attended at least two out of the previous four regular meetings. Those members attending a VSO regular or special meeting who meet the eligibility requirements for that meeting may by a 2/3rds majority vote grant a member voting privileges on a specific issue even though that member's attendance requirements are not met.

Only VSO attendees of VITA member companies can vote. Non-VITA members in attendance at VSO meetings cannot vote.

##### **5.2 Majority Vote and 2/3 Majority Vote**

Unless otherwise noted, a majority vote means more than half of the votes in the affirmative cast by persons legally entitled to vote, excluding abstentions, at any duly called meeting.

Likewise, unless otherwise noted, a 2/3 majority vote means 2/3rds of the votes in the affirmative cast by persons legally entitled to vote, excluding abstentions, at any duly called meeting.

##### **5.3 Abstentions**

Abstentions are a decision not to vote and are therefore not counted as votes cast.

##### **5.4 The 75/75 Balloting Requirement**

The 75/75 balloting requirement requires that 75% of the ballots from the official ballot list must be returned marked either APPROVE or DISAPPROVE and 75% of the returned ballots must be marked APPROVE. A ballot that is marked ABSTAIN is NOT considered a vote and will NOT be counted towards the 75% returned ballot requirement. A ballot marked REMOVE ME will result in the balloter being removed from the working group and from the ballot list. The 75% ballot return requirement will be calculated using the revised ballot list.

## **6.0 VSO Meetings**

### **6.1 Regular Meetings**

The VSO will meet on a regular basis, typically from four to six times per year, or as determined by the membership. Meetings will be for the purpose of informing members of on-going developments, for providing working and study groups with time to work on standards development, and for conducting any other business as required. The date, time, and place of such meetings will be posted at least 30 days in advance on the VSO web page of the [www.vita.com](http://www.vita.com) website. Attendance may be in person or by teleconference. A teleconference attendee must at least attend the on-going developments session to be recorded as attended.

### **6.2 Special Meetings**

A special meeting of the VSO may be called by the technical director of VITA, by the chair of the VSO, or by the chair of the VSO upon written request of at least ten (10) eligible voting members of the VSO when it is necessary to take action on some item or items of urgency that cannot wait until a regular meeting. The date, time, place and reason for the special meeting must be transmitted to VSO members 15 days prior to the date of the meeting.

### **6.3 Duly Recognized Meeting**

A duly recognized meeting of the VSO will be any regular or special meeting as defined in sections 6.1 and 6.2.

### **6.4 Conduct of the Meeting**

The latest edition of “Robert’s Rules of Order New Revised” (see [www.robertsrules.com](http://www.robertsrules.com)) shall be used to conduct VSO meetings. Where Robert’s Rules of Order differ with specific provisions of these Policies and Procedures, these Policies and Procedures shall take precedence.

The patent policy statement, anti-trust policy statement and ITAR policy statement shall be available and accepted at all meetings.

Availability may be in three forms. The patent, anti-trust and ITAR policy statement

1. may accompany all meeting announcements.
2. shall be displayed during web based conference calls.
3. shall be read if any member is unaware or does not acknowledge acceptance of these three statements.

Acceptance at the meeting shall be as follows. The chair shall read the following “Acceptance of VSO patent, anti-trust and ITAR policy statement”:

“This meeting is covered by the patent, anti-trust and ITAR policy statement per VSO policy and procedures posted on its website. These policy statements are displayed here via web meeting. Please acknowledge by voice vote that you accept these policies. Affirmative?” (Wait for response)

“Negative?” (Wait for response) ... if there are negatives then please read the relevant policy statements.

“Are there any patent disclosures related to the contents of this meeting?”

#### **6.4.1 Patent Policy Statement**

“VITA’s patent policy regarding the use of patented technology in standards is posted on its website. Working group members should read these policies. Working group members who are aware of any patents or patent applications that might be essential to the standards proposed by this working group are required to disclose them. Are there any disclosures?”

#### **6.4.2 Anti-trust Policy Statement**

These standards are developed in accordance with applicable antitrust and competition laws. Meetings amongst competitors to develop these standards are to be conducted in accordance with these laws.

Hence don’t in fact or appearance, discuss or exchange information regarding:

- Individual company prices, terms and conditions of sale, profits, margins or cost.
- Industry pricing policies and levels.
- Changes in industry production, capability, or inventories.
- Individual company bids or bid procedures.
- Plans of individual companies concerning the design, characteristics, production, distribution, marketing, or introduction dates of particular products, including proposed territories or customers.
- Matters relating to individual suppliers that might have the effect of excluding them from any market.
- Individual company market shares for any products or for all products.

### 6.4.3 ITAR Policy Statement

Optionally the ITAR (International Traffic in Arms Regulations) statement shall be read.

This working group is an international community, thus no ITAR sensitive information shall be exchanged during this meeting.

## 7.0 Standards Development

The development of a standard starts within the VSO in either a study group or a working group and moves through two distinct phases as shown in Figure 7.1. Prior to Phase 2 the standards committee chooses one of two tracks. Track 1 leads to either an IEC Industry Trade Agreement or a VSO Specification while track 2 leads to an American National Standard.

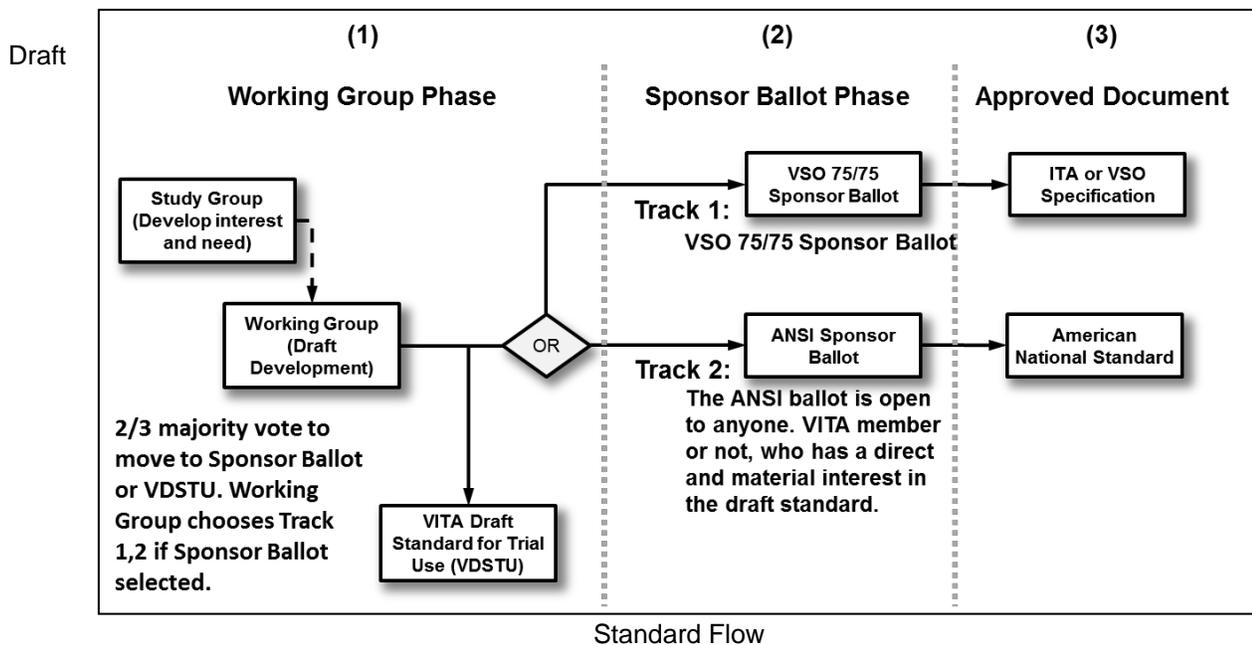


Figure 7.1

### 7.1 Phase 1 – Standard Development

#### 7.1.1 Study Groups

A study group may be formed by any VSO member that wishes to investigate the need and ascertain the interest in developing a standard. The VSO member requesting recognition of the study group is designated the chair of the study group. Membership in the study group is open to any VSO member. The study group chair is responsible for scheduling meetings, soliciting members, keeping minutes of meetings, and reporting activities to the VSO Chair.

A study group can move to working group status by meeting working group formation criteria as outlined in section 7.1.2 Working Groups. A study group would disband if interest in developing the standard was not achieved within a period deemed reasonable by the VSO membership.

Forming a study group is NOT a prerequisite for forming a working group. A standards activity can begin in a working group if the working group formation criteria are met.

### **7.1.2 Working Groups**

The development of a draft standard takes place in a working group. Three (or more) organizations which are VITA members may form a working group to carry out the development of a specific standard. Working groups achieve official VSO recognition by meeting the following criteria.

1. The development of the standard must be proposed by three (or more) organizations that are VITA members and wish to sponsor the development of the standard
2. The scope of the proposed standard must fall within the technical scope of the VSO.
3. The sponsors must notify the VSO Chair of their intentions to form a working group and must submit a document with the purpose, scope, and an outline for the proposed standard.

To maintain formal working group status, the working group shall continue to have at least three sponsors as VITA members and shall continue to show forward progress in the development of the standard. If the number of sponsors falls below three, then the remaining sponsor(s) may recruit new sponsor(s), may return to study group status, or may disband the working group.

An ANSI PINs (Project Initiation Notification) form shall be submitted within two weeks of working group formation for any proposed standard that is intended to be submitted for ANSI recognition.

VITA shall notify ANSI within two weeks upon the cancelation of any project for which a PIN was submitted.

### **7.1.3 Working Group Officers**

Working groups should have a chair, a draft editor, and optionally a vice-chair and secretary. The chair and the draft editor may be the same individual. All working group officers shall be initially appointed by the supporter organizations. After two meetings, the working group may hold elections to either reaffirm or elect new officers.

The working group chair is initially appointed by the supporter organizations and shall be responsible for the following:

1. Soliciting membership for the working group.
2. Maintaining a working group membership list.
3. Scheduling meetings.
4. Leading working group meetings.
5. Keep meeting minutes unless the working group has a secretary.
6. Reporting development status to the VSO Chair.
7. Completing development in a timely manner.
8. Submitting the draft for one or more working group ballots.

The working group vice-chair (optional position) is responsible for coordinating working group activities with the chair and acting in the chair's absence.

The working group secretary (optional position) is responsible for writing and keeping the minutes of the working group meetings.

The working group draft editor is responsible for maintaining and updating the official draft copy.

#### **7.1.4 Working Group Membership**

Any employee of or a consultant to a VITA member company may be a member of a working group. To become a member of a working group, the interested individual should formally register with the chair of the working group committee. Working groups have three levels of participation: sponsor, participant, and observer. Sponsors make a formal commitment to support the standards activity and put forth extra effort to achieve standardization. Participants attend meetings on a regular basis and are expected to cast votes on all working group ballots and any other committee matters. Observers may attend meetings and may vote in ballots. Members may change their status by submitting a notification in writing to the working group chair.

#### **7.1.5 Working Group Meetings**

Working group meetings may be held at VSO meetings or at other times as required. Meetings may be held in person or via teleconference or other electronic means.

The date, time, and place of such meetings, if held in person, must be transmitted to the working group members 15 days or more in advance. In the case of teleconference or other electronic media meetings, notice must be transmitted to the working group members 48 hours or more in advance. Complete meeting contact information must be included with each notice.

Robert's Rules of Order Newly Revised shall be used to conduct VSO working group meetings. Where Robert's Rules of Order differ with specific provisions for working groups as outlined in these Policies and Procedures, these Policies and Procedures take precedence.

The chair shall also read the "Acceptance of VSO patent, anti-trust and ITAR policy statement" per section 6.4 Conduct of the Meeting.

#### **7.1.6 Working Group Balloting**

Balloting is by individual. Before a formal working group ballot, the working group chair is responsible for compiling a working group balloting list. The list should consist of the sponsors, participants, and observers of the working group.

The period for a working group ballot may be 28 days depending on the material to be reviewed. The length of the ballot period shall be proposed by the working group chair with majority agreement of the working group. The working group chair may extend the ballot period up to 14 days in order to allow more time for voting upon request of any of the working group members.

Ballots shall be marked with one of the following responses:

APPROVE (with or without comment). Comments are informational only and are not considered in counting the vote as APPROVE. Any changes considered necessary will require a DISAPPROVE vote. An APPROVE ballot that is conditional on a change in the draft will be considered to be a DISAPPROVE ballot.

DISAPPROVE (with reasons). Provide reason(s) for the DISAPPROVE vote and suggest an action that would change the DISAPPROVE vote to APPROVE. DISAPPROVE ballots without reasons may be discarded by the committee.

ABSTAIN. A voter may abstain for any reason. Abstentions are not counted as returned ballots.

During the ballot period one or more follow-up notifications shall be sent to voters who have not voted reminding them that the ballot will close as of the specified date and urging them to vote.

Working group ballots shall be coordinated with the VITA technical director. VITA maintains a web based system for balloting.

### **7.1.7 Developing Consensus**

The working group chair shall review all working group ballots with the working group and shall attempt to resolve the DISAPPROVE ballots. The results of working group ballots shall be reported to the VSO Chair.

No specific number of working group ballots is required. However, most draft standards require more than one before the draft is completed.

Either a working group ballot or a recirculation of a working group ballot is required when one or more significant changes are made to a draft. A significant change is any change which affects compliance with the draft.

If a significant change has been made to the draft, it is the responsibility of the chair of the working group to decide between a working group ballot or a re-circulation ballot.

### **7.1.8 Recirculation Ballot**

A recirculation of a previous ballot should be held if significant changes have been made as a result of the resolution of DISAPPROVE comments or if unresolved DISAPPROVE comments remain. Recirculation ballots shall be 14 days in length

During a recirculation ballot balloters are given the opportunity to change their previous ballot from APPROVE to DISAPPROVE or DISAPPROVE to APPROVE. Balloters may let their previous ballot response stand by taking no action in the recirculation ballot. Balloters who have abstained in the previous ballot may ballot in the recirculation ballot. Balloters shall consider only the changes from the previous ballot and any unresolved negative comments.

### **7.1.9 Moving to Phase 2**

Once the draft has received a 2/3 majority vote in a working group ballot, the working group may decide to move to phase 2 and to select a track to pursue by a 2/3 majority vote.

### **7.1.10 Draft Availability**

During phase 1, the draft will be made available through web posting or other means to working group members and other members of VITA. Requests for draft copies from non-VITA members during phase 1 shall be approved by the VITA Executive Director or his designee.

## **7.2 Phase 2 - Standards Development**

Standards development takes place in one of two tracks during phase 2 as decided by the working group during phase 1.

### **7.2.1 Track 1 – IEC/ITA or VSO Specification**

The end result of track 1 is either an IEC Industry Trade Agreement or a stand-alone VSO Specification.

#### **7.2.1.1 IEC Industry Trade Agreement**

In March of 2001 VITA executed an agreement with the IEC to allow VSO approved specifications to be recognized as IEC ITA's (Industry Technical Agreements). To be recognized as an ITA, the specification must complete the VSO ballot with 75/75 consensus. That is, at least 75% of the ballots are returned and 75% of the returned ballots are affirmative. See section 5.4. The VSO ballot is open to both working group members and any other VSO member. Once approved by the VSO the candidate specification will be put into the proper format for an ITA document and submitted to the IEC to be posted as an ITA. No further balloting process is required.

#### **7.2.1.2 VSO Specification**

To be recognized as a standalone VSO specification, the draft must pass a 75/75 VSO ballot. At least 75% of the ballots must be returned and 75% of the returned ballots must be affirmative. See section 5.4. The VSO ballot is open to working group members and to any other VSO members who register to vote. Once the ballot is completed and if the 75/75 criteria is met, the draft shall be considered a VSO specification.

## **7.2.2 Track 2 – American National Standard**

The end result of track 2 is an American National Standard. The requirements and procedures for this track are detailed in the separate document title “Procedures for the Development of American National Standards with the VITA Standards Organization”.

## **7.3 Project Discontinuance**

A project to develop a standard shall be discontinued:

- 1) if the number of sponsors falls below three (see Section 7.1.2), or
- 2) if the working group at a duly called meeting agrees by a majority vote to discontinue the project, or
- 3) if the VSO at a duly called meeting agrees by a 2/3 majority vote to discontinue the project due to a lack of action by the working group.

## **8.0 Appeals**

Appeals shall be addressed promptly and a decision made expeditiously. Consideration of appeals shall be fair and unbiased and shall fully address the concerns expressed.

This section gives general criteria regarding the right to appeal, to whom appeals are made and what may be appealed.

### **8.1 Appeals at VITA**

Right to Appeal: Persons who have directly and materially affected interests in the actions of the VITA Standards Organization (VSO) have the right to appeal. Person(s) wishing to appeal should submit their appeal in writing to the Chair of the VSO. The appeal should state the nature of the concern, any alleged adverse effects, and remedial action that would satisfy the concerns of the appellant.

The Chair of the VSO must convene an appeals board meeting within 30 days of receiving the appeal and will carry out the role of respondent.

The appeals board shall consist of three individuals who have not been directly involved in the matter in dispute, and who will not be materially or directly affected by any decision made or to be made in the dispute. At least two members shall be acceptable to the appellant and at least two shall be acceptable to the respondent. In the event that the appellant and respondent cannot agree on acceptable individuals, the Executive Director of VITA shall appoint three individuals to the appeals board that in his/her judgment meet the criteria stated in the first sentence of this paragraph.

The appeals board shall render a judgment in writing within 30 days of their first meeting. The judgment shall be agreed to by at least two out of the three appeals board members. All judgments by the appeals board are final within the VSO.

### **8.2 Appeals at ANSI**

Persons who have directly and materially affected interests and who have been or will be adversely affected by any procedural action or inaction by ANSI or by any ANS-related process have the right to appeal. ANSI will not normally hear an appeal of an action or inaction by a standards developer relative to the development of an American National Standard until the appeals procedures provided by the standards developer have been completed. Appeals of actions shall be made within reasonable time limits; appeals of inactions may be made at any time. Such appeals shall be directed to ANSI in accordance with the procedures of the appropriate ANSI board or council (e.g., Board of Standards Review, Executive Standards Council).

## **9.0 Liability**

VITA and all companies and individuals who contribute to the development of a potential standard make no warranty for the use of the standard, and assume no responsibility for consequential damages nor for errors

appearing in the standard. VITA will provide official interpretations (See Section 10.0) of its standards. However, VITA and any companies or individuals involved with such interpretations make no warranty and assume no responsibility for consequential damages as a result of such interpretations.

## **10.0 Patent Policy**

All VSO members, including study and working group members, shall follow the procedures set forth in this Section 10.

The Patent Policy set forth in this Section 10 includes Appendices 6, 7 and 8.

### **10.1 Early Patent and FRAND License Disclosure Policy**

This section implements an early patent and FRAND license disclosure policy.

### **10.2 Disclosure of Patents**

#### **10.2.1 Disclosure Obligations**

Each working group member (“WG Member”)<sup>1</sup> shall disclose to the working group (“WG”) in writing the existence of all patents and patent applications owned, controlled, or licensed by the VITA member company (“VITA Member Company”) the WG Member represents, which are known by the WG Member and which the WG Member believes contain claims that may become essential to the draft VSO specification (“Draft VSO Specification”)<sup>2</sup> of the WG in existence at the time, after the WG Member has made a good faith and reasonable inquiry into the patents and patent applications the VITA Member Company (or its Affiliates<sup>3</sup>) owns, controls or licenses. An “essential” claim for this purpose means any claim the use of which is necessary to create a compliant implementation and for which there is no technically and commercially feasible non-infringing alternative. The WG Member must provide, on behalf of the VITA Member Company, all patent disclosure information to VSO by completing a “Declaration of VITA Member Company” (“Declaration”), which is set forth in Appendix 6.

#### **10.2.2 Patent Information to be Disclosed**

All patents or patent applications to be disclosed under Section 10.2.1 shall include the following information: (a) for issued patents and published patent applications, the patent or patent application number, the associated country and, as reasonably practicable, the relevant portions of the WG’s Draft VSO Specification; and (b) in the case of unpublished patent applications, the existence of the unpublished patent applications and, as reasonably practicable, the relevant portions of the WG’s Draft VSO Specification.

#### **10.2.3 Timing of Patent Disclosure**

A VSO member who proposes to VSO a specification for consideration to become a Draft VSO Specification must disclose all patents and patent applications owned, controlled, or licensed by the VSO member that contain claims that may become essential to the Draft VSO Specification prior to the date the study group or WG, as applicable, adopts the proposed specification as a Draft VSO Specification.

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<sup>1</sup> For purposes of Section 10, “WG Member” includes all three levels of membership described in Section 7.1.4 of *VSO Policies and Procedures*: sponsors, participants, and observers.

<sup>2</sup> For purposes of Section 10, “Draft VSO Specification” includes any eventual standard developed and adopted under Track 1 or Track 2 in Section 7.2 as an IEC Industry Technical Agreement, a VSO or VITA Specification, or an American National Standard.

<sup>3</sup> For purposes of Section 10, an “Affiliate” is any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

Upon formation of a WG, all WG Members must disclose, on behalf of the VITA Member Company he or she represents, all patents and patent applications owned, controlled, or licensed by the VITA Member Company that contain claims that may become essential to the Draft VSO Specification within sixty (60) days after the formation of the WG.

In anticipation of a ballot to adopt the Draft VSO Specification as a VSO or VITA Specification (including an IEC Industry Technical Agreement or an American National Standard), all WG Members must disclose, on behalf of the VITA Member Company he or she represents, all undisclosed patents and patent applications owned, controlled, or licensed by the VITA Member Company that contain claims that may become essential to the Draft VSO Specification no later than fifteen (15) days from the date of publication of a Draft VSO Specification.

In addition, at the commencement of all face-to-face WG meetings, the WG Chairperson shall ask WG Members to disclose, on behalf of the VITA Member Company he or she represents, any undisclosed patents or patent applications owned, controlled, or licensed by the VITA Member Company that contain claims that may become essential to the Draft VSO Specification in accordance with the requirements set forth in this Patent Policy. If any WG Member thereupon discloses such a patent or patent application, the WG Chairperson shall ask the WG Member to submit and the WG Member shall submit, on behalf of the VITA Member Company he or she represents, a Declaration with information regarding that patent or patent application within thirty (30) days of the meeting at which the disclosure is made.

#### **10.2.4 Disclosure of Third Party Patent Claims**

Each WG Member who becomes aware of patents or patent applications owned or claimed by a third party that the WG Member believes to contain claims that may become essential to the Draft VSO Specification of the WG in existence at the time, including but not limited to any such patents that are licensed to the VITA Member Company the WG Member represents, must disclose them, provided that such disclosure is not prohibited by any confidentiality obligation binding upon the WG Member or the VITA Member Company he or she represents. Any WG Member that discloses third party patent claims does not take a position on the essentiality or relevance of the third party claims to the Draft VSO Specification.

### **10.3 Disclosure of FRAND License**

#### **10.3.1 License Terms**

Each WG Member agrees, on behalf of the VITA Member Company he or she represents, that it will grant to any WG Member, VITA Member Company, or third party a nonexclusive, worldwide, nonsublicensable (except to the extent necessary “to have made”), perpetual patent license (or equivalent non-assertion covenant) for its patent claims essential to the Draft VSO Specification on fair, reasonable and non-discriminatory terms to use, make, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute products that implement the Draft VSO Specification. Such license need only extend to the portions of the Draft VSO Specification for which the license is essential to its implementation.

#### **10.3.2 Declaration**

Each WG Member must complete and execute a Declaration (Appendix 6) on behalf of its VITA Member Company. Each WG Member must declare the maximum royalty rate for all patent claims that the VITA Member Company he or she represents (or its Affiliates) owns or controls and that may become essential to implement the Draft VSO Specification. WG Members are encouraged to attach to the Declaration a draft licensing agreement for all patent claims essential to implement the Draft VSO Specification. The failure to do so precludes the VITA Member Company from including in its final licensing agreement a grant back, reciprocal license, non-assert provision, covenant not to sue, or defensive suspension provision that is broader or more restrictive upon licensees than the following:

1. A VITA Member Company may include in its final licensing agreement a term requiring the licensee to grant a license on fair, reasonable, and non-discriminatory terms to any of the licensee’s patent claims on present or future improvements that are essential to the same Draft VSO Specification;

2. A VITA Member Company may include in its final licensing agreement a term requiring the licensee to grant a reciprocal license to all the licensee's present or future patent claims essential to the same Draft VSO Specification;
3. A VITA Member Company may include in its final licensing agreement a term under which the licensee commits not to assert or not to bring suit to enforce any of the licensee's present or future patent claims essential to the same final specification against the VITA Member Company based on its implementation of the Draft VSO Specification;
4. A VITA Member Company may include in its final licensing agreement a term providing that the license may be suspended with respect to the licensee if the licensee sues the VITA Member Company for infringement of any of the licensee's present or future patent claims essential to the same Draft VSO Specification.

License terms must in all other respects be fair, reasonable, and non-discriminatory.

The Declaration is irrevocable. If a subsequent Declaration covering previously disclosed information is submitted, the subsequent Declaration may only supersede the prior Declaration if the subsequent Declaration is less restrictive upon prospective licensees than the former Declaration. Otherwise, the former Declaration continues to apply. The Declaration will apply to the Draft VSO Specification and any reaffirmations or revisions to that Draft VSO Specification.

### **10.3.3 Record of Declarations**

A record of all Declarations shall be placed and retained in the files of VSO.

### **10.3.4 Negotiation of License Terms**

The negotiation or discussion of license terms among WG Members or with third parties is prohibited at all VSO and WG meetings.

### **10.4 Effect of Failure to Disclose Patents or License Terms**

If a WG Member fails to adequately and timely disclose, on behalf of the VITA Member Company he or she represents, a patent claim or license terms for it as set forth in this Section 10, including at any of the times specified in Section 10.2.3, the VITA Member Company must license it to the extent it is essential to a Draft VSO Specification on a royalty free basis and in accordance with the license restrictions set forth in Section 10.3 for purposes of an implementation compliant with the Draft VSO Specification.

### **10.5 Arbitration Procedure**

Any VSO member who believes a WG Member or the VITA Member Company that the WG Member represents has not complied with his/her or its obligations under this Patent Policy, including but not limited to obligations under Section 10.3 to grant licenses on terms that are fair, reasonable and non-discriminatory, may submit his/her claim in this respect to the applicable WG Chairperson. If the claim is not thereupon resolved on an informal basis within fifteen (15) days of its submission, the WG Chairperson will commence an Arbitration Procedure in accordance with the provisions set forth below.

The Arbitration Panel will consist of three persons: one person selected by the party asserting noncompliance; one person selected by the party whose compliance or noncompliance is at issue; and a third person jointly selected by the other two selected persons. The first two selected persons cannot be affiliated with VITA members represented on the Working Group in question but may be affiliated with other VITA members if so desired. The third jointly selected person, who will act as Chair of the Panel, cannot be affiliated with any VITA member or with VITA. The entire panel must be selected within fifteen (15) days of the WG Chairperson's commencement of this Arbitration Procedure as referenced in the paragraph above. The VITA Technical Director will act as the non-voting Administrator of the Arbitration Procedure to convene, oversee and record the Panel's activity. The VITA General Counsel will specify and advise on the procedures to be followed, including procedures under which parties to the dispute and other interested parties asking to participate may be heard with respect to the dispute.

The Arbitration Panel will submit a Recommendation on the dispute to the VITA Executive Director within forty-five (45) days of commencement of the Arbitration Procedure. Within fifteen (15) days of receiving that

Recommendation, the VITA Executive Director will consult with the VITA Board regarding the Recommendation and will then render a Decision on the dispute.

Any VSO member may request reconsideration of the Decision by notice to that effect to the VITA Board. Upon receiving any such notice, the VITA Board will reconsider the Decision and thereupon render a Final Decision on the dispute within thirty (30) days of that notice.

All VSO members and the VITA Member Companies they represent are expected to accept either the Executive Director's Decision or, if there is reconsideration, the Final Decision as a final and binding determination of the dispute subject to this Arbitration Procedure.

The VITA Board must approve any fees or other costs to be incurred in connection with an Arbitration Procedure, and will also specify the party or parties responsible for payment of all such costs. General principles to be followed are that (a) a party who initiates an Arbitration Procedure but whose claim is ultimately rejected will pay all costs; and (b) a party ultimately found to have not complied with its obligations will pay all costs.

## **11.0 Interpretations**

Issues requiring official interpretation of a standard or specification must be submitted in writing to the chair of the VSO. The chair of the VSO will submit the issue to three (3) technical experts for investigation and review. After review the technical experts will produce an opinion within 30 days. If the experts do not agree on a single interpretation, then a majority opinion and a minority opinion shall be issued. Such opinions shall be considered opinions only and shall not be legally binding. The working group responsible for the standard shall review split opinions to determine if a revision to the standard is appropriate.

## **12.0 Standard Project Designation**

Each candidate VSO standards project shall carry a designation made up of three fields: project field, title field, Draft field.

### **12.1 Project Field (35 characters max)**

VITA n

n is the VSO project number which is assigned by the VSO administrator sequentially from a master list. n may be an integer digit such as 1, 2, 15, 35, etc. to represent a core document. It may be a decimal number such as 1.1, 3.3, 7.12 to represent a related document.

### **12.2 Title Field (300 characters max.)**

This is the title of the standard: for example, VME64; Raceway Interlink - Physical and Logical Standard; Board Level Live Insertion for VMEbus. The title should be concise but descriptive.

### **12.3 Draft Field**

All projects shall start out as Draft 0.1. Minor changes such as typographical corrections and rewording should be designated as 0.1a, 0.1b, 0.1c, etc. Technical changes, additions, and deletions should move the draft designation to the next digit such as 0.2, 0.3, 0.4, etc. No special importance will be given to integer Drafts such as 1.0, 2.0, 3.0, etc. (For example, if a project is approved at Draft 0.8 within the VSO, it will not move to a Draft 1.0 due to approval.) The Draft field should also contain the month, day, and year that the Draft is released. For example, Draft 0.3, April 21, 2003.

### **12.4 ANSI Approval**

VSO standards which achieve ANSI recognition will have the ANSI designation added to their project field and the Draft and date will be dropped. The year that the draft was approved by ANSI will be added to the designation.

## **13.0 Standards Distribution and Copyright Policy**

Publication and sale of VSO specifications, IEC Industry Trade Agreements, and ANSI/VITA standards promotes open technology and also generates revenue to fund VITA activities. Through the publication and sale of standards VITA is able to keep members' dues to a minimum while maintaining a high level of services to members.

Because publication and sale of VSO standards are important to promoting members' interests, VITA has established the following distribution policy covering standards in development, standards that have achieved VSO recognition, and standards that have achieved ANSI recognition.

### **13.1 Copyright**

Draft standards developed by VSO working groups shall be considered the property of VITA and shall carry the following copyright notice.

Copyright © <current year> by VITA, the VMEbus International Trade Association.

The VSO membership at a duly called meeting may by 2/3<sup>rd</sup> majority approval transfer the copyright to another organization.

### **13.2 Notification**

Every draft standard shall carry the following notification.

*This document is an unapproved draft of a proposed standard. As such, this document is subject to change. Do not specify or claim conformance or compliance to this draft standard.*

### **13.3 Publication Format**

Standards and specifications are distributed in electronic formats such as Adobe Portable Document Format (PDF).

### **13.4 Specifications in Development**

During the development of a specification, drafts in electronic form are available to VITA members. Drafts may be provided to non-VITA members with the approval of the VITA Executive Director or his designee.

### **13.5 VSO Specifications and IEC/ITA's**

VSO approved specifications and VSO recognized IEC/ITA's will be entered into the VITA list of publications. Electronic copies will be provided to VITA members at no cost.

### **13.6 ANSI/VITA Standards**

Specifications that achieve ANSI recognition will be entered into the VITA list of ANSI/VITA standard publications. Electronic copies will be provided to VITA members at no cost.

### **13.7 Pricing of Standards Philosophy**

VITA's philosophy in pricing of standards publications is to establish a reasonable price which promotes the adoption of the standard while supporting on-going member activities.

## **14.0 “VITA Draft Standard for Trial Use” Process**

A proposed standard that is intended for subsequent submittal for recognition as an American National Standard may be published as a "VITA Draft Standard for Trial Use".

### **14.1 Trial Use Requirements**

Draft standards for trial use must be in compliance with VITA's Patent Policy.

### **14.2 Decision to Designate a “Draft Standard for Trial Use”**

The decision to designate a draft standard that has passed a working group 2/3<sup>rd</sup> majority ballot as a “VITA Draft

Standard for Trial Use” shall be made by the working group at a duly called meeting by a 2/3<sup>rd</sup> majority vote.

#### **14.3 Right to Appeal**

Persons who have directly and materially affected interests in a candidate draft standard for trial use have the right to appeal the decision to designate the standard for draft trial use. See Section 8.0 regarding the appeals process.

#### **14.4 Time Period**

The working group responsible for the proposed draft standard may set the period for trial use to any period up to 36 months. A draft standard for trial use may only be issued once for any proposed standard.

#### **14.5 Statements in the Draft Standard**

The trial use draft standard should contain an explanation of the motivation for issuing the draft standard for trial use and should indicate what aspects of the standard might be subject to change and what impact these changes would have on the user.

The following statement, or equivalent, shall be included on the front cover of the draft standard for trial use:

“Publication of this draft standard for trial use and comment has been approved by VITA. Distribution of this draft standard for trial use and comment shall not continue beyond ( ) months from the date of publication. It is expected that following this ( ) month period, this draft standard, revised as necessary, will be submitted to the American National Standards Institute for approval as an American National Standard. This draft standard is not an American National Standard. Suggestions for revision should be directed to the VITA technical director.”

## APPENDICES

[**Editor’s Note:** Appendix 1 through Appendix 4 have been either removed or incorporated into the main document. The remaining appendix numbers were not revised so that the first appendix listed is Appendix 5.]

### Appendix 5 - Revision History

Date	Revision - Comments
25 Jan 94	1.0 - Document created
13 Dec 95	1.1 - Revised section 14 Appeals to bring into line with ANSI recommendations. Revised section 16 Patents to include early patent disclosure policy.
17 Sep 97	1.2 - Revised section 16 paragraph 2 to reflect change in ANSI policy. ANSI no longer requires that T&C be provided to ANSI.
18 Mar 98	1.3 - Added section 6.12.1 Absentee Voting
Mar 2001	1.4 – Major revisions to include IEC/ITA capability.
May 2001	1.5 – Submitted for VSO ballot.
July 2001	1.5 – Approved at the Salt Lake City VSO meeting.
Oct 2003	1.6 – Major revision to meet ANSI Essential Requirements
Dec 2003	1.6a – Clarified definition of meetings, balloting, and voting requirements.
Mar 2004	1.7 – Modified 5.1 to allow members to grant voting privileges to attending members who don’t meet voting eligibility requirements. Added copyright requirements to section 12.
April 2004	1.8 – accepted all changes. Removed “draft” watermark and “draft” from header.
Nov 2004	1.9 – add meeting time notification requirements to 7.15
June 2005	2.0 – add section 13 re: Draft Standard for Trial Use
Sep 2006	2.1 – add section 7.3 Project Discontinuance, add section 8 Appeals, revised section 7.1.2 – removed ability of working group to continue with less than 3 sponsors via appeal to VSO, revised section 14.2 to point to section 8.0 Appeals.
Jan 2007	2.2 – replaced previous Patent Policy with “ex ante” Patent Policy approved at January 17, 2007 VSO meeting. See Section 10 Patent Policy. (Editor Note: in revision 2.0 Patent Policy was section 10. The proposed “ex ante” Patent Policy in draft status was labeled section 10. In revision 2.1 submitted as a result of the 2006 VITA ANSI audit, a new section “Interpretations” was added before the Patent Policy section causing the Patent Policy section to become section 11. In 2.2 I have switched the Patent Policy section with the Interpretations section so that Patent Policy is again labeled section 10 and Interpretations is section 11.)

June 2007	2.3 – revisions to meet requests of ANSI Exc, see yellow highlighted areas.
Jan 2008	2.4 – remove language in 8.1 re: lack of consensus by appeals board and decision rendered by executive director. Brings VSO PP into sync with ANSI/VITA Procedures
Feb 2009	14.0 This section has been completely removed. ANSI's Essential Requirements no longer supports an ANSI recognized "Draft Standard for Trial Use".
Nov 2009	Section 14.0 was added to allow "VITA Draft Standard for Trial Use".
Nov 2011	Section 7.1.2 - added PINs submission requirement, Section 7.1.6 and other appropriate places – changed ballot terms to match practice, revised Observer status to bring into line with current practice, revise ballot length, add ballot reminder requirement.
Sept 2015	<ul style="list-style-type: none"> <li>• Added concept of teleconference attendee (6.1)</li> <li>• Added anti-trust and ITAR policy (6.4.x)</li> <li>• Allow concept of displaying patent policy instead of reading (6.4.x)</li> <li>• Added display of patent, anti-trust and ITAR policy at all meetings (6.4.x)</li> <li>• Clarify that only members who register to vote are counted for VSO Specification approval ballot (7.2.1.2)</li> </ul>

Appendix 6: Declaration of VITA Member Company

Section 10 of the *VSO Policies and Procedures* requires the undersigned WG Member<sup>4</sup> to complete and execute this Declaration on behalf of the VITA Member Company he or she represents. The Declaration is irrevocable. Any subsequent Declaration covering information disclosed in this Declaration may only supersede this Declaration if the subsequent Declaration is less restrictive upon prospective licensees than the information set forth in this Declaration. This Declaration will apply to the Draft VSO Specification<sup>5</sup> identified below in Section C and to all reaffirmations or revisions to such Draft VSO Specification.

**A. VITA Member Company**

Legal Name of Organization \_\_\_\_\_

**B. WG Member Representing the VITA Member Company**

Name & Department: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_ URL: \_\_\_\_\_

**C. Draft VSO Specification**

Number: \_\_\_\_\_

Title: \_\_\_\_\_

**D. Disclosure of Patents Containing Essential Claims**

1. In accordance with Section 10 of the *VSO Policies and Procedures*, the undersigned WG Member shall disclose, on behalf of the VITA Member Company he or she represents, all patents or patent applications that the VITA Member Company (or its Affiliates<sup>6</sup>) may own or control and that it believes may contain claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration.

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<sup>4</sup> For purposes of this Declaration, “WG Member” includes all three levels of membership described in Section 7.1.4 of the *VSO Policies and Procedures*: sponsors, participants, and observers.

<sup>5</sup> For purposes of this Declaration, “Draft VSO Specification” includes any eventual standard developed and adopted under Track 1 or Track 2 in Section 7.2 of the *VSO Policies and Procedures* as an IEC Industry Technical Agreement, a VSO or VITA Specification, or an American National Standard.

<sup>6</sup> For purposes of this Declaration, an “Affiliate” is any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

Patent / Application No.: \_\_\_\_\_

Title: \_\_\_\_\_

Patent / Application No.: \_\_\_\_\_

Title: \_\_\_\_\_

Patent / Application No.: \_\_\_\_\_

Title: \_\_\_\_\_

*Attach additional pages if necessary.*

2. Does the VITA Member Company the undersigned represents hold a license from another party to a patent that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration?

Yes       No

If yes, the undersigned shall disclose on behalf of the VITA Member Company all patents to which the VITA Member Company holds a license from another party that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C.

Patent No.: \_\_\_\_\_

Title: \_\_\_\_\_

Licensor: \_\_\_\_\_

*Attach additional pages if necessary.*

**E. VITA Member Company’s Declaration regarding the Licensing of Essential Patents**

In accordance with Section 10 of the *VSO Policies and Procedures*, the VITA Member Company, by and through the undersigned, hereby declares for itself, its Affiliates, successors, assigns, and transferees of its patent rights its licensing position with respect to all patents that it may hold or control and that contain claims that may be essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration, as follows:

1. The VITA Member Company will grant to all interested parties a nonexclusive, worldwide, nonsublicensable (except to the extent necessary "to have made"), perpetual patent license (or equivalent non-assertion covenant) for its patent claims essential to create an implementation compliant with the above-referenced Draft VSO Specification on fair, reasonable and non-discriminatory terms to use, make, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute products that implement the Draft VSO Specification. (The license need only extend to the portions of the Draft VSO Specification for which the license is

essential to its implementation. Any other intended condition or limitation on this commitment is stated in a letter accompanying this Declaration.)

2. The VITA Member Company will grant a license to all such claims to all interested parties with a royalty rate that will not exceed: USD \$ \_\_\_\_\_, or \_\_\_\_\_% of product price, per unit.
  
3.  The VITA Member Company attaches to this Declaration a draft licensing agreement for any claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C (the final licensing agreement will not be more restrictive upon licensees than this draft); **or**  
  
 The VITA Member Company will not include in its final licensing agreement for all claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C a grantback, reciprocal license, non-assert provision, covenant not to sue, or defensive suspension provision that is broader and more restrictive upon prospective licensees than those specified in Section 10 of the current *VSO Policies and Procedures*.

**F. Signature**

*By signing this Declaration, the undersigned represents that he or she is authorized to bind the VITA Member Company as stated herein. The undersigned acknowledges and agrees that this Declaration is a binding agreement between the VITA Member Company and VITA, and its terms are enforceable against the VITA Member Company, its Affiliates, successors, assigns, and transferees. The undersigned further acknowledges and agrees on behalf of the VITA Member Company that each licensee and prospective licensee of patent claims essential to implement the Draft VSO Specification identified above in Section C is an intended beneficiary of this agreement, and each such beneficiary is entitled to rely upon and enforce against the VITA Member Company the provisions set forth in this Declaration.*

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

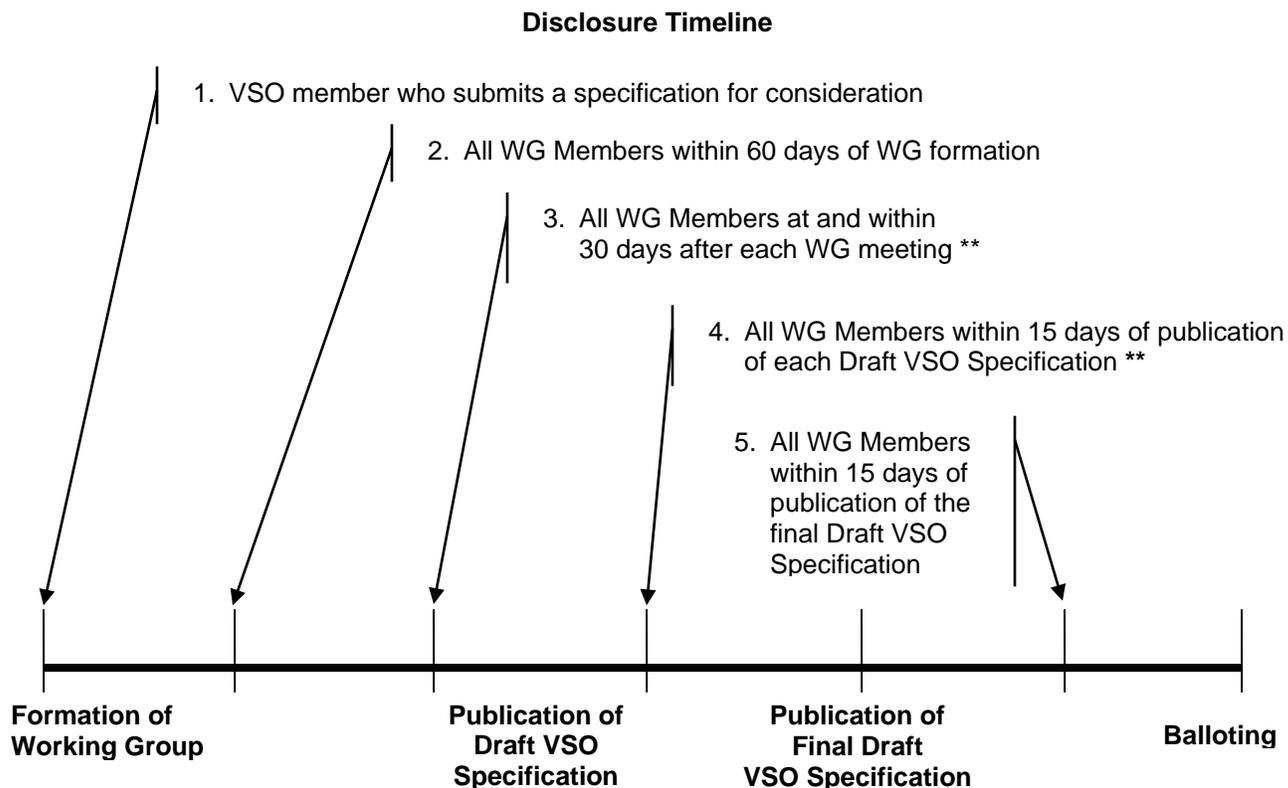
Organization: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 7: Implementation Plan for VITA’s Revised Patent Policy

### Working Groups Formed After January 17, 2007:

#### Timing of IP Disclosure



\*\* These are continuing obligations to disclose after each meeting and after publication of each draft specification

1. A VSO member who proposes to VSO a specification for consideration to become a Draft VSO Specification must disclose prior to formation of a WG.
2. All WG Members must disclose within 60 days of formation of a WG.
3. At each WG meeting, the WG Chair will make a call for essential patents and those WG Members who respond must disclose at and within 30 days of the WG meeting.
4. All WG Members must disclose within 15 days of the date of each publication of a Draft VSO Specification.
5. All WG Members must disclose for balloting within 15 days of the date of publication of the final Draft VSO Specification.

#### Method of Disclosure

- Each time patent information is required to be disclosed, WG Members must complete the Declaration form and timely submit it to the WG Chair.
- There is no need to submit new Declaration forms for previously disclosed patents, patent applications, or licenses.

- If a WG Member wants to amend license information on a previously-submitted Declaration form, he or she can do so only if the subsequent Declaration is less restrictive upon prospective licensees than the former Declaration.
- WG Members must submit a Declaration form for each new or otherwise previously undisclosed patent or patent application the VITA Member Company owns, controls, or licenses that contains claims essential to implement a Draft VSO Specification.

### **Good Faith and Reasonable Inquiry Obligation**

- Disclosures must be based on the WG Member's good faith and reasonable inquiry into the patents and patent applications the VITA Member Company he or she represents owns, controls, or licenses. The scope of this inquiry is limited to those patents, patent applications, or licenses that contain claims essential to the Draft VSO Specification.
- A good faith and reasonable inquiry includes the WG Member using reasonable efforts to identify, contact, and discuss the Draft VSO Specification with: (1) individuals at the VITA Member Company who are experts in the relevant subject area; and (2) the company's attorneys responsible for the patent work in the relevant subject area.
- For example, a WG Member could satisfy his or her good faith and reasonable inquiry obligation by: (1) discussing the Draft VSO Specification with his or her manager and contacting team members involved in the relevant subject matter of the Draft VSO Specification; and (2) contacting the company's inside or outside attorneys, as appropriate, responsible for the patent work in the relevant subject area to determine if there are patents, patent applications, or licenses the company owns or controls that may contain claims essential to implement the Draft VSO Specification.
- This obligation does not require a WG Member to search the VITA Member Company's patent databases.

### **Failure to Meet Disclosure Obligations**

- If any WG Member does not adequately and timely disclose, the VITA Member Company must license any undisclosed patents or patent applications to the extent essential to implement a Draft VSO Specification on a royalty free basis and in accordance with the license restrictions in Section 10.4 of the Patent Policy.
- Any VSO member that believes a WG Member or the VITA Member Company he or she represents has not fulfilled his/her or its obligations under the Patent Policy terms may submit his/her complaint to the WG Chair.
- If the complaint is not resolved within 15 days of notifying the WG Chair, the WG Chair will commence the Arbitration Procedure in Section 10.5 of the Patent Policy.

### **Working Groups Formed Before January 17, 2007:**

The Patent Policy will apply to WGs formed before January 17, 2007, but with the following limitations:

1. For WGs that will not conclude before March 18, 2007, the following applies:
  - All WG Members have 60 days from January 17, 2007 to make the required disclosures and to submit the required Declaration form.
2. For WGs that will conclude before March 18, 2007, the following applies:
  - All WG Members have 30 days from January 17, 2007 to make the required disclosures and to submit the required Declaration form.
  - If WG Members in a WG believe that 30 days is not enough time to satisfy their good faith and reasonable inquiry obligation, as described immediately above, the WG can elect to extend the disclosure deadline an additional 30 days, but, if it does so, the Draft VSO

Specification cannot be voted on until all WG Members' disclosures are made and Declarations are submitted to the WG Chair.

In both instances, if any WG Member does not adequately and timely disclose and submit Declaration forms, the VITA Member Company must license any undisclosed patents or patent applications to the extent essential to implement a Draft VSO Specification on a royalty free basis and in accordance with the license restrictions in Section 10.4 of the Patent Policy.

## Appendix 8: FAQs on VITA's Patent Policy

Questions have arisen concerning the proper interpretation of some aspects of VITA's new patent policy as adopted by the membership this past January 2007. We set forth below answers to these questions to clarify the policy for all members.

1. Q: Do the required disclosures of patents and pending applications that may contain claims essential to a draft specification require patent searches?

A: No. As set forth in section 10.2.1, the policy requires only that a WG Member disclose those patents and applications "known by the WG Member and which the WG Member believes" to contain essential claims "after the WG Member has made a good faith and reasonable inquiry into" his or her company's patent holdings. The Implementation Plan sent to all members this past November provides significant guidance on what a good faith and reasonable inquiry may entail, centered on discussions with appropriate company experts and counsel. The Plan expressly states that this "does not require a WG Member to search the VITA Member Company's patent databases."

2. Q: Does section 10.4 mean that a WG Member's inadvertent failure to disclose an essential patent claim will result in his or her company being required to license that claim on a royalty-free basis?

A: No. Section 10.4 specifies only that, if a WG Member "fails to adequately and timely disclose" patent information as required by earlier sections, the consequence is royalty-free licensing but only "to the extent" an undisclosed claim is essential to a Draft VSO Specification. Any party complaining that a WG Member has not "adequately and timely" disclosed as required would bear the burden of establishing that the nondisclosure was the result of a WG Member's failure to make the requisite good faith and reasonable inquiry rather than mere inadvertence. Under section 10.5, any dispute over whether the good faith and reasonable inquiry occurred will be the subject of informal resolution efforts and, if that fails, a fair and impartial arbitration procedure.

3. Q: Does the policy allow a WG to incorporate a VITA Member Company's patented technology into a Draft VSO Specification even if the VITA Member Company does not want that technology used and is not willing to license it generally?

A: No. The policy is not intended to force any company to allow a WG to employ the company's patented technology in a specification against the company's wishes; it is intended only to inform WG Members when a Draft VSO Specification may implement patent claims that will entail license costs. A WG Member is free to inform the WG that patent claims owned or controlled by the Member's company and implicated in a Draft VSO Specification will not be available for licensing; and, in that event, the WG should not proceed with the Draft VSO Specification unless it can be fashioned without elements that implicate those patent claims.

4. Q: Does the section 10.5 arbitration procedure give the Executive Director or Board broad discretion to reject an Arbitration Panel's determinations?

A: No. The Executive Director's and Board's role is only to ensure that the arbitration process has met all applicable procedural requirements and is otherwise consistent with all VITA rules and policies. If there is any such procedural or other problem presented, the Executive Director would return the matter to the Arbitration Panel to cure the problem. Neither the Executive Director nor the Board will under any circumstance second-guess or otherwise modify or reject the Arbitration Panel's factual determinations, particularly in light of the central role of the Panel Chair who will in all cases be an entirely independent and impartial third party.

5. Q: Does the policy replace VITA's obligations under the ANSI patent policy for proposed VSO-sponsored American National Standards?

A: No. The VITA patent policy is in addition to VITA's continued responsibilities to adhere to the requirements of the ANSI patent policy in connection with VSO-sponsored American National Standards. While the VITA patent policy imposes disclosure requirements only on WG Members, the ANSI patent policy applies to all essential patent claims that may be disclosed and come to VITA's attention from any

source, including from the larger group of interested parties that participate in the prescribed open balloting process for a proposed VSO standard that is submitted to become an American National Standard. Thus, VITA will continue to see to it that the appropriate licensing assurances relating to all such claims are received by ANSI prior to approval of a proposed VSO-sponsored American National Standard. If any such assurance is not forthcoming in a timely manner, VSO will remit the proposed standard back to the applicable VSO Working Group for reconsideration of the proposed standard.

6. Q: Assume a WG invites each of three VITA member companies A, B and C to propose a solution for a connector element of a Draft VSO Specification; all three proposals are covered by patents; and the WG will need to select one of them. A, B and C all represent that they will commit to licenses and to providing license information as contemplated by VITA's patent policy but not until after the WG makes its decision among the proposals. Is it o.k. for A, B and C to coordinate their responses in this manner? Is it prudent for the WG to make its decision before receiving license commitments and license information?

A: No and No. Any such coordination among patent owners with competing connector proposals would raise serious antitrust issues. The whole idea behind VITA's patent policy is to enable a WG to obtain relevant license commitments and information before rather than after making a decision among competing proposals, thereby enabling an informed choice. If A, B and C are represented within the WG, they must submit their Declarations containing license commitments and information at each of the times specified in section 10.2.3 of the patent policy. Even if A, B and C are not represented within the WG, the WG has every right to ask and expect that the relevant license commitments and information be submitted to it prior to a decision among the proposals. That said, however, it is important to keep in mind at all times the prohibition in section 10.3.4 of the patent policy: "The negotiation or discussion of license terms among WG Members or with third parties is prohibited at all VSO and WG meetings."

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Please do not hesitate to bring any other questions or concerns about the patent policy to our attention. We will address them as promptly as possible.