

SD CARD ASSOCIATION INTELLECTUAL PROPERTY POLICY

This Intellectual Property Policy ("**IP Policy**") is designed to state clearly the expectation of the SD Card Association ("**SDA**"), with regard to any individual member company's ("**Member**") intellectual property as well as the intellectual property of the SDA, 3C Members (as defined below) and the SD-3C, LLC, respectively.

The SDA is committed to an open standard and strives to establish high quality specifications that can be implemented in a compliant manner by any interested party. Therefore, the SDA will only include a Member's proprietary technology in the SDA's specifications if the owner of that technology agrees to reasonable and non-discriminatory licensing terms as set forth below.

The SDA Board of Directors, or its delegates, shall have the responsibility of determining Members' compliance with this IP Policy. By joining or continuing to participate in the SDA, each Member agrees to abide by the terms of this IP Policy including with respect to any Adopted Specifications which were adopted prior to or during its membership. Members failing to abide by this IP Policy are subject to expulsion from the SDA.

1. TYPE OF SPECIFICATIONS

The SDA will have essentially two types of specifications at any given time, proposed specifications and adopted specifications.

"**Proposed Specifications**" are those specifications that have not yet been formally adopted by the SDA and which remain subject to review and comment by Members during specified periods of time.

On the other hand, "**Adopted Specifications**" are those specifications that have gone through the formal process of being adopted by the SDA as part of the standard. Subject to agreement of certain terms, Adopted Specifications can be licensed for commercial purposes.

For purposes of this IP Policy, references to "**Specifications**" shall mean Proposed Specifications and Adopted Specifications collectively.

2. PATENTS

Subject to the provisions of Section 5, each Member must be prepared to license in a non-discriminatory fashion, and on reasonable terms, to all other Members and non-member licensees (collectively, "**Licensees**"), such Member's Patent Claims which are required to implement the Adopted Specifications ("**Essential Patent Claim(s)**"). As used herein, the term "Patent Claims" means the claims of a patent, whether issued and existing or pending, which are either owned and under the control of such party or licensed and sub-licensable by such party under the terms set forth herein. If a Member desires to incorporate any changes to the Specifications (whether intellectual property rights in those are owned by such Member or a third party), then such changes will not be incorporated into the Specifications unless such Member or the third party likewise agrees to license any Essential Patent Claims, as the case may be, that cover such changes on the same terms as described in this Section 2.

Licensing rights that include granting the SDA the right to sub-license, directly or through other licensing entities, and licensing at zero cost to Members, are the terms considered to be most desirable by the SDA.

Certain exceptions apply to the licensing requirement stated in this Section 2. A Member will not be required to license or continue to license its Essential Patent Claims to a Licensee if: (i) such Licensee does not agree to grant back a license to all other Licensees under such party's Essential Patent Claims on terms and conditions comparable to those contained in the license granted by the Member and/or (ii) such Licensee has commenced or has threatened to commence patent litigation on an Essential Patent Claim against such Member while such patent litigation or dispute is continuing relating to products compliant with the Adopted Specifications.

3. COPYRIGHTS

Copyrighted material submitted by a Member for inclusion in a Specification (“**Submitted Material**”) must include at the time of submittal a non-exclusive, perpetual, irrevocable, sub-licensable (through multiple tiers), royalty free, worldwide license to the SDA to use, reproduce, modify, prepare derivative works of, distribute, publicly display and/or perform the Submitted Material and/or any derivative thereof. The Member (on behalf of itself and any employees, contractors, consultants or agents involved in the creation of such Submitted Material) hereby waives and agrees not to assert any and all moral rights, including, without limitation, any right to identification of authorship or limitation on subsequent modification in such Submitted Material. The Member represents and warrants that to its knowledge (a) no information in such Submitted Material is confidential (except as such material may be incorporated in the Specifications as set forth in Section 6 of this IP Policy) and that the SDA may freely disclose such information, (b) there are no limits to the Member’s ability to make the grants, acknowledgements and agreements herein, and (c) the Member has not included in the materials any information which is defamatory, untrue or which is illegal under the laws of the jurisdiction in which the Member has its principal place of business. SDA shall own the copyright in Adopted Specifications, subject to the underlying copyright rights of the submitting Member in the Submitted Material, provided that the submitting Member shall have no rights, whether expressly, or by implication, estoppel or otherwise, in such Adopted Specification, including the modifications made to Submitted Material by the SDA and/or its working groups or committees and/or other materials combined or collected with such Submitted Material. Any publication of an Adopted Specification shall contain an appropriate copyright notice in the name of SDA and its licensors (and in the case of specifications incorporating portions of Parts 1-4 of Versions 1.0 and 1.01, the 3C Members as defined below), without further identification or attribution to the submitting Member.

Notwithstanding the foregoing, the copyrights in Parts 1-4 of Versions 1.0 and 1.01 of the Adopted Specifications shall be owned by Matsushita Electric Industrial Co., Ltd., SanDisk Corporation and Toshiba Corporation (collectively, the “**3C Members**”) and licensed by SD-3C, LLC under the terms of the SD Host/Ancillary Product License Agreement and/or the SD Memory Card License Agreement as such Adopted Specifications are available on the secure Members Site, HALA Site and LAMS Site at www.sdcard.org.

4. TRADE SECRETS

With respect to information disclosed by any Member to the SDA or during any SDA Meeting to any other Member relating to SDA matters, such information shall be non-confidential and treated as such by the SDA and other Members, unless otherwise covered by Section 6 below. As used herein the term “**SDA Meeting**” means an SDA general session, e-mail reflector communication, working group meeting or other SDA meeting held in any manner authorized by the SDA Bylaws (e.g. in person or teleconference). With respect to Submitted Material, the Member who submitted such material may continue to use and disclose such material, except as part of any Adopted Specification and except for the derivative works created by the SDA.

Each Member grants to SDA a perpetual, irrevocable, royalty free, non-exclusive, worldwide license to any information, trade secret or know-how of such Member that has been provided by such Member and incorporated into any Specifications, to issue and license such Specifications to Licensees pursuant to terms and conditions, and to otherwise use and disclose (subject to the prior consent of the SD-3C, LLC with respect to Parts 1-4 of Versions 1.0 and 1.01) such Specifications, as determined by the SDA Board of Directors. Each Member waives the right to receive compensation (for example, a share of the license fee or administration fee, if any), that may be received from Licensees for the Specifications into which such information, trade secrets or know-how of the Member has been incorporated.

Notwithstanding the foregoing, any trade secrets in Parts 1-4 of Versions 1.0 and 1.01 of the Adopted Specifications shall be owned by the 3C Members and licensed by SD-3C, LLC under the terms of the SD Host/Ancillary Product License Agreement and/or the SD Memory Card License Agreement as such Adopted Specifications are available on the secure Members Site, HALA Site and LAMS Site at www.sdcard.org.

5. DISCLOSURE POLICY

When considering whether proprietary technology should be included in the Specifications, the SDA balances the benefits of such technology with the burden of compliance with licensing requirements. As such, any Member making a Contribution (as defined below) to a Specification shall disclose, at the time of submittal, all known proprietary intellectual property rights included in the Contribution and shall provide to the SDA a completed License Assurance / Disclosure Form either (i) at the time such Contribution is made in written form, or (ii) within twenty (20) days after an oral Contribution is memorialized in written documentation as set forth below. As used herein, the term "**Contribution**" means any Submitted Material, proposal, suggestion, or other submission offered by a Member in the process of developing a Specification for the purpose of incorporating such Submitted Material, proposal, suggestion, or other submission into a Specification, provided that such Submitted Material, proposal, suggestion, or other submission either (a) exists in a tangible form of expression (including in electronic media); or (b) is a verbal statement that is memorialized in written documentation (such as a Proposed Specification, Submitted Material or meeting minutes) and is either confirmed or not objected to by such Member within twenty (20) calendar days after its receipt of or access to such memorialization, including without limitation via posting on the SDA website. All Members of the SDA are encouraged to disclose all known proprietary intellectual property rights in a proposal for a Specification by completing the License Assurance / Disclosure Form as soon as it comes to their attention. (Disclosure by itself does not diminish any ownership rights in the proprietary technology or associated intellectual property rights.)

Each Member that participates (as defined below) in the Technical Committee or other working group ("**Participant**") shall as a condition of participation agree to license in a non-discriminatory fashion, and on reasonable terms, to all other Licensees, such Participant's Essential Patent Claims. A Member shall be deemed to "**participate**," if the Member or its representative: (1) formally joins the Technical Committee or other working group involved in the development of or amendments to Specifications ("**Relevant Working Group**") as a listed participant; or (2) makes a Contribution to such Technical Committee or other Relevant Working Group; or (3) attends more than one (1) meeting of such Technical Committee or other Relevant Working Group (in person or by telephone) within a one-year period. A Participant may be relieved from such licensing commitment only to the extent that it discloses its Essential Patent Claims and formally withdraws from participation within a reasonable time of the formulation of a Proposed Specification but in no event later than the commencement of the Notice Period as defined below.

Disclosure of Essential Patent Claims under this Section 5 shall mean the following: (a) with respect to issued patents, the patent holder name, address and IPR contact person; name or title of the patent; the patent number; the date of filing and the date of issuance; the jurisdiction of issuance, (b) with respect to published applications, the patent holder name, address and IPR contact person; name or title of the patent; the patent application number; the date and jurisdiction of filing, and (c) with respect to unpublished pending application, disclosure merely of the existence of such unpublished application(s), provided that in the event the patent application holder does not indicate its willingness to license in a non-discriminatory fashion, and on reasonable terms, to all Licensees, such patent application holder must identify the portion(s) of the proposed specification on which such Essential Patent Claims(s) read(s). Nothing herein precludes broader disclosure of unpublished patent applications on a voluntary basis or pursuant to a non-disclosure agreement. If any disclosed patent or patent application contains Essential Patent Claims which, if licensed, would require a payment of royalties or other material consideration to an unaffiliated third party, the Member must also highlight this fact in its disclosure statement.

When a formal written recommendation is published to all the Members in accordance with Section 10.1 (a) of the Amended and Restated Bylaws of the SD Card Association ("**SDA Bylaws**") and to all non-member licensees, each Licensee will be required to disclose to the SDA's Technical Committee all of its Essential Patent Claims that to its knowledge are required to implement the Proposed Specifications recommended by the Technical Committee, such notice to be given within sixty (60) days from the date such recommendation is published ("**Notice Period**"). Licensees making such disclosure shall provide to the SDA a completed License Assurance / Disclosure Form within the Notice Period.

Notwithstanding anything to the contrary in this IP Policy and except as set forth above for Participants, with regard to Essential Patent Claims required to implement a Proposed Specification, a Licensee is given the following options on licensing by providing to the SDA a completed License Assurance / Disclosure Form within the Notice Period:

(i) agree to license in a non-discriminatory fashion for use in such implementation, on such terms as are

disclosed with such statement, to all Licensees, once the Proposed Specification is adopted by the SDA;
or

(ii) agree to license in a non-discriminatory fashion for use in such implementation, upon reasonable terms and conditions as provided in Section 2 above, with or without charge, to all Licensees once the Proposed Specification is adopted by the SDA; or

(iii) do not agree to license in connection with any or all of the implementations described in the Proposed Specification, in which case the SDA will not include such Licensee's proprietary technology in the Specifications.

If a Licensee does not provide such a statement and submit a License Assurance / Disclosure Form before the end of the Notice Period, the Licensee will be deemed to have agreed to grant non-discriminatory licenses upon reasonable terms in accordance with the provisions of this Section 5(ii) above, with or without charge. Upon conclusion of such Notice Period and pursuant to Section 10.1 of the SDA Bylaws, the Technical Committee may modify the Proposed Specification in light of such disclosure and resubmit the modified Proposed Specification to the Licensees for reconsideration.

The IP Policy applies equally to situations involving the Essential Patent Claims that issue or are discovered after adoption of the Specification. In the event that such additional Essential Patent Claims of a Licensee come to the attention of such Licensee, such Licensee shall promptly notify the SDA in writing of such rights by submitting a License Assurance / Disclosure Form and shall make licenses available under such Essential Patent Claims in a non-discriminatory fashion, and on reasonable terms, to all other Licensees, subject to the terms of this IP Policy. Upon becoming a Licensee, a Licensee shall be deemed to have agreed to license in a non-discriminatory fashion, and on reasonable terms, to all other Licensees, such Licensee's Essential Patent Claims in any Specifications adopted prior to becoming a Licensee and, except as set forth in (iii) above, any Specification adopted while a Licensee until such Licensee withdraws from membership and/or terminates its license.

Notice is given that Parts 1-4 of Versions 1.0 or 1.01 of the Adopted Specification and other Adopted Specifications implementing or incorporating any portion(s) of such parts, contain intellectual property held by the SD-3C, LLC and/or 3C Members licensed by the SD-3C, LLC through the SD Host/Ancillary Product License Agreement or the SD Memory Card License Agreement ("**3C Notice**"). The above 3C Notice shall be a sufficient disclosure for purposes of this IP Policy or during any IP review period to the extent the same Essential Patent Claims are required for any Proposed Specification implementing or incorporating any portion(s) of Parts 1-4 of Versions 1.0 or 1.01 of the Adopted Specification, provided that such Essential Patents Claims are licensed by the SD-3C, LLC under the terms of the SD Host/Ancillary Product License Agreement and/or the SD Memory Card License Agreement.

To the extent any other Essential Patent Claims are disclosed against a Specification, information regarding any parties who have claimed patent rights in the Specification may be obtained from the SDA Administrative Office.

The SDA makes no representation as to the reasonableness of any terms or conditions of the license agreements offered by such patent rights holders, and all negotiations regarding such terms and conditions must take place between the individual parties outside the context of SDA. Notice is hereby given, however, that it is also possible that other patent rights that have not been disclosed to the SDA may be implicated by implementation of or compliance with an Adopted Specification. The SDA is not responsible for identifying patent claims for which a license may be required in order to implement an Adopted Specification, and takes no position and conducts no inquiries with respect to the legal validity or scope of those patents or patent claims that are brought to its attention.

6. NONDISCLOSURE OF SPECIFICATIONS AND OWNERSHIP

As used herein "**Confidential Information**" means the Specifications (except to the extent disclosed in the Simplified Specifications posted on the public portion of the SDA Website) and other information, visual, oral or written, which is designated as confidential during any SDA Meeting or which is disclosed in a SDA Meeting and a reasonable person would understand to be confidential or proprietary from the context of such disclosure. Confidential Information shall be deemed the proprietary and trade secret information of the SDA and, with respect to Parts 1-4 of Versions 1.0 or 1.01 of the Adopted Specification, the 3C, LLC and/or 3C Members. Members agree to not disclose Confidential Information to any non-

Member, to maintain the confidentiality of such information and to use such information only for the following purposes: (i) to facilitate discussions within the SDA Meetings or discussions amongst Members during interim periods between such SDA Meetings for the definition, development and promotion of technical specifications; and (ii) to evaluate the Specifications internally for use in developing, designing and/or manufacturing possible future products which are compliant with such Specifications (the "**Purposes**").

Members further agree to use at least reasonable care to protect the Confidential Information from unauthorized use or disclosure. Except as expressly set forth in a License Agreement (as defined below), this commitment shall include limiting dissemination of the Confidential Information to those employees with a need to know such information to carry out the Purposes and who are bound by written confidentiality obligations substantially similar to the obligations stated in this IP Policy. Members also agree to comply with any export laws or regulations regarding a Member's own dissemination of the Confidential Information.

No license, express or implied, is granted to Members for the Confidential Information other than the Purposes. Commercial use of the Adopted Specifications requires a separate written definitive license agreement to be consummated between a Member and the SDA and/or SD-3C, LLC, as appropriate ("License Agreement"). Members agree that both the SDA, each member of the 3C Members and the SD-3C, LLC shall have standing and rights to enforce their respective interests in any intellectual property covered by this IP Policy.

Members agree to give the SDA prompt written notice of any unauthorized use or disclosure of the Confidential Information, with verification of receipt. Upon receipt of any such notice, the SDA will take those steps that it deems appropriate in its discretion in light of the information it receives.

Members agree that the Confidential Information and the Simplified Specification is provided to Members: (i) on an "AS IS" basis and may have defects or deficiencies that cannot and will not be corrected; and (ii) without any warranties of any kind, express, implied or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

MEMBERS AGREE THAT IN NO EVENT SHALL THE SDA BE LIABLE FOR ANY MONETARY DAMAGES WITH RESPECT TO ANY CLAIMS RELATED TO, OR ARISING OUT OF, THE CONFIDENTIAL INFORMATION AND/OR THE SIMPLIFIED SPECIFICATION OR ANY MEMBER'S USE OF THE CONFIDENTIAL INFORMATION AND/OR THE SIMPLIFIED SPECIFICATION, OR PORTIONS THEREOF, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, EVEN IF THE SDA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION MEMBERS ALSO AGREE THAT IN NO EVENT SHALL THE SD-3C, LLC OR ANY OF THE 3C MEMBERS BE LIABLE FOR ANY MONETARY DAMAGES WITH RESPECT TO ANY CLAIMS RELATED TO, OR ARISING OUT OF, PARTS 1-4 OF VERSIONS 1.0 OR 1.01 OF THE ADOPTED SPECIFICATION OR ANY PORTION THEREOF IN THE SIMPLIFIED SPECIFICATION OR ANY MEMBER'S USE OF SUCH PARTS OR PORTIONS THEREOF IN THE ADOPTED SPECIFICATION OR THE SIMPLIFIED SPECIFICATION, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, EVEN IF THE SD-3C, LLC OR ANY OF THE 3C MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. CONFLICT

Any proposals for new Specifications, changes to existing Adopted Specifications and/or any questions or conflicts regarding the proposals shall be submitted to the SDA Technical Committee for review. The Technical Committee can elect whether to accept the proposal for consideration or to reject it by returning it to the submitting Member, together with formal comments as may be applicable. If rejected, the submitting Member shall be notified by the Chair of the SDA Technical Committee or the working group thereof through which it was originally submitted. If rejected, the proposal and all related proposal inputs shall not be included within the applicable minutes for that Technical Committee meeting, but the minutes shall include sufficient information to describe the proposal and results of the discussion thereof including the reason for rejection.

If the Technical Committee fails to decide whether or not a proposal shall be considered, the proposal and applicable information (including minutes of the pertinent Technical Committee discussion) shall be submitted to the SDA Board of Directors. The SDA Board of Directors may elect to accept or reject the proposal for consideration or delegate further action. Applicable comments and resultant decisions by the

Board shall be included in the minutes of their applicable meeting(s) but the proposal itself need not be included.

8. COMMITTEE AND WORKING GROUP WORK PRODUCT

Participants acknowledge that, subject to the other provisions of this IP Policy, the copyrights and all other rights in or to the materials produced in or by committees and/or working groups of the SDA (“**Work Product**”), including without limitation Specifications and related documentation developed by SDA committees and/or working groups, is owned by the SDA and SDA may register such copyright in its own name. Such materials are owned by the SDA as a “work for hire” as set forth in the US Copyright Act. To the extent that all such rights in Work Product are not vested in SDA as a “work for hire” all such Participants agree to assign and hereby assign all rights in and to the Work Product to the SDA and further agree to take any actions reasonably requested by SDA to perfect SDA’s ownership in the Work Product, including execution of additional documents of assignment.

9. CONSTRUCTIVE NOTICE.

Licensee entities are responsible for insuring that the contact person provided to the SDA office is correct and complete at all times, including without limitation containing a valid e-mail address for such contact person. Licensees will be deemed to have received notices and announcements provided pursuant to this IP Policy, including without limitation commencement of the Notice Period and voting on proposed Specifications, within 24 hours of distribution by the SDA Office to the most recent e-mail address provided in writing by such Licensee for its contact person.

10. GENERAL RIGHTS AND SURVIVAL

Member rights and obligations under this IP Policy may not be assigned or delegated without the prior written consent of the SDA.

The provisions of this IP Policy shall survive the termination of SDA membership of any Member as follows: (i) Sections 1, 2, 3, 4, 6, 8, 10, and 11 shall survive in perpetuity; and (ii) the license assurance set forth in a License Assurance / Disclosure Form, and any commitment set forth in this IP Policy to license in a non-discriminatory fashion, and on reasonable terms, to all other Licensees, such Member’s Essential Patent Claims, shall survive with respect to any Specification adopted prior to such termination until the last to expire of such patents. Such provisions shall apply only to the version of the Specifications which were disclosed to Members while such Member was a member of the SDA.

Upon termination of membership, each Member agrees to destroy all copies of the Specifications in its possession and if the SDA requests, at its option, to certify such destruction.

11. GOVERNING LAW / ORDER OF PRECEDENCE

This IP Policy will be governed by the laws of the State of California, USA and the federal and state courts located in California shall have exclusive jurisdiction regarding any matters under this IP Policy. In the event that a Licensee has entered into an SD Host/Ancillary Product License Agreement with the SDA and the provisions of such agreement conflict with the provisions of this IP Policy, the provisions of such SD Host/Ancillary Product License Agreement shall prevail to the extent of such conflict.