

# IoT Ready Alliance, Inc.

## Intellectual Property and Confidentiality Policy

### 1. Background

1.1 Background. IoT Ready Alliance, Inc. (the “Alliance”) is a nonprofit non-stock Delaware corporation formed for purposes including, but not limited to, defining one or more specifications, best practices, reference architectures, implementation guidelines and standardized agreements to promote the adoption of an interface, called the IoT Ready interface, between LED lighting fixtures and corresponding Internet of Things (IoT) sensors.

1.2 Intellectual Property Basis. The Alliance has adopted this Intellectual Property and Confidentiality Policy (the “IP Policy”) to address Members’ contributions of and obligations with respect to use of intellectual property and proprietary assets. The IP Policy is intended to maximize the likelihood of widespread adoption of IoT Ready Specifications by Members and to minimize the possibility of inadvertent infringement of the intellectual property rights of Members.

1.3 Legal Compliance. Members are bound to the terms of the IP Policy by virtue of their membership in the Alliance. The IP Policy is designed to comply with all applicable law, including federal and state antitrust laws.

### 2. Definitions

Unless defined explicitly in this policy, capitalized terms used but not otherwise defined in this IP Policy shall have the meaning given in the Bylaws of the Alliance. For the purposes of this IP Policy, the capitalized terms below shall have the meaning defined in this Section 2, while any other capitalized terms used in this IP Policy shall have the meanings respectively assigned to them. The definitions in the singular form shall also be applicable to the plural form and vice-versa, where the context so requires.

**"Affiliate"** means a corporation, company or other entity that owns or controls a Member, or is owned or controlled by a Member or is under common control with a Member, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For the purposes of this definition “own or controls” means owning or controlling, directly or indirectly, more than fifty percent (50%) of the outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) or more than fifty percent (50%) of ownership interest representing the right to make the decisions for such corporation, company or other entity.

**“Compliant”** means compliance with the relevant portions of a Final Specification as tested and verified in accordance with formal certification procedure and programs established by the Alliance.

**“Contribution”** means a submission to or for a Work Group by a Member for incorporation in a Specification that is submitted either: (a) in writing (including a writing in electronic medium) clearly marked as a “Contribution”, or (b) orally, so long as the Contribution is (i) memorialized in the formal written minutes of the meeting where it was proposed as a Contribution, (ii) correctly attributed in the meeting minutes to the submitting Member, and (iii) not withdrawn (but may be corrected in writing) by the submitting Member before or at the time that the meeting minutes are approved at a subsequent meeting.

**“Draft Specification”** means a set of documents consistent with the purpose of the Alliance and designated as an IoT Ready Draft Specification, including without limitation, IoT Ready Specifications, test tool, test plan, reference design documents, certification program and generally any document marked "Draft Specification" or words of similar meaning and all Contributions included in the Draft Specification.

**“Eligible Member”** means a Sponsor Member and if invited by the Board, a member of the Contributor membership class.

**“Essential IPR”** means one or more claims in patents, patent applications, and utility models throughout the world (hereinafter jointly referred to as “Patents”) which, absent any license, it is unavoidable that they be directly infringed to make, use, market, import, offer to sell, or sell, and to otherwise directly or indirectly distribute, or otherwise commercially exploit products Compliant with the Required Portions of a Final Specification. For purposes of the application of this definition of Essential IPR, a Patent is only considered to cause direct infringement absent a license if there is no commercially reasonable non-infringing alternative. Explicitly excluded from “Essential IPR” are (i) any claims of any Patent, even if other claims of that Patent are Essential IPR, directed to technology that may be used to develop, design, manufacture, sell or use any product or portion thereof that complies with the Final Specification but is not expressly set forth therein (examples of such technologies include without limitation semiconductor manufacturing technology, compiler technology, object oriented technology, and basic operating system technology), and (ii) any Patent that is not otherwise essential to the Final Specification, but that is essential to any specification and/or standard not made by the Alliance that is referenced by a Final Specification.

**“Excluded IPR”** means Essential IPR identified in a compliant Licensing Objection.

**“Final Specification”** means a Draft Specification that has been adopted by the Alliance in accordance with the Bylaws and this IP Policy as a Final Specification. Such Final Specification may carry the marking IoT Ready Alliance 1.X Specification, IoT Ready Alliance 2.X Specification, or other similar marking as established by the Board of Directors.

**“Granting Member”** means a Member granting a license to Essential IPR.

**“Licensed Material”** means only those specific portions of a Receiving Member's product (hardware, software, or combinations thereof) that (a) implement and are Compliant with all the Required Portion(s) of the applicable Specification; and (b) to the extent that the Receiving Member's products implement one or more optional portions of such Specification, those portions of Receiving Member's products that implement and are Compliant with all Required Portions that must be implemented to comply with such optional portions of the Specification.

**“Licensing Scheme”** means an element of a Work Group charter, which specifies the type of license required for any Essential IPR associated with the output produced by a given Work Group.

**“Member”** means a member in the Alliance, whether or not the member is considered a statutory member of the Alliance within the meaning of the Delaware General Corporation Law as applies to nonstock corporations. For avoidance of doubt, under this IP Policy, the term “Member” includes all Participants as defined in the Bylaws of the Alliance.

**“RAND License”** means a license in accordance with Section 3.6(b).

**“RAND-Z License”** means a license in accordance with Section 3.6(c).

**“Receiving Member”** means a Member receiving a license to Essential IPR.

**“Required Portion”** means a portion of Specification that must be implemented to comply with such Specification. If such Specification defines optional parts, Required Portions include those portions of the optional part that must be implemented if the implementation is to comply with such optional part.

**“Specification”** means a Final Specification or Draft Specification.

### 3. **Specification Development and Intellectual Property Licensing**

#### 3.1 Work Group Formation and Process.

(a) **Notice of Work Group Review Period.** The Alliance shall provide all Members with not less than sixty (60) days’ prior notice (notice may be via email to all Members or via a publication on the Alliance’s official website, or such other method as the Board directs) of the formation of a new Work Group (“Work Group Review Period”) in which to review a proposal for that Work Group (“Work Group Proposal”). Each Work Group shall be formed with a Work Group Elected Licensing Scheme (“Work Group Elected License Scheme”) selected based on Board action in accordance with the Bylaws from the alternate licensing schemes provided in Section 3.6(b) and Section 3.6(c). The Work Group Proposal shall include the scope of the Work Group, the scope of the intended specification, and the License Scheme of the Work Group selected by the Board. Upon receipt of the Work Group Proposal, each Eligible Member shall review the Work Group Proposal to determine if the Member wishes to participate in the Work Group.

(b) **Work Group Participation Statement.** Upon a positive decision to participate in the new Work Group, and prior to the expiration of the Work Group Review Period, an Eligible Member shall provide notice to the Alliance of its intention to participate in the new Work Group and that it will license its Essential IPR according to the applicable Work Group Elected License Scheme (“Work Group Participation Statement”) and subject to Section 3.4 if applicable. There is no requirement for any Member to review or search its patent portfolio for claims that could possibly be Essential IPR to any resulting specification of the new Work Group and there is no requirement for any Member to list Essential IPR in its Work Group Participation Statement.

**(c) Selection of Work Group Participants; Work Group Activities.**

Only Eligible Members that provide a Work Group Participation Statement to the Alliance shall be able to participate in the Work Group. At the end of the Work Group Review Period and upon receipt and review of all the Work Group Participation Statements, the Board shall select (i) which Eligible Members submitting Work Group Participation Statements shall comprise the Work Group, and (ii) which Eligible Member shall chair the Work Group. The Work Group shall have the responsibility for drafting and developing a Draft Specification, which shall following the License Review Period be submitted to the Board of Directors to decide on acceptance as a Final Specification. Each Work Group member may at its discretion submit Contributions and exchange with other Work Group members any information it deems useful to develop such Draft Specification. No Work Group member shall be compelled to submit any such Contributions; nor will the submission of any such Contributions affect the Member's intellectual property rights in any manner other than as explicitly set forth in this IP Policy.

3.2 License Review Period for Draft Specification. Upon receipt of a Draft Specification from a Work Group, the Alliance shall distribute the Draft Specification to all Members and allow for a review period of no less than sixty (60) days following distribution (such period, the "License Review Period"). Such notice shall include the complete Draft Specification and state the anticipated effective date when the Draft Specification, if it becomes a Final Specification, and all Essential IPR therein, shall be subject to the licensing provisions of Section 3.6 herein for the applicable Work Group Elected Licensing Scheme.

3.3 Review of Draft Specification. Upon receipt of such notice and the Draft Specification, each Member may review the Draft Specification with respect to any intellectual property licensing issues including, without limitation, consideration of such Member's licensing obligations with respect to any of its Essential IPR that may be contained therein. While there is no requirement for a Member to review or search its patent portfolio for Essential IPR, all Members agree that failure to both file a timely Licensing Objection in accordance with Section 3.4 and terminate membership prior to the end of the License Review Period will subject the Member to the licensing obligations of Section 3.6 as to Member's disclosed and undisclosed Essential IPR, despite lack of knowledge thereof by any individual participating on behalf of such Member.

3.4 Licensing Objection and Termination of Membership to Avoid License. If a Member submits a Licensing Objection disclosing Excluded IPR in compliance with Section 5.1 and withdraws by resignation or by failure to renew an expiring membership prior to the end of the License Review Period, such Member shall not be obligated to grant licenses to identified Excluded IPR under Section 3.6 with respect to such Draft Specification if it is adopted as a Final Specification. In the event that the Member does not, prior to the expiration of the License Review Period, both (i) terminate its membership and (ii) give required notice, the licensing provisions of Section 3.6 shall apply, and such Member shall be obligated to grant licenses to its Essential IPR with respect to such Draft Specification if it is adopted as a Final Specification. Notwithstanding the foregoing, a Member cannot avoid a commitment to grant

licenses to Essential IPR under the terms of this IP Policy pertaining to a Contribution that the Member made to a Specification and such licensing obligation shall continue notwithstanding the resignation, termination, expiration or non-renewal of membership in the Alliance of such Member. For avoidance of doubt, a Member choosing to withdraw from the Alliance during the License Review Period for any reason or whose membership expires and is not renewed during the License Review Period is required to file a Licensing Objection in accordance with this IP Policy prior to the end of the License Review Period to avoid license of the Member's Essential IPR in such Draft Specification if it is adopted as a Final Specification.

3.5 Notice and Process for Licensing Objections. In the event that one or more Licensing Objections is received by the Alliance and not withdrawn within a reasonable period of time, the Work Group developing the affected Draft Specification will, in consultation with the Board of Directors, determine how best to proceed, such as, for example, by attempting to develop a revised version of the Draft Specification that works around the Excluded IPR, and determining whether or not alternatives rendering the Excluded IPR non-Essential are technically and commercially feasible.

3.6 Licensing of Member Essential IPR.

(a) **Licensing Obligation.** Except as otherwise permitted pursuant to a Member's valid and timely Licensing Objection in accordance with this IP Policy, all Members shall comply with the Work Group Elected License Scheme for each Final Specification.

(b) **RAND Licensing Scheme.**

(i) Each Member hereby covenants that upon request, it will grant to every other Member a nonexclusive, worldwide, non-sublicensable (except to Affiliates), perpetual patent license (or an equivalent non-assertion covenant) to Essential IPR licensable by such Granting Member without consent of and/or payments to third parties (including all Essential IPR to which Granting Member obtains such right in the future) that is contained in a Final Specification on fair, reasonable, and non-discriminatory terms to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute, or otherwise commercially exploit, Licensed Material (the "**RAND License**"). For the sake of clarity, the rights set forth above include the right to directly or indirectly authorize a third party to make unmodified copies of the Receiving Member's Licensed Material and to license (optionally under the third party's license) the Receiving Member's Licensed Material within the scope of, and subject to the terms of, the Receiving Member's RAND License and acceptance by the third party of this IP Policy.

(ii) Such RAND License need not extend to features of Licensed Material that are not Required Portions of the applicable Final Specification.

(iii) At the election of the Granting Member, such RAND License may include a term requiring that the Receiving Member grant a reciprocal RAND License to Granting Member for any Essential IPR (if any) controlled by such Receiving Member in the

same Specification, but shall not require such Receiving Member to grant a license under any patent claims that are not Essential IPR. The RAND License may also include a term providing that such RAND License may be suspended with respect to the Receiving Member if Receiving Member commences legal action against the Granting Member for infringement by the Granting Member of any of the Receiving Member's Essential IPR in the same Specification.

(iv) License terms that are fair, reasonable, and non-discriminatory beyond those specifically mentioned above may also be included, and such additional terms are left to the Receiving Members and Granting Member involved.

(c) **RAND-Z Licensing Scheme.**

(i) Each Member hereby covenants that upon a request, it will grant to every other Member a nonexclusive, worldwide, non-sublicensable (except to Affiliates), perpetual patent license (or an equivalent non-assertion covenant) to Essential IPR licensable by such Granting Member without consent of and/or payments to third parties (including all Essential IPR to which Granting Member obtains such right in the future) that is contained in a Final Specification on fair, reasonable, and non-discriminatory terms that do not include monetary compensation to make, have made, use, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute, or otherwise commercially exploit, Licensed Material (the “**RAND-Z License**”). For the sake of clarity, the rights set forth above include the right to directly or indirectly authorize a third party to make unmodified copies of the Receiving Member’s Licensed Material and to license (optionally under the third party’s license) the Receiving Member’s Licensed Material within the scope of, and subject to the terms of, the Receiving Member’s RAND-Z License and acceptance by the third party of this IP Policy.

(ii) Such RAND-Z License need not extend to features of Licensed Material that are not Required Portions of the applicable Final Specification.

(iii) At the election of the Granting Member, such RAND-Z License may include a term requiring that the Receiving Member grant a reciprocal RAND-Z License to Granting Member for any Essential IPR (if any) controlled by such Receiving Member in the same Specification, but shall not require such Receiving Member to grant a license under any patent claims that are not Essential IPR. The RAND-Z License may also include a term providing that such RAND-Z License may be suspended with respect to the Receiving Member if Receiving Member commences legal action against the Granting Member for infringement by the Granting Member of any of the Receiving Member's Essential IPR in the same Specification.

(iv) License terms that are fair, reasonable, and non-discriminatory beyond those specifically mentioned above may also be included, and such additional terms are left to the Receiving Members and Granting Member involved.

3.7 **No Other License.** The Members agree that no patent license, immunity or other right is granted under this **Section 3** by any Member to any non-



members or third parties, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth in this Section 3.

3.8 Ownership of Rights. The intellectual property rights to Contributions contained in a Specification shall be owned by the Member making the Contribution. Such Member shall have the right to obtain in its own name patents, copyrights, registrations, and similar other protections, but without any obligation to do so.

3.9 Copyright Notice. Each Final Specification shall contain an appropriate copyright notice in the name of the Alliance.

#### **4. New Member Specification Review**

Upon joining the Alliance as a new Member, the new Member shall be permitted sixty (60) days (the “Withdrawal Review Period”) to review any Draft Specification then under review and any previously adopted Final Specifications. In the event that a new Member both (i) submits a Licensing Objection compliant with Section 5.1, and (ii) withdraws from the Alliance within the Withdrawal Review Period, the licensing provisions of Section 3.6 shall not apply to such new Member to the extent of its identified Excluded IPR contained in such Licensing Objection. If the new Member does not both (i) submit a compliant Licensing Objection, and (ii) withdraw from the Alliance prior to the expiration of the Withdrawal Review Period, the licensing provisions of Section 3.6 shall apply to all Essential IPR of the new Member in accordance with this IP Policy.

#### **5. Additional IPR Clauses**

5.1 Mandatory Disclosure to Avoid License Obligation. Where disclosure is required under this IP Policy to avoid license obligations that would otherwise apply under this IP Policy (such disclosure, a “Licensing Objection”), the following minimum information shall be provided in order to comply with the disclosure obligation. With respect to issued patents and published pending patent applications, the Licensing Objection must include: (i) the identity of the legal entity owning or otherwise controlling and/or applicant of the Excluded IPR; (ii) the patent number or application number of the patent rights in each country where a patent or patent application has been filed or issued; and (iii) the actual claim or claims of the patent within the filed or issued patents that may be Essential IPR. With respect to unpublished pending patent applications, the Licensing Objection must include the existence of the application containing the asserted Essential IPR and must identify the section(s) of the Specification to which the party’s asserted Essential IPR contained in such unpublished pending application relates but need not disclose identifying information (e.g., application number, contents) of the patent rights. Nothing herein precludes broader disclosure of unpublished pending patent applications on a voluntary basis or pursuant to a non-disclosure agreement. Once an unpublished pending patent application that has been disclosed is published, the Member shall disclose to the Alliance the additional identifying information about the published application as specified above. All Licensing Objections shall be submitted in writing with required detail and, if applicable, in the form adopted by the Alliance. No Licensing

Objection shall be valid to the extent it: (i) identifies as Excluded IPR any Essential IPR pertaining to a Contribution that Member made to the Draft Specification for a Specification, or (ii) identifies Essential IPR that is Essential IPR for any previously adopted Final Specification.

5.2 General Disclosure Obligation. In addition to the mandatory disclosure obligations during applicable License Review Periods and Withdrawal Review Periods, each Member participating in the development of a Draft Specification is strongly encouraged to disclose to the Alliance, in writing and on an ongoing basis, any intellectual property rights held by it where such intellectual property rights include Essential IPR related to a Draft Specification that would be required to be licensed pursuant to Section 3.6 if included in a Final Specification. Each Member is encouraged to make this disclosure as soon as reasonably practicable after the Member first obtains knowledge of the Essential IPR and to meet the standards of Section 5.1 in making such disclosures.

5.3 License Rights of Members. This IP Policy shall not supersede, modify or prevent any licensing agreements or arrangements by or between Members, by or between the Alliance and one or more Members, or by or between Members, the Alliance and/or any third parties.

5.4 Intellectual Property Rights of Third Parties. Each Member agrees to use its best efforts not to use, and in any case not to use knowingly, as part of any material or information supplied to any Member pursuant to this IP Policy or as part of any Contribution, any information subject to an intellectual property right, including without limit copyright, of a third party (including subcontractors), except in the event that the intellectual property right is disclosed clearly in writing to all the other Members or the Member has acquired the right to grant licenses to such intellectual property right that is not a License on Controlled Terms. Each Member is responsible for obtaining its own rights to any intellectual property rights which may be held by a third party, including subcontractors. For purposes of this IP Policy, "License on Controlled Terms" means a copyright or other intellectual property license that requires that the use, copying, modification and/or distribution of a modified version or a derivative work of provided information be subject, in whole or in part, to one or more of the following terms: (i) the modified or derivative work be made available to any third party on request, whether royalty-free or not; (ii) that permission to create modified versions or derivative works be granted to any third party; and (iii) that a royalty-free license relating to the derivative work be granted to any third party. For the avoidance of doubt, any license that merely permits (but does not require) any of (i)-(iii) is not a License on Controlled Terms.

5.5 Transfer of Essential IPR. Any transfer by a Member to a third party of a patent having Essential IPR shall be subject to the terms and conditions of this IP Policy, including but not limited to all obligations to grant licenses hereunder. A Member who transfers ownership of Essential IPR shall include appropriate provisions in the relevant transfer documents to ensure that this undertaking is binding on the transferee, and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding all successors-in-interest. Notwithstanding the forgoing, the undertaking shall be



interpreted as binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents. For the purpose of this provision, a transfer of ownership shall include any means of transferring control by a Member of Essential IPR regardless of the legal means and includes granting exclusive licenses, and assigning actual ownership.

5.6 Copyright License. Each Member hereby grants to the Alliance and each other Member, a worldwide, irrevocable, nonexclusive, nontransferable, fully-paid up and royalty-free, copyright license to reproduce, create derivative works, distribute, display, and perform and sublicense the rights to reproduce, distribute, display and perform each Final Specification solely for the purposes of developing, publishing and distributing the Final Specification and related materials. Further, each Member hereby grants to the Alliance a worldwide, irrevocable, nonexclusive, nontransferable, fully-paid up and royalty-free copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform promotional material, and also hereby grants to each other Member, solely for the purpose of promoting the Alliance or any Final Specification, a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, distribute, display and perform promotional material. Effective as of the approval of each Final Specification, each Member hereby conveys to the Alliance a non-exclusive, undivided, and equal ownership in the copyrights in the Final Specification which shall for the purpose of copyrights be deemed ownership of a collective work under 17 USC 201(c) (collectively “Materials”) while retaining ownership of the copyrights in any Contribution made by such Member. The Alliance may exercise any and all rights of copyright ownership and sublicense such rights in the Materials as if such rights were solely owned by the Alliance, without permission of the Member and without any duty to account. This Section 5.6 survives any withdrawal from membership of such Member.

5.7 No Search Requirement. No obligation in this IP Policy shall require any Member to carry out patent or other searches of its patent portfolio for claims that could become Essential IPR to a Specification.

5.8 Affiliates. Any rights granted under, and obligations arising out of this IP Policy to a Member extend to its Affiliates whether or not explicitly named, but under no circumstances can an Affiliate claim more rights arising out of this IP Policy than a Member. Any rights granted to Affiliates of a Member under this IP Policy only exist for as long as they are Affiliates of that Member and are in compliance with the obligations of that Member. Any and all such rights terminate without any notification when the Affiliate ceases to be an Affiliate of that Member or when the rights of the Member terminate. Any obligations arising out of this IP Policy of an Affiliate of a Member shall continue when the Affiliate ceases to be an Affiliate of a Member to the full extent of the obligations arising under this IP Policy prior to the cessation of the Affiliate relationship. Each Member shall be responsible for ensuring the compliance of its Affiliates with respect to obligations of such Member and its Affiliates under this IP Policy.

5.9 Name, Trademark and Trade Name Use. Nothing in this IP Policy gives any Member permission to use any other Member's name, trademark or trade name in any publication or in respect of any service or item to be supplied to the public, whether relating to this IP Policy or otherwise and any such use shall be subject to the explicit prior written consent of the other Member.

## 6. **Survival of Agreement to License**

6.1 License Survival. Notwithstanding the dissolution of the Alliance or a Member's withdrawal from the Alliance by resignation, termination, or non-renewal of its membership in the Alliance, and except as provided herein, a Member or former Member's agreement to grant a license as provided in Section 3.6 shall remain in full force and effect, including with respect to entities that become Members after the effective date of the Member's withdrawal from the Alliance by resignation, termination, or non-renewal of its membership in the Alliance, for: (a) any Essential IPR to a Contribution made by such Member that becomes part of the particular version of the Final Specification for which the Contribution was offered; (b) any Essential IPR to a Final Specification that was adopted prior to the effective date of the Member's withdrawal from, termination of, or expiration of membership; and (c) any Essential IPR to a Specification that was adopted as a Final Specification if the License Review Period for such Specification began prior to the effective date of the Member's withdrawal from, termination of, or expiration of membership unless and to the extent that the Member provided a valid Licensing Objection identifying Excluded IPR in accordance with Section 3.4. A former Member shall remain entitled to a reciprocal license pursuant to Section 3.6 so long as that former Member is obligated to license its Essential IPR under this IP Policy.

6.2 License Survival Exception Applicable to Withdrawing New Members. Notwithstanding the provisions of Section 6.1, in the case of a new Member that both (i) provides a valid Licensing Objection in accordance with Section 4, and (ii) withdraws as a Member prior to the expiration of the applicable Withdrawal Review Period, no licensing obligation shall continue with respect to Excluded IPR identified in such License Objection.

6.3 License Survival for Compatibility. Notwithstanding the generality of Section 6.1, the obligations set forth in items (a), (b) and (c) of Section 6.1 will additionally survive to the extent such Essential IPR are both: (i) necessary for future Final Specifications to be backwards compatible with prior Final Specifications (i.e., designed to fully interoperate, communicate or connect with or to products that comply with the prior Final Specifications); and (ii) used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Essential IPR was used in a prior Final Specification for which the Member is obligated to grant licenses.

## **7. Alliance Developed Intellectual Property**

7.1 Alliance Intellectual Property. Any intellectual property developed or created: (i) by any of the Alliance's employees, if any, alone; or (ii) by a contractor to the Alliance performing work for the Alliance on a "work made for hire" basis; (iii) or during any meetings of the Alliance Members as the collective work product thereof; or (iv) otherwise solely assigned to or procured by the Alliance (collectively "Alliance Intellectual Property"), shall be owned exclusively by the Alliance. Except with respect to the Alliance trademarks and promotional materials, which will be licensed to Members pursuant to a separate license agreement, each Member shall have an irrevocable (except for breach), royalty-free, worldwide, unlimited license in any Alliance Intellectual Property created during that Member's membership in the Alliance. No rights are granted to prepare derivative works of the Alliance Intellectual Property.

7.2 Notification and Delivery. The Alliance shall notify each Member of the adoption of Alliance Intellectual Property promptly upon its adoption by the Alliance Board of Directors, or in the event that a committee of the Board of Directors is delegated the task of adopting intellectual property, upon its adoption by such committee. Each Member may receive a copy of such Alliance Intellectual Property as may be comprised of Alliance trademarks, service marks, and corresponding logos connoting membership in the Alliance, in document or electronic form, upon request to the Secretary of the Alliance, and execution of a license agreement governing its use. Any other Alliance Intellectual Property shall be licensed to Members on a case by case basis, on terms approved by a majority of the Board of Directors.

7.3 Copyright License to Members. As to the Final Specifications adopted by the Alliance prior to or during a Member's participation in the Alliance, or other copyrighted materials of the Alliance, the Alliance hereby grants each Member an irrevocable (except for breach), nonexclusive, non-sublicensable, nontransferable, fully-paid up and royalty-free copyright license to, internally (within the participating company including Affiliates or, subject to a restricted use nondisclosure agreement, third party contractors of the participating company) reproduce, distribute, perform, create derivative works of and display the Final Specifications and promotional materials, as reasonably necessary to develop and commercialize products based upon the Final Specifications, procure products based upon the Final Specifications, or design, develop or implement internal systems and processes based upon the Final Specifications. This license to the Members expressly excludes the right to create derivative works except under the restrictions set forth in this Section 7.3 and in any case excludes making derivative works for the purpose of developing products not Compliant with the Specification.

7.4 Trademarks. In the event that the Alliance proposes to adopt any other name or logo as a trademark or trade name (collectively, "Trademarks"), the Alliance shall notify the Members in writing of the proposal. The Alliance will not adopt any Trademark for which a Member has notified the Alliance of reasonable objections, notably that the proposed trademark affects trademarks owned, used or adopted by the Member. The Alliance shall take

such steps as the Board of Directors deems necessary and proper to protect its rights under the Trademarks adopted for use by the Alliance and the Alliance shall own such Trademarks and the goodwill from the Trademarks shall be for the benefit of the Alliance. In furtherance thereof, the Board of Directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of the Trademarks adopted for use by the Alliance, fully-paid up royalty-free and demonstrably free of any unfair discrimination among the Members. Each Member agrees that unless it provides written notice to the Alliance of that Member's challenge to the proposed Trademark prior to its adoption by the Board of Directors, then the Member shall not assert against the Alliance or any Member any trademark or trade name rights they may have or thereafter possess in the proposed Trademarks. Each Member agrees not to use or adopt any trademarks for any product, service, guideline, specification, or standard likely to cause confusion with any of the Trademarks adopted by the Alliance, unless agreed by the Board of Directors or already in use by the Member prior to adoption of the Trademark by the Alliance.

7.5 Patents. The Alliance will not assert claims to or against any patent held by any Member. The Alliance does not currently contemplate either the development or acquisition of any patents to be owned by the Alliance. Any patent to be developed or acquired by the Alliance shall be in all respects subject to a patent policy (either general, or specific to a particular patent) adopted by the Board of Directors, as an amendment to this IP Policy, which shall ensure availability of RAND-Z licenses thereto for the Members.

7.6 Defense of Alliance Intellectual Property. Subject to the prior approval of the Alliance Board of Directors, the Alliance may initiate legal proceedings, at the Alliance's cost, to restrain infringement of Alliance Intellectual Property on behalf of the Alliance, upon the terms and conditions agreed to by the Alliance Board of Directors.

## **8. Confidentiality**

8.1 Disclosure of Member Confidential Information. "Member Confidential Information" means valuable information concerning a Member's business which is not generally known to the public and is disclosed to the Alliance. A Member may disclose confidential information to other Members in compliance with Alliance policies and in furtherance of the Alliance's purposes subject to the provisions of this Section 8. Confidential Information may be disclosed: (i) in writing; (ii) by delivery of items; (iii) by authorized access to the Confidential Information, such as may be contained in a document; and (iv) by oral and/or visual presentation. All written materials containing the Confidential Information must have a restrictive marking of the disclosing Member at the time of disclosure. Confidential Information disclosed orally must be summarized in writing provided to the recipient Member within thirty (30) days of disclosure. In addition to the foregoing, all discussions among Members relating to the Alliance's purposes, as well as all minutes of meetings, draft Proposals, or other materials prepared by or on behalf of the Alliance, shall be considered the Confidential Information of each Member.

8.2 Protection. For three (3) years after disclosure of Confidential Information, the recipient Member will:

- (a) Not disclose Confidential Information to any third party other than as expressly permitted under this IP Policy;
- (b) Restrict disclosure of Confidential Information to only those employees and subcontractors of the recipient Member who need to know the Confidential Information for the Alliance's purposes as and who are bound by confidentiality terms at least as restrictive as those in this IP Policy;
- (c) Be liable to the disclosing Member for any use of Confidential Information by any such employees and subcontractors in violation of such terms;
- (d) Not reverse engineer, de-compile or disassemble any Confidential Information;
- (e) Use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information;
- (f) Promptly notify the disclosing Member upon discovery of any unauthorized use or disclosure of that Member's Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this the agreements in this IP Policy;
- (g) Only use the Confidential Information in connection with the Alliance's purposes; and
- (h) Return to the disclosing Member all materials received there from containing Confidential Information and destroy all copies thereof, at the option of the Member, or certify in writing that all such Confidential Information has been destroyed upon the written request of the disclosing Member.

8.3 Residuals. Notwithstanding anything herein to the contrary, any Member may use Residuals for any purpose, including without limitation use in development, manufacture, promotion, sale and maintenance of its products and services; provided that this right to Residuals does not represent a license under any patents, copyrights or other registerable intellectual property rights of the disclosing Member. "Residuals" means any information retain in the unaided memory of the persons that have had access to Confidential Information compliant with the terms of the IP Policy. A person's memory is unaided if the person has not referred to notes or copies of the Confidential Information or intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it. Nothing in this paragraph, however, shall be deemed to grant to the receiving Member a license under the disclosing Member's intellectual property rights.

8.4 Required Disclosures. If the recipient Member is required to disclose Confidential Information pursuant to applicable law, statute, or regulation, or court order, the recipient Member will give to the disclosing Member prompt written notice of the request and

a reasonable opportunity to object to such disclosure and seek a protective order or appropriate remedy. If, in the absence of a protective order, the recipient Member determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only Confidential Information specifically required and only to the extent required to do so.

8.5 Exceptions. The obligations under this Section 8 shall not apply to the extent that Member Confidential Information includes information for which the receiving Member can prove that it has been or is:

- (a) Already rightfully in the recipient Member's possession or rightfully received by recipient Member without breach of a non-disclosure obligation to the disclosing Member;
- (b) Developed independently by recipient Member without the use of any of disclosing Member Confidential Information or any breach of the provisions of this IP Policy;
- (c) Publicly available when received, or thereafter becomes publicly available through no fault of the recipient Member;
- (d) Disclosed by the disclosing Member without breach of a non-disclosure obligation to the disclosing Member; or
- (e) Is required to be disclosed by a government agency or by a proper order of a court of competent jurisdiction; provided, however, that the receiving Member will use its best efforts to minimize such disclosure and will consult with and assist the disclosing Member in obtaining a protective order prior to such disclosure.

8.6 Confidentiality Obligations. The Alliance agrees to maintain in confidence Member Confidential Information and not to disclose such information to any person except its employees or consultants to whom it is necessary for the purpose which such Member may hereafter authorize in writing. The Alliance shall take reasonable measures to maintain the confidentiality of Member Confidential Information. These obligations shall not apply to the extent that Member Confidential Information includes information which:

- (a) The Alliance proves was already known to the Alliance at the time of disclosure;
- (b) Becomes publicly known through no act or failure to act of the Alliance;
- (c) Is independently developed by the Alliance without reference to the Confidential Information of the Member;
- (d) Is approved for release by written authorization of the Member; or
- (e) Is required to be disclosed by a government agency or by a proper order of a court of competent jurisdiction; provided, however, that the Alliance will use its best efforts to minimize such disclosure and will consult with and assist the Member in obtaining a protective order prior to such disclosure.



8.7 Ownership. All materials including, without limitation, documents, drawings, models, apparatus, sketches, designs and lists furnished to the Alliance by a Member which contain Member Confidential Information shall remain the property of the Member. The Alliance shall return to the Member or destroy such materials and all copies thereof, at the option of the Member, and certify in writing that all such Confidential Information has been returned or destroyed upon the written request of the Member. However, the recipient Member may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning the provisions of this IP Policy. No license, express or implied, in the Confidential Information is granted under this IP Policy other than to use the Confidential Information in the manner and to the extent authorized in this Section 8.

8.8 Applicability. The provisions of this Section 8 shall govern communications between the Members relating to the Alliance's purposes. Nothing in this Section 8 is intended to govern communications that do not relate to the Alliance's purposes ("Other Communications") or to modify any agreement between two or more Members relating to any Other Communications.

8.9 Alliance Agent Confidentiality Obligations. When a written agreement between a Member and the Alliance designates one or more employee(s) of Member an agent of the Alliance, such agent shall be bound by the confidentiality provisions of this Section 8.

8.10 Termination. Upon termination of a Member's membership, the Alliance shall cease to use that Member's Confidential Information and shall comply with Section 8.7 within thirty (30) days of the date of termination. All Alliance Agents which have Member Confidential Information shall also cease to use the Member Confidential Information and shall comply with Section 8.7 within thirty (30) days of the date of termination. Member's Contributions are explicitly excluded from this paragraph, and this paragraph shall not be interpreted as any limitation on the rights to use the Member's Contributions to develop the Specification for which the Contribution was made.

8.11 Member Remedies. A Member may initiate an action for injunctive relief to restrain improper disclosures of its Member Confidential Information and/or an action for damages for improper disclosures of its Member Confidential Information against the Alliance, Alliance Agents, or other Members.

## **9. No Representation or Warranties**

EACH MEMBER HEREBY AGREES AND ACKNOWLEDGES THAT: (A) THE ALLIANCE AND EACH MEMBER, INCLUDING WORK GROUP REPRESENTATIVES AND WORK GROUP CHAIRS, TAKE NO POSITION AS TO WHETHER ANY INTELLECTUAL PROPERTY RIGHTS EXIST IN ANY DRAFT OR FINAL SPECIFICATIONS; (B) THE SPECIFICATIONS AND ANY CONTRIBUTIONS THERETO ARE ALL PROVIDED "AS IS" AND "WITH ALL FAULTS"; (C) THE ALLIANCE AND EACH MEMBER, INCLUDING WORK GROUP REPRESENTATIVES AND WORK GROUP CHAIRS, MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SPECIFICATIONS OR ANY CONTRIBUTIONS THERETO, INCLUDING, BUT NOT LIMITED TO, ALL

IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OR RESULTS OR OF LACK OF NEGLIGENCE; AND (D) NEITHER THE ALLIANCE NOR ANY OF ITS MEMBERS, INCLUDING WORK GROUP REPRESENTATIVES AND WORK GROUP CHAIRS, HAS UNDERTAKEN ON BEHALF OF THE ALLIANCE OR ITS MEMBERS ANY PATENT SEARCH WITH RESPECT TO THE SPECIFICATIONS OR ANY CONTRIBUTIONS THERETO. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED AS A RESTRICTION ON ANY MEMBER CONDUCTING ITS OWN DUE DILIGENCE OR OTHER TECHNOLOGY SEARCH OR SCREENING WITH RESPECT TO THE SPECIFICATIONS.

#### **10. Limitation of Liability**

IN NO EVENT SHALL THE ALLIANCE OR ANY MEMBER BE LIABLE TO ANY OTHER MEMBER OR THIRD PARTY FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING UNDER THIS IP POLICY, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, OR LOSS OF DATA.

#### **11. Amendments and Modifications**

Any revisions or amendments to this IP Policy will become effective only upon adoption by the Board of Directors in accordance with the Bylaws.

#### **12. Applicable Law**

All disputes arising under this IP Policy shall be governed by the law of the state of Delaware, United States of America, without regard to its rules with respect to conflict of laws. However, any disputes with respect to the ownership, existence, scope, validity or infringement of intellectual property rights shall be governed by the law of the country in which the intellectual property rights confer protection.