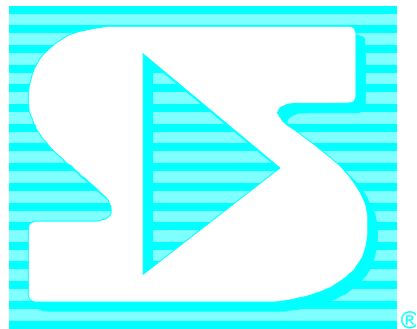


STS Association Directive

**Procedure for the development of standards
and codes of practice**



Amendments issued since publication

Amdt No.	Date	Text affected

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Procedure for the development of standards and codes of practice

Foreword

Edition 1.0 of this directive was approved by the STS Association Board on 7th April 2004 . It was circulated for acceptance by the membership of the Association on 18th March 2004. A record of the responses of members is held by the Association's secretariat.

Errors in clauses 4.2 and 4.4 were subsequently identified and corrected, to bring the procedure in line with international practice. Edition 1.1 was approved with these corrections on 4 August 2004, and replaces Edition 1.0.

1 Scope

This directive sets out the procedure for developing standards and codes of practice for the STS Association, and the roles and responsibilities of the parties involved.

2 Normative references

1] STS2000-1 - STS Association Policy - Intellectual Property Rights

3 Definitions and abbreviations

3.1

CD: committee draft. A draft document submitted by the WG to the STSA members for comment

3.2

CDV: committee draft for voting. A draft document submitted by the WG to the STSA members for voting (and possible non-technical comments)

3.3

CoP: code of practice

3.4

FDS: final draft standard [code of practice]. An approved draft of a standard or code of practice that has not yet been published

3.5

ITG: Investigatory task group. A team of interested parties that assist in developing a NWIP.

3.6

NWIP: new work item proposal

3.7

STSA: STS Association

3.8

Trial-use standard [code of practice]: A document approved by the working group (by consensus or vote) that will only proceed to CD stage after some limited application in, for example, pilot projects or other restricted applications over an agreed time period.

3.9

WG: working group. A working group established by a resolution of the Board of the STSA.

4 Parties involved and their responsibilities

4.1 Proposer: Any person (STSA member or otherwise) who submits a proposal in writing to the STSA. Guidance on the information to be provided in a NWIP is given in annex A.

4.2 Secretary: The STSA secretariat as appointed by the Board
Circulates NWIP to STSA members
Tables result of voting on NWIP for Board consideration

4.3 Board: The Management Board of the STSA in terms of its constitution
Approves/defers or rejects a NWIP according to the rules set by this procedure
Appoints the convenors of working groups
Authorizes expenditure for resources deemed to be necessary for WG progress
Approves motivated extensions to time for development of CDs /reinitializes projects/cancels projects where the agreed time frame for a WG activity has been exceeded.
Approves or rejects a CDV according to the rules of this procedure.

4.4 Working group convenor: The person appointed by the Board to convene a working group for the purposes of progressing a NWI. The proposer of a NWIP has the “right of first refusal” to be WG convenor

4.5 Working group: Those persons nominated by STSA members to participate in the development of a specification or CoP, and any other persons co-opted to assist.

4.6 STSA membership: All members in good standing that have voting rights in terms of the STSA membership rules. (considered as “the committee”, in relation to “CDs” and “CDVs”)

STSA members are required to comment and vote on NWIPs, CDs and CDVs submitted for their consideration.

STSA members may nominate experts to participate in WGs.

5 Basic criteria:

5.1 For NWIP to proceed: Simple majority of members in favour of the NWIP. At least 3 members nominate experts. Successful appointment of a convenor. (See NOTE 1)

NOTE 1 In nominating an expert, the member organization signifies that the nominee will be available to participate in the subsequent WG activities, involving providing timely comments on and input to draft documents and participating in WG meetings.

5.2 For CD to be submitted by a WG for STSA comment

i) Consensus of WG members. The WG convenor to specifically ask if the members consider consensus has been reached and record this in a report of, or minutes of a WG meeting.

ii) Voting by WG members. Where consensus cannot be reached, a simple majority of WG members voting will suffice, with the convenor having a casting vote if required. [Abstentions and votes not cast will not be counted]

NOTE All WG activity by consensus wherever possible, if not possible, then by simple majority vote.

5.3 For WG activity to continue if the CD is not ready by due date.

If the WG is unable to submit a CD by the due date, the convenor is to submit the current WG draft document with a resubmission of the NWIP and a revised programme, not later than 3 months after the original due date for submission of CD. If no resubmission of the NWIP is received after that three month period, the convenor will be advised that the WG has been disbanded and the Board will appoint a new WG convenor who will be instructed to circulate a new NWIP for voting. In either case the criteria for a NWIP to proceed (4.1) will apply.

5.4 For a CDV to be accepted. Of the members voting, a two thirds majority in favour. [Abstentions and any votes not cast will not be counted]

5.5 For Board approval. A CDV accepted by the members in terms of 4.4 and no appeals in writing from any member within a month of the secretary circulating the results of voting and the FDS.

5.6 Appeal process. In the event of an appeal, the secretary will be asked to compile an audited report detailing the process followed from NWIP to FDS, and the appealing party will be asked to present his case in writing which will be considered at a special general meeting (SGM) of the Association. At this meeting a ¾ majority of the voting members present will be the criteria for rejecting or upholding the appeal. No relaxation of the criteria will be allowed. In the event that the appeal is rejected, the FDS will immediately be published. In the event that the appeal is upheld, the activity reverts back to the WG to submit a new CDV in a time frame agreed at the SGM.

6 Project tracking

A four-stage STS project tracking framework shall be used (see tables 1 and 2).

Table 1 – Summary of STS project cycle

stage	starts	ends	remarks
1	Submission of NWIP (1.1)	Board resolution to approve/not approve (1.6)	Provides for identifying new stakeholders
2	Acceptance of scope of work by WG convenor (2.1)	Submission of CD for membership comment (2.6)	If time-out reverts back to stage 1
3	Circulation of CD to STSA members (3.1)	Submission of voting summary to Board (3.4)	Circ of CD and CDV No technical changes allowed at CDV
4	Acceptance of FDS by Board (4.1)	Publication (4.4)	Includes provision for appeal process

NOTE: Stage 1 could be preceded by an investigation stage (record in STSA's records as stage 0) which could involve an ad hoc ITG comprising STSA members and other potential stakeholders and interested parties

Table 2 – Details of **STS project cycle activities**

Stage							
1	new work item proposal	1.1 identify potential project	1.2 STSA membership canvassed for support	1.3 results of voting on NWIP with notes on needs of members/potential members	1.4 Report submitted to Board (Note 1)	1.5 Board review proposed WG composition/competencies needed/funding requirements	1.6 Board resolution proceed with/defer/not approve project/confirm convenor
		NOTE 1 Report to include a) time frame for completion of WG draft and b) names of potential new members					
2	WG Draft	2.1 Acceptance of scope of work by convenor	2.2 Prepare first draft	2.3 Obtain comments from WG	2.4 Use comments to prepare next draft	2.5 Iterate to 2.3 to complete document as "CD" approved by WG (Note 2)	2.6 CD submitted to secretary for circulation to STSA members
		NOTE 2 Option for independent technical review. WG convenor to motivate where costs to be incurred					
3	Committee draft	3.1 Circ to all STSA voting members for comment (CD) or vote (CDV) – convenor recommends – Board decides	3.2 comments on CD reviewed by WG	3.3 prepare CDV for vote [NO further technical changes allowed]	3.4 CDV submitted to secretary for circulation to STSA members (Note 3)	3.5 voting summary to Board + WG convenor final report	
		NOTE 3 If so proposed by the WG, the CDV may be released as a "Trial-use" specification					
4	Final draft standard	4.1 Board resolution Publish/refer back to WG	4.2 Final formatting and language edit	4.3 Membership advised	4.4 release/publish		

Annex A

Guide for submission of a new work item proposal (NWIP) for consideration by the STS Association

A.1 The information provided in a NWIP should contain at least the following:

1. Name of proposer.
2. Date of submission.
3. Proposed scope of work.
4. Likely benefits to members and potential future members.
5. Description of preliminary work or supporting documents.(Attach, for example report of ITG, if applicable).
6. Details of any known patent or intellectual property issues which could impact on the proposed development.
7. Liaison organizations (if any) (Such as other associations, or organizations not currently members of the STSA).
8. Possible participants in a working group, where individuals or organizations have already indicated an interest in participating.
9. Proposed time frame/target date/ expected frequency of meetings.

A.2 The secretariat to record the following information on each NWIP:

Date of circulation to STSA members (table 2: 1.2)	
Date of circulation of results of voting by STSA members (table 2: 1.3)	
Decision of Board (table 2: 1.6)/ date	

Annex B Working Group Charter

**STS ASSOCIATION
WORKING GROUP CHARTER
(STANDARDS WORKING GROUPS)**

Working Group Member Particulars

Full Name _____

Company/CC Reg. No. _____

Physical Address _____

Postal Address _____

Contact Person _____

Contact Person Telephone Number _____

Contact Person Mobile Phone Number _____

Contact Person Fax Number/s _____

Contact Person e-mail _____

<i>Capacity</i>	STSA Member	Invited Expert	Interested Party
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(herein referred to as the "Working Group Member")

Signed for and on behalf of the Working Group Member, which acknowledges that it has read the terms and conditions of this document and agreement; that it understands such terms and conditions; that the signatory of the Working Group Member is authorised to conclude this agreement; and that the Working Group Member agrees to be bound hereby.

for and on behalf of the Working Group Member

Date: _____

Place: _____

Authorised Signatory – sign
who warrants that he is duly authorised

Witness - sign

Signed for and on behalf of the STS Association by the Working Group Convenor who warrants that he is duly authorised to conclude this agreement and that the STS Association agrees to be bound hereby.

for and on behalf of the STS Association

Date: _____

Place: _____

Authorised Signatory – sign
who warrants that he is duly authorised

Witness – sign



Annex A

Working Group

[set out STS official designation and details of Working Group]
(herein referred to as the "Working Group")

Application to join the Working Group

The Working Group Member wishes to join and participate in the deliberations of the Working Group and, by signing this Charter agrees to the terms and conditions set out in this Charter.

1. the Working Group Member records its confirmation that, notwithstanding any invitation to join the Working Group, the Working Group Member joins and participates in the Working Group voluntarily and of its own accord.
2. The Working Group Member undertakes:
 - 2.1. to participate actively and to the best of its technical ability in the activities of the Working Group;
 - 2.2. to undertake and conclude any task assumed by the Working Group Member expeditiously and diligently, in a manner that does not jeopardise the activities of the Working Group;
 - 2.3. to comply with all reasonable requirements and directives of the Working Group convenor and the STS Association relating to the Working Group; and
 - 2.4. to abide by all reasonable time limits imposed by the Working Group and the Working Group convenor.

Intellectual property disclosure

3. When called upon to disclose information and intellectual property, particularly patents, as required in terms of the STS Intellectual Property Policy [1], the Working Group Member will undertake proper due diligence investigations into its intellectual property portfolio with a view to making maximum good faith disclosure without unnecessary or unreasonable restraints on such disclosure and further, to make such disclosure in the spirit of participation and cooperation envisaged by the STS Intellectual Property Policy.
4. The Working Group Member will not exclude or seek to exclude intellectual property from RF Licensing, as contemplated in the STS Intellectual Property Policy, unless such exclusion is reasonably necessary for the protection of the Working Group Member's technical and commercial interests, bearing in mind the stated objective of the STS Association to make standards associated with the STS available to STS Association Members without encumbrance.

Maximum good faith

5. All Working Group members must participate in the Working Group and the activities

Annex A

and work of the Working Group in the manner of partners in a partnership and, in this spirit, the Working Group Member hereby assumes the obligation and undertakes to display maximum good faith in its dealings with the Working Group, the STS Association and fellow Working Group Members.

6. The Working Group Member will accept the decision of any person or body appointed in a decision making capacity in terms of the STS Intellectual Property Policy, including the Patent Advisory Group, as binding on the Working Group Member and will abide by, carry out and implement such a decision.

Limitation of liability

7. The STSA will not be liable for any loss or damage, including lost profits or consequential damages, suffered by any person, including the Working Group Member, as a result of the Working Group Member's participation in the Working Group. The Working Group Member hereby indemnifies the STSA accordingly.
8. The Working Group Member indemnifies the STSA and STSA personnel and representatives against all loss, liability or damage which may be incurred by the STSA, its personnel or representatives as a result of any act, neglect or default of the Working Group Member or its employees in connection with the Working Group Member's participation in the Working Group.

RF Licensing

9. The STS Intellectual Property Policy makes provision:
 - 9.1. for members of STSA working groups that develop STS standards to make certain of their intellectual property available royalty free (herein referred to as "RF IPR") in the course of their participation in such working groups; and
 - 9.2. for STSA Members (herein referred to as the "Prospective Licensee") to make application to the STSA for a royalty free licence (herein referred to as a "RF Licence") in respect of the intellectual property made available royalty free, where such a licence is necessary for the use, application or implementation of a standard published by the STSA.
10. The Working Group Member will undertake proper due diligence investigations in respect of the intellectual property rights it makes available royalty free and in this regard:
 - 10.1. the Working Group Member will take all necessary precautions to ensure that the RF IPR it makes available royalty free and the use, manufacture, sale or disposal of any product, process or service that incorporates, utilises or implements the RF IPR does not infringe third party intellectual property rights; and
 - 10.2. the Working Group Member will, upon the written request of the STSA or a Prospective Licensee, make available to the STSA or the Prospective Licensee,

Annex A

such information as the Working Group Member may have in its possession or under its control regarding third party intellectual property rights relevant to the RF IPR, provided that the Working Group Member will not be required to accept any responsibility or liability as to the completeness or accuracy of such information.

11. If the STSA, once the standard to be developed by this Working Group has been published, receives an application for a RF Licence in respect of intellectual property made available royalty free by the Working Group Member in the course of its participation in the Working Group (herein referred to as the “Working Group Member’s RF IPR”):
 - 11.1. the STSA will notify the Working Group Member in writing, giving the Prospective Licensee’s contact details and calling upon the Working Group Member to grant the Prospective Licensee a licence under the Working Group Member’s RF IPR on terms substantially similar to the terms and conditions of the Model RF Licence annexed to the STS Intellectual Property Policy (herein referred to as the “RF Licence”);
 - 11.2. on receipt of the STSA notification, the Working Group Member will enter into negotiations with the Prospective Licensee in good faith and use its best endeavours to conclude such a RF Licence, without undue delay and in the spirit of participation and cooperation envisaged by the STS Intellectual Property Policy.
12. In granting such a RF Licence, the Working Group Member will not impose or seek to impose, on the Prospective Licensee, terms more onerous (to the Prospective Licensee) than the terms and conditions of the Model RF Licence forming part of the STS Intellectual Property Policy, provided that the Working Group Member and the Prospective Licensee will be entitled to negotiate and agree additional terms and conditions or terms more favorable to the Prospective Licensee than the terms and conditions of the Model RF Licence.
13. In the event that the STS Association, the Working Group Member or the Prospective Licensee believe that the intervention of the STSA may be necessary in the negotiations for the RF Licence:
 - 13.1. the STSA will be entitled, of its own accord or on the written request of the Prospective Licensee or the Working Group Member, to send the parties to the RF Licence negotiations (the Working Group Member and the Prospective Licensee) a written notification requiring them to conclude and sign the RF Licence within a specified time, which time limit will not be unreasonable;
 - 13.2. if the parties fail to sign such a RF Licence within the time specified, the STS Association will be obliged to declare a dispute, which will be resolved in the manner set out in the section below under the heading “Dispute Resolution”.

Dispute resolution

Annex A

14. If a dispute is declared in terms of paragraph 13.2 above or if a dispute arises between the Working Group Member and either or both the STSA and the Working Group concerning this Charter, a breach of the Charter or its termination, including a dispute concerning the interpretation of this Charter or any document furnished by a party in terms of this Charter or the STS Intellectual Property Policy (herein referred to as the "dispute"), the dispute will be dealt with in accordance with this section (Dispute Resolution).
15. Unless otherwise agreed in writing, the parties to the dispute will maintain the strictest of confidentiality regarding all aspects of the dispute, its causes, its surrounding circumstances and its resolution and all proceedings aimed at resolving the dispute will be conducted in privacy and in circumstances conducive to maintaining the confidentiality contemplated in this section.
16. In the event of a dispute, the parties to the dispute will first attempt to resolve the dispute by negotiation or, if negotiations fail, by way of mediation administered, if the Parties are unable to agree on a mediator, by a Patent Advisory Group (a "PAG") convened in terms of the STSA Intellectual Property Policy.
17. Should a dispute arise and whether or not the parties to the dispute have complied with the provisions of paragraph 17 relating to negotiated or mediated settlement of the dispute:
 - 17.1. either party to the dispute will be entitled to apply to a pre-arbitral referee for urgent provisional measures in relation to the dispute;
 - 17.2. the parties to the dispute will select the referee by agreement and failing agreement, the referee will be appointed by the PAG; and
 - 17.3. any measure ordered by the referee will be binding until otherwise decided by an arbitral tribunal.
18. If the dispute has not been resolved by negotiation, mediation or by the order of a pre-arbitral referee, the dispute will be resolved by final arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation" or "AFSA") by an arbitrator or arbitrators appointed by AFSA, provided that:
 - 18.1. the proceedings will be held in Johannesburg, South Africa with only the arbitrator and the legal and other representatives of the Parties present;
 - 18.2. the proceedings will be held in an informal and summary manner in accordance with the formalities and procedures settled by the arbitrator and on the basis that it will not be necessary to observe or carry out the usual formalities of court litigation including procedures, pleadings and discovery or strict rules of evidence, it being the intention that the proceedings will be held and completed as soon as possible;
 - 18.3. the arbitrator will be entitled to determine the dispute on the basis of justice and equity; and
 - 18.4. the decision of the arbitrator will be final and binding on the parties to the dispute.

Annex A

General

19. The Working Group Member has studied and understood the documents defining the scope of the work of the Working Group, the Working Group Charter, the STS Intellectual Property Policy and the Model RF Licence.
 20. The Working Group Member agrees that this Charter and application to join the Working Group will, upon acceptance by the STS Association, constitute a binding agreement between the Working Group Member and the STS Association and that the terms and conditions of this Charter include, as if specifically incorporated herein, the policies embodied in the STS Intellectual Property Policy.
-

Annex A

Annex C – Model RF Licence

Model RF Licence

Licensor Particulars

Full Name

Company/CC Reg. No.

Physical Address

Postal Address

Contact Person

Contact Person Telephone

Number

Contact Person Mobile Phone

Number

Contact Person Fax Number/s

Contact Person e-mail

(herein referred to as the “Licensor”)

Licensee Particulars

Full Name

Company/CC Reg. No.

Physical Address

Postal Address

Contact Person

Contact Person Telephone

Number

Contact Person Mobile Phone

Number

Contact Person Fax Number/s

Contact Person e-mail

(herein referred to as the “Licensee”)

STS ASSOCIATION

The Standards Required Transfer Specification Association
(Association Incorporated Under Section 21)
(Company Registration no 1995/08496/08)



The Parties Agree As Follows:

7 Introduction

- 7.1** The STANDARD TRANSFER SPECIFICATION ASSOCIATION is an association not for gain incorporated in South Africa under section 21 of the South African Companies Act (No. 61 of 1973) to promote, administer, control and develop, in South Africa and internationally, the Standard Transfer Specification or STS, a specification of standards pertaining to the transfer of credit and information between and within utility vending systems.
- 7.2** In addition to the STS, the STSA publishes a number of standards for information and the adoption, use, application and/or implementation of such standards and/or the incorporation thereof in products and/or services of manufacturers and service providers.
- 7.3** A number of these standards required have been developed for the STSA by STSA Members and invited experts assembled in Working Groups on the general understanding that, if adoption, use or implementation of a particular standard requires the use of the intellectual property of a member of the Working Group, then that intellectual property will be made available royalty free, subject to certain exceptions which are set out in this Agreement.
- 7.4** The Licensee wishes to adopt, use, apply and/or implement a specific standard or set of standards, being the Standards Required as recorded in the Standards Schedule annexed hereto as Annexure 1 and/or to incorporate such Standards Required in products and/or services of the Licensee.
- 7.5** The Licensor is recorded as a Working Group Member of the Working Group that developed the Standards Required (Annexure 1) and the Licensor is recorded, as a proprietor in respect of:
- 7.5.1** RF IPR in the Standards Required, which RF IPR the Licensor has made available royalty free, as recorded in the documentation of the Working Group that developed the Standards Required; and
- 7.5.2** non-RF IPR, being additional intellectual property, including technology, intellectual property rights and know-how pertaining to the Standards Required, which intellectual property the Licensor has not made available royalty free.
- 7.6** The Licensee wishes to acquire a RF Licence in respect of the Licensor's RF IPR and the Licensor is prepared to grant such a licence in accordance with the terms and conditions of this Agreement.

8 Interpretation

Unless the context dictates otherwise, the expressions set forth below will bear the following meanings and cognate expressions will bear corresponding meanings:

Agreement	this agreement and its annexures;
Commencement Date	the commencement date referred to in clause 3;
Party / Parties	the Licensor or the Licensee or if the context so requires, both of them;
Licensor	the Party referred to as the Licensor on the cover page of this Agreement;
Licensee	the Party referred to as the Licensee on the cover page of this Agreement;
STSA	The STS Association or Standard Transfer Specification Association, an association incorporated in terms of section 21 of the South African Companies Act (No. 61 of 2273) under South African Company Registration No. 1995/08496/08;
STS	the Standard Transfer Specification in the form published by the STSA as of the Commencement Date of this Agreement, notwithstanding publication of the same or a different version of the STS by the STSA in future or the same or a different version of the STS by the International Electrotechnical Commission (IEC);
Standard/s Required	the standard or standards required by the Licensee, as recorded in the Standards Schedule (Annexure 1), for adoption, use, application and/or implementation and/or for

incorporation into products, processes and/or services of the Licensee, in the form published by the STSA as of the Commencement Date of this Agreement, notwithstanding publication of the same or a different version of the STS by the STSA in future or the same or a different version of the STS by the International Electrotechnical Commission (IEC);

RF IPR

intellectual property of the Licensor pertaining to the Standards Required, which the Licensor has made and will make available royalty free, as recorded in respect of the Standards Required by the STSA and which RF IPR is recorded in the Standards Schedule (Annexure 1) and all rights in and to the RF IPR, including rights of ownership, rights of confidentiality and/or rights derived from patent-, design-, trade mark- and/or copyright law;

non-RF IPR

intellectual property, including know-how, of the Licensor, which the Licensor has not made available royalty free, whether or not recorded in the Standards Schedule (Annexure 1) and/or the documentation of the Working Group that developed the Standards Required and all rights in and to the non-RF IPR, including rights of ownership, rights of confidentiality and/or rights derived from patent-, design-, trade mark- and/or copyright law;

9 Commencement and term

This Agreement will commence on the date of signature of this Agreement by or for the Licensor and it will endure indefinitely thereafter notwithstanding the possible lapsing or expiry of any patent forming part of the RF IPR.

10 Licence

10.1 The Licensor hereby grants to the Licensee, strictly for the purpose of adopting, using, applying and/or implementing and/or incorporating the Standards Required and for no other purpose, a non-exclusive, non-transferable licence to make or have made, to use or permit the use of, to sell, offer to sell, let or otherwise dispose of, to import or to distribute any permitted implementation of the Standards Required and/or to make, use,

dispose of, market and sell products, processes and services that embody or incorporate the RF IPR, provided that the Licensee will not:

- 10.1.1 use the RF IPR in or for any product, process or service that does not require or implement a significant part of either or both the STS and the Standards Required;
 - 10.1.2 use the RF IPR for any purpose unrelated to implementation of either or both the STS or the Standards Required; or
 - 10.1.3 adopt, use, apply, implement or incorporate the RF IPR or the Standards Required in any product, process or service that does not require or implement a significant part of either or both the STS and the Standards Required.
- 10.2 Unless the Parties specifically agree otherwise in writing, the Licensor need not provide the Licensee with any assistance in the development, testing, promotion, marketing and sale of the Standards Required or any product, process or service that makes use of the RF IPR.
- 10.3 This RF Licence does not include the right to use the Licensor's trade marks and unless the Parties specifically agree otherwise in writing, the Licensee agrees that all rights in and to the Licensor's trade marks vest in the Licensor and the Licensee undertakes not to use the Licensor's trade marks or any mark confusingly similar thereto.

11 Royalties

- 11.1 In respect of the RF IPR, this licence is royalty free and the Licensor will, for as long as this Agreement remains in force, not be required to pay the Licensor any royalty or premium in respect of the use of the RF IPR in terms of this Agreement.
- 11.2 This RF Licence grants no rights in or to the non-RF IPR and the Licensee will only make use of the non-RF IPR if it concludes a licence agreement with the Licensor in respect of such non-RF IPR, which licence agreement may contain provisions pertaining to the payment of royalties.

12 Recognition of the rights of the Licensor

- 12.1 The Licensee recognises and agrees that the ownership of the RF IPR vests in the Licensor and the Licensee undertakes not to dispute nor assist any other person to dispute or put at issue such ownership or the validity of such RF IPR.
- 12.2 The Licensee will not at any time apply for or obtain the registration of any patents in any country or do any other act or thing which might in any way impair the rights of the Licensor to the RF IPR and will not claim any right or interest in the RF IPR except such rights as are expressly granted herein.

13 Infringement of intellectual property rights

- 13.1 If any infringement of the RF IPR comes to the notice of any of the Parties hereto, the Party will immediately inform the Licensor thereof and the Licensor will be entitled but not obliged to take whatever action it considers necessary to suppress the infringement in its own name and at its own cost, by instituting legal proceedings if necessary.**
- 13.2 If any attack on the validity of the RF IPR comes to the notice of any of the Parties hereto, the Party will immediately inform the Licensor thereof, and the Licensor will be entitled but not obliged to take whatever action it considers necessary to defend the intellectual property rights in its own name and at its cost, by instituting legal proceedings if necessary and proceeding to the final end and determination thereof.**
- 13.3 The Licensor makes no warranty that the exercise of the rights granted in this RF Licence or the use of the RF IPR by the Licensee will not infringe patent rights or other intellectual property rights of a third party (herein referred to as “third party intellectual property rights”).**
- 13.4 In this regard the Licensee agrees and acknowledges that it is required to and will make its own investigations and take all necessary precautions to ensure that it does not infringe third party intellectual property rights in using, manufacturing or selling any product, process or service that incorporates, utilises or implements the RF IPR, the Licensor assuming no liability or obligation to make or assist in any such investigation, except that the Licensor will, upon the written request of the Licensee, make available to the Licensee such information as the Licensor may have in its possession or under its control regarding third party intellectual property rights relevant to the RF IPR, without thereby accepting any responsibility or liability as to the completeness or accuracy of such information.**
- 13.5 If legal proceedings are threatened or instituted by a third party for the alleged infringement of third party intellectual property rights as a result of the Licensee exploiting the RF IPR, the Licensee will immediately inform the Licensor of the proceedings, and the Licensor will be entitled but not obliged to take whatever action it considers necessary, in its name, to oppose such proceedings.**
- 13.6 The Licensor does not and will not indemnify the Licensee against claims or threats of any nature that may be made against the Licensee by any third party arising out of the alleged use of third party intellectual property rights in the manufacture or sale by the Licensee of any product, process or service that incorporates, utilises or implements the RF IPR and the Licensee agrees and acknowledges that it has and will have no rights or claims against the Licensor in this regard.**

13.7 The Licensee indemnifies and holds the Licensor harmless against all claims, expenses and costs attributable to any proceeding or claim threatened, made or instituted by any third party in respect of the unauthorised use of third party intellectual property rights party arising out of the use by the Licensee of the RF IPR or any product, process or service that incorporates, utilises or implements the RF IPR including, without limitation, awards of damages, costs and any legal costs or expenses incurred by the Licensor in this regard.

14 Warranties, indemnities and limitation of liability

14.1 The Licensor makes no warranties of any kind whatsoever regarding the RF IPR or any part of the RF IPR and in particular, makes no warranties of any kind:

14.1.1 in respect of the accuracy, completeness, fitness for a particular purpose or intended use or the merchantability of the RF IPR or any part of the RF IPR;

14.1.2 in respect of the functionality and technical or other characteristics of any product, process or service that incorporates, utilises or implements the RF IPR or any part of the RF IPR; or

14.1.3 that the use or manufacture of any product, process or service that incorporates, utilises or implements the RF IPR or any part of the RF IPR will be error-free.

14.2 The Licensee, accordingly, indemnifies the Licensor against any and all liability for any claim by any third party arising from any defect or other characteristic of any Product embodying or incorporating the RF IPR or any part of the RF IPR.

14.3 The Licensor will not be liable for any loss or damage, including lost profits or consequential damages, suffered by any person, including the Licensee, as a result of this Agreement or the use of the RF IPR or the adoption, use, application and/or implementation and/or incorporation into products and/or services of the Standards Required. The Licensee hereby indemnifies the Licensor accordingly.

14.4 The Licensee indemnifies the Licensor and the Licensor's personnel against all loss, liability or damage which may be incurred by the Licensor or its personnel as a result of any act, neglect or default of the Licensee or its employees in connection with the use of the RF IPR or the adoption, use, application and/or implementation and/or incorporation into products and/or services of the Standards Required.

14.5 The Licensor does not make any warranties, express or implied, to the Licensee other than those specifically set out in this agreement.

- 14.6 The Licensee acknowledges that:
- 14.6.1 this clause (8) reflects an informed, voluntary arrangement between the Parties concerning the risks (known and unknown) that may exist in connection with this RF Licence;
 - 14.6.2 this voluntary arrangement was a material part of the bargain between Parties in concluding this RF Licence; and
 - 14.6.3 the economic and other terms of this RF Licence were agreed to by the Parties in reliance on such voluntary arrangement.

15 Improvements

If the Licensee has or comes to have any proprietary interest in any addition to or adaptation or modification of the RF IPR (herein referred to as an "Improvement"), it will notify the Licensor (and no other person) in writing of the Improvement and all Improvements in the RF IPR will belong to and vest in the Parties in equal undivided shares or such other manner as the Parties may agree, in writing.

16 Confidentiality

- 16.1 Pending notification from the Licensor to the contrary, all disclosures and information relating to the RF IPR and any of the Licensor's technology that comes to the knowledge of the Licensee:
- 16.1.1 will be received and maintained in confidence and treated as confidential information which will be used by the Licensee for the sole purpose of fulfilling its obligations under this Agreement; and
 - 16.1.2 the Licensee, its employees and representatives will maintain the Licensor's confidential information in the strictest confidence and will only disclose it to parties that require disclosure as part of a necessary service required in order to permit the Licensee to fulfill its obligations under this Agreement and then only after the persons concerned have signed suitable undertakings of confidentiality.
- 16.2 The Licensee agrees that the Licensor's confidential information and all documents and notes (in or on any medium) pertaining thereto remain the exclusive property of the Licensor and the Licensee will not and will use its best endeavours to procure that its employees and representatives do not copy, adapt or use the Licensor's confidential information, either directly or indirectly, other than as set out herein.
- 16.3 The Licensor will deal with all confidential information and technology it receives from the Licensee in the manner that it deals with its own confidential information and technology.

17 Termination and breach

- 17.1 A RF Licence such as this is only available to members in good standing of the STSA and if the STSA membership of the Licensee is suspended or terminated for any reason whatsoever, this RF Licence will automatically terminate on the date of such suspension or termination of membership.
- 17.2 If either Party (the “Party in breach”) breaches in any material way any material provision of this agreement and remains in breach for a period of 30 days after receipt of a notice from the other Party (the “aggrieved Party”) calling upon it to rectify the breach, the aggrieved Party will be entitled to cancel and terminate this Agreement upon expiry of the period, without prejudice to the accrued claims of either Party or to any claim that it may have for damages arising out of such breach or the premature termination of this agreement or otherwise.
- 17.3 Either Party may terminate this agreement with immediate effect on written notice to the other if that Party becomes commercially insolvent or commits any act of insolvency or if that Party is placed in provisional or final liquidation or is placed under provisional or final judicial management.

18 Consequences of termination

- 18.1 Upon termination of this Agreement for any reason whatsoever, the Parties will, within 7 days of the date of termination, return to the other all items incorporating confidential information of the other and all notes and documents pertaining thereto, together with all copies of any such notes and documents. Neither Party will use, copy or adapt such confidential information or any printed material relating thereto.
- 18.2 Upon termination of this Agreement for any reason whatsoever, the Licensee will cease, subject to the provisions of clause 12.3, to have any further right to use the RF IPR or to adopt, use, apply and/or implement and/or incorporate into products and/or services of the Licensee any STS standard that requires use of the RF IPR.
- 18.3 Notwithstanding the termination of this Agreement for any reason:
- 18.3.1 the Licensee will be entitled to complete the manufacture and delivery of products or services for which firm orders had been received by the Licensee prior to the date of termination; and
- 18.3.2 the Licensee will be entitled to dispose of such products and services in accordance with the rights granted herein; provided that, in respect of such manufacture, delivery and disposal, all the provisions of this Agreement will be adhered to as if this Agreement is still in force.
- 18.4 Clauses 6, 7, 8, 10, 12 and 16 will survive termination of this agreement for any reason whatsoever.

19 Whole agreement

This Agreement constitutes the whole agreement between the Parties regarding its subject matter and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

20 Annexures

- 20.1 The annexures to this Agreement form a part of the agreement.**
- 20.2 Unless otherwise indicated by the context, the terminology of the annexures will be interpreted in the manner determined in this Agreement.**
- 20.3 The annexures may be varied, upon agreement between the Parties and any such variation will be dated and signed on behalf of both Parties, whereupon it will be incorporated in this Agreement as a replacement or variation of the then current annexure.**
- 20.4 The terms of this Agreement will govern the provisions of any annexure and in the event of any conflict between this Agreement and any annexure, the terms and conditions of this Agreement will prevail and take precedence.**

21 Assignment

- 21.1 This RF Licence is personal to the Licensee and the Licensee will not assign the rights granted herein nor sub-licence such rights without the prior written consent of the Licensor.**
- 21.2 Notwithstanding clause 15.1, the Licensee will be entitled to sub-contract the manufacture of products and the delivery of services of the Licensee incorporating the Standards Required to third parties on written notice to the Licensor and for this purpose permit the use of the Licensor's RF IPR by such a sub-contractor, provided that:**
 - 21.2.1 the Licensee ensures that the Licensee's sub-contractor is made aware of and adheres strictly to the terms and conditions of this Agreement; and**
 - 21.2.2 the Licensee's concludes a sub-contracting agreement with such a sub-contractor, which agreement must contain provisions permitting automatic termination of such the sub-contracting agreement in the event that this RF Licence Agreement is terminated.**

22 Dispute resolution

- 22.1 Should any dispute arise between the Parties concerning this Agreement, its breach or its termination, including a dispute concerning the interpretation of this Agreement or any document furnished by a Party in terms of this Agreement (the "dispute"), the Parties shall deal with the dispute in**

accordance with this clause (16).

- 22.2 Unless otherwise agreed in writing, the Parties will maintain the strictest of confidentiality regarding all aspects of any such dispute, its causes, its surrounding circumstances and its resolution and all proceedings aimed at resolving the dispute will be conducted in privacy and in circumstances conducive to maintaining the confidentiality contemplated in this clause (16).
- 22.3 Should any dispute arise, the Parties will first attempt to resolve the dispute by negotiation or, if negotiations fail, by way of mediation administered, if the Parties are unable to agree on a mediator, by a Patent Advisory Group (a "PAG") convened in terms of the STSA Intellectual Property Policy.
- 22.4 Should a dispute arise and whether or not either or both the Parties have complied with the provisions of clause 16.3 relating to negotiated or mediated settlement of the dispute:
- 22.4.1 either Party will be entitled to apply to a pre-arbitral referee for urgent provisional measures in relation to the dispute;
- 22.4.2 the Parties will select the referee by agreement and failing agreement, the referee will be appointed by the PAG; and
- 22.4.3 any measure ordered by the referee will be binding until decided otherwise by an arbitral tribunal.
- 22.5 If the dispute has not been resolved by negotiation, mediation or by the order of a pre-arbitral referee, the dispute will be resolved by final arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation" or "AFSA") by an arbitrator or arbitrators appointed by AFSA, provided that:
- 22.5.1 the arbitrator in any dispute that relates exclusively to the payment of money will be an independent accountant appointed by the Chairman of the South African Institute of Chartered Accountants;
- 22.5.2 the proceedings will be held in Johannesburg, South Africa with only the arbitrator and the legal and other representatives of the Parties present;
- 22.5.3 the proceedings will be held in an informal and summary manner in accordance with the formalities and procedures settled by the arbitrator and on the basis that it will not be necessary to observe or carry out the usual formalities of court litigation including procedures, pleadings and discovery or strict rules of evidence, it being the intention that the proceedings will be held and completed as soon as possible;
- 22.5.4 the arbitrator will be entitled to determine the dispute on the basis of justice and equity; and
- 22.5.5 the decision of the arbitrator will be final and binding on the Parties.
- 23 Force majeure

In the event that a Party (the "affected Party") is unable to perform any obligation under this Agreement due to circumstances beyond the control of the affected Party, including the action, intervention or decree of any government, and such circumstances are not caused by fault, of any degree, on the part of the affected Party, then the affected Party will be absolved from performing that obligation for as long as the circumstances prevail or, if performance of the obligation is or becomes impossible, the affected Party will be entitled to terminate this Agreement on written notice to the other Party.

24 Governing law and jurisdiction

This Agreement will be governed by and be interpreted in accordance with the law of the Republic South Africa and the Courts of the Republic of South Africa with competent jurisdiction will have jurisdiction over all matters arising out of this Agreement, its interpretation, its validity and the settlement of disputes arising out of this Agreement.

25 Invalidity of this Agreement or any part thereof

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same object as the invalid or unenforceable provision, to adopt such means by way of variation of this Agreement.

26 Notices

- 26.1** The Parties choose, as their addresses for all purposes under this Agreement, whether in respect of the payment of money, the service or delivery of court process, notices or other documents or all other communications, the addresses set out on the cover of this Agreement.
- 26.2** Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if it is in writing.
- 26.3** The term "writing" includes electronic communications, including fax and electronic mail.
- 26.4** Any Party may by written notice to the other Party, change its electronic mail address, its fax number or its chosen address, to another number or address which is not constituted exclusively by a Post Office box address. The change will become effective 7 days from the deemed receipt of the notice by the addressee.
- 26.5** Any notice to a Party sent by post (by airmail if appropriate) in a correctly addressed envelope to it at its address will be deemed to have been received 14 days after posting.

- 26.6 Any notice to a Party delivered by hand to a responsible person during ordinary business hours at its address will be deemed to have been received on the day of delivery.
- 26.7 Any notice to a Party sent, by electronic mail to its chosen electronic mail address will be deemed to have been delivered immediately upon transmission;
- 26.8 Any notice to a Party sent, during normal business hours, by fax to its chosen fax number, will be deemed to have been delivered immediately upon the issuance, by the transmitting fax machine, of a report confirming correct transmission of the document containing the notice.
- 26.9 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party will be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address.

27 Severability

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

28 Supersession of prior agreements

This Agreement supersedes all prior arrangements, undertakings, understandings and arrangements between the Parties regarding its subject matter, whether tacit, oral, written or otherwise.

29 Variation

No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

30 Waiver

- 1 No relaxation by a Party of any of its rights in terms of this Agreement at any time will prejudice or be a waiver of its rights (unless it is a written waiver) and it will be entitled to exercise its rights thereafter as if such relaxation had not taken place and no waiver on the part of either Party of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.



Done and signed by the Parties, acknowledging that they have read the terms and conditions of this Agreement, that they understand all such terms and conditions, that they agree to be bound thereby and that the signatories of the Parties are duly authorised to conclude this Agreement.

For and on behalf of
The Licensor

sign

print name

position

date

place

witness

For and on behalf of
The Licensee

sign

print name

position

date

place

witness

ANNEXURE 1

MODEL RF LICENCE

SCHEDULE

STANDARDS REQUIRED RF IPR

Standards Required

list standards

RF IPR

list RF IPR – list only the Licensor’s RF IPR relevant to this RF Licence.

Note

The STS Standard, as published, might contain a schedule identifying the standard and listing all the RF IPR relevant to the Standard. However, it is anticipated that the schedule of RF IPR will contain the intellectual property of a number of intellectual property owners (Working Group Members that made their intellectual property available royalty free. The implementation of such a standard will require the conclusion of a multiplicity of RF Licences between the Prospective Licensee and each RF Licensor (Working Group Member – RF intellectual property owner).

When it comes to licensing, each RF Licence must identify each Working Group Member/intellectual property owner as Licensor and also the intellectual property (RF IPR) of that Working Group Member.

If the published schedule is to be used to form this annexure, the published schedule must identify each Working Group Member intellectual property owner and its RF IPR clearly so that a simple reference is all that is required to identify the RF IPR of each RF Licence. For instance:

Standards Required

Standard no STS nn-zz, dated [date].

RF IPR

The intellectual property rights recorded under the name of [Licensor name] in Standard no STS nn-zz, dated [date].