

[HomePNA]

Intellectual Property Rights Policy

BACKGROUND

The Alliance has been formed as a non-profit mutual benefit corporation for the purpose of developing and promoting specifications for home networking products and services using existing home wiring including phone line and coax cables and to develop a certification process for products implementing the specifications to ensure interoperability between products and manufacturers.

This Intellectual Property Rights Policy (“*IPR Policy*”) is intended to maximize the likelihood of widespread adoption of Alliance deliverables related to the transport of digital entertainment and information content over existing wiring in the home. Encryption such as conditional access, copy protection or digital rights management which resides above the link layer, will not be within the scope of such deliverables. In the event that such encryption which is outside the scope of deliverables (as described above) is submitted for approval by the Alliance, Member(s) (as defined below) shall not be obligated to perform the covenants contained in Section 4.1 (RAND Licenses) of this IPR Policy with respect to said encryption which is outside the scope of deliverables. This IPR Policy is designed and intended to comply with all applicable law, including all federal and state antitrust laws.

1. **DEFINITIONS**

For purposes of this IPR Policy, the following capitalized terms shall have the meaning specified below. Other capitalized terms used herein but which are not defined herein shall have the definitions ascribed to them in the Alliance Bylaws or the applicable membership agreement, as applicable.

“*Affiliates*” shall mean all entities within the “Control Group” of a Member; “Control” shall mean: (i) the ownership of more than 50% of the total voting securities of another entity, or (ii) in the case of unincorporated entities “Control” shall mean the ownership of more than 50% of the ownership interest representing the right to make decisions for the entity; and “Control Group” shall include all corporations or other entities which are Controlled by a Member (e.g. subsidiaries), which Control a Member (e.g. parent entities), or which are also Controlled by the same corporation or entity Controlling a Member (e.g. brother/sister entities). The Board of Directors may, by resolution and separate agreement with a Member, limit the number of entities included within a specific Control Group.

“*Alliance Intellectual Property*” means Intellectual Property (i) conceived, reduced to practice, created, derived, developed, or made by employees of the Alliance in the course of their employment without contribution from or involvement by any Member (ii) conceived, reduced to practice, created, derived, developed, or made by a third party contractor (other than a Member) for the Alliance pursuant to a written agreement with the Alliance, or (iii) otherwise acquired or procured by the Alliance.

“Approved Draft Deliverable” means a Draft Deliverable which has been approved by the Board of Directors (i.e., the Board of Directors meeting minutes or resolution that indicates such approval) in accordance to the procedures specified in this IPR Policy. An Approved Draft Deliverable may incorporate, be based on or require the practice or use of Alliance Intellectual Property and/or Single Member Intellectual Property and/or Multiple Member Intellectual Property.

“Board of Directors” means the Board of Directors of the Alliance as described in the Alliance Bylaws.

“Compliance Test(s)” means one or more tests, test scripts or procedures, programs and/or documentation that are used to test and determine whether a product that implements a Technical Specification is a Fully Compliant Product.

“Confidential Information” shall have the meaning set forth in Section 5.1 (Definition. “Confidential Information”) of the Agreement.

“Deliverable(s)” shall have the meaning set forth in Section 2.4 (Disclosure of Deliverables to Non-Members).

“Draft Deliverable(s)” means Technical Specifications, Reference Implementations, Compliance Tests, field test plans, reports or other work product (i) prepared by the Alliance or (ii) prepared by a Member and delivered to the Alliance as a part of Alliance activities, which is in draft form and which is not an Approved Draft Deliverable. A Draft Deliverable may incorporate, be based on or require the practice or use of Alliance Intellectual Property and/or Single Member Intellectual Property and/or Multiple Member Intellectual Property.

“Essential Copyrights” means the copyright rights in any software of a Member or its Affiliates that is actually included in an Approved Draft Deliverable, which copyright rights are infringed by the making, reproducing, modifying, selling, importing or distributing Fully Compliant Products. Essential Copyrights shall include copyright rights in such software regardless of when the software was written and/or fixed in a tangible medium of expression. Essential Copyrights include copyrights that meet the definition above that are included in the Multiple Member Intellectual Property. For the avoidance of doubt, the term Essential Copyrights shall not include mask works or other works of authorship.

“Essential Patent Claims” means those claim(s) in issued patents (excluding design patents and design registrations) throughout the world, which a Member or its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the scope set forth in Section 4.1 (RAND Licenses) without such grant or the exercise of rights thereunder resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or to employees within the scope of their employment) and (i) which are necessarily infringed by the using, making, selling or importing of a Fully Compliant Product, where the term "necessarily infringed" means that such infringement could not have been avoided by another commercially reasonable non-infringing implementation of the applicable Approved Draft Deliverable Technical Specification on which the Fully Compliant Product is based, or (ii) for which infringement is based on an implementation of any example included in the body of such

Technical Specification. Essential Patent Claims do not include implementation examples included solely in any appendix, exhibit or other attachment to the actual Technical Specification. Essential Patent Claims shall include claims in issued patents regardless of when the patents issue or when the inventions included in such patents were conceived, reduced to practice, created, derived, developed, or made. Essential Patent Claims include claims that meet the definition above that are included in the Multiple Member Intellectual Property.

“First Customer Shipment” (FCS) is the date on which a Fully Compliant Product is publicly and commercially released and available, and shipping, directly or indirectly, to end consumers.

“Full Specification” means a version of an Approved Draft Deliverable of a Technical Specification that is restricted to and includes that information descriptive of (i) the electrical characteristics and protocols of physical and media access control interfaces which allow data transmission using existing wiring, and (ii) a standard set of transmitted signals.

“Fully Compliant Product” means a product (including, without limitation a component of a product) that (i) supports or implements all of the portions of an Approved Draft Deliverable which is a Technical Specification defined by that Technical Specification as being “required” or similar designation; (ii) implements all portions of a Technical Specification required for a specific type of product or component thereof and (iii) passes all applicable Compliance Tests.

“Intellectual Property” means all trademarks, service marks, patents, patent applications, inventions (whether or not patentable), works of authorship, copyrights, trade secrets, protectable designs, mask works, and other similar intellectual property that are necessary to use, make, reproduce, sell or otherwise distribute or import Deliverables, Draft Deliverables, Approved Draft Deliverables, and/or Fully Compliant Products.

“Majority Vote” shall have the meaning in the Alliance’s Bylaws.

“Member” means an Alliance member that has entered into a written agreement with the Alliance pursuant to which such member agrees to the terms of this IPR Policy.

“Multiple Member Intellectual Property” means Intellectual Property developed by employees and/or Subcontractors of two (2) or more Members or by one (1) or more Members and the Alliance, working jointly for or in the course of contributing to a Draft Deliverable, which Intellectual Property is designated in writing by the applicable developing entities as a contribution to the Draft Deliverable.

“RAND” shall have the meaning specified in Section 4.1.1 (Limited Obligation to License Essential Patent Claims).

“Reference Implementation(s)” shall mean a Fully Compliant Product prototype implementation that is created using or based on a Technical Specification and that is meant to be used as a guide for developers when creating, developing or manufacturing their own products implementations that are based on a Technical Specification.

“**Single Member Intellectual Property**” means Intellectual Property developed solely by one or more employees or Subcontractors of a single Member for or in the course of contributing to any Draft Deliverable.

“**Subcontractor**” means any third party performing services or work under this Agreement, or provided access to Confidential Information, for a Member other than employees of the Member.

“**Technical Specification(s)**” means a document containing a set, or subset, of (i) the electrical characteristics and protocols of physical and media access control interfaces which allow data transmission using existing wiring, and/or (ii) a standard set of transmitted signals.

2. DELIVERABLES

2.1 **Majority Approval of Draft Deliverables.** Draft Deliverables (including any version of a Draft Deliverable) shall be designated and approved of as Approved Draft Deliverables by a Majority Vote of the Board of Directors. The Board of Directors may from time to time require that one or more versions of a Draft Deliverable be submitted to the Board of Directors for consideration as an Approved Draft Deliverable.

2.2 **Delivery of Draft Deliverables to Members.** In the course of submitting a Draft Deliverable to the Board of Directors for consideration as an Approved Draft Deliverable, the applicable Draft Deliverable shall be provided by the Alliance to Members no less than thirty (30) calendar days prior to the scheduled vote on which the Draft Deliverable is to be considered by the Board of Directors.

2.3 **Member Access to Approved Draft Deliverables.** All Approved Draft Deliverables shall be provided to the Members no more than thirty (30) calendar days after the Board of Directors approves the Draft Deliverable as an Approved Draft Deliverable.

2.4 **Disclosure of Deliverables to Non-Members.** Upon a Majority Vote of the Board of Directors, an Approved Draft Deliverable, or a portion thereof, may obtain the designation of a “**Deliverable**” and in such event, the Board of Directors shall, subject to the terms in this Section, determine the process, nature and scope of disclosure of the Deliverable to third parties that are not Members of the Alliance (“**non-Members**”). Nothing in this IPR Policy shall require the Board of Directors to, and the Board of Directors may elect not to, disclose a Deliverable or any portion thereof to non-Members. Disclosure of a Deliverable or any portion thereof to non-Members shall require a Majority Vote of the Board of Directors and the written consent of any then-current Member of the Alliance whose Confidential Information is included in the Deliverable, provided that such consent shall not be unreasonably withheld. If Member is no longer an Alliance member at the time of distribution of the Deliverable to non-Members, then Member hereby consents to such distribution to non-Members even if Member’s Confidential Information is included in the Deliverable.

2.5 **Full Specifications.** It is the intent of the Alliance that the Full Specification match the function and behavior of a Reference Implementation used for Compliance Tests and in the event of a discrepancy that the behavior of the Reference Implementation shall prevail. To this end, and notwithstanding anything to the contrary herein, the Draft Deliverable of a Full Specification and any contribution to a Draft Deliverable of a Full

Specification shall not be required to be submitted to the Alliance as a Draft Deliverable until after First Customer Shipment.

3. **INTELLECTUAL PROPERTY**

3.1 **Ownership of Rights.**

3.1.1 **Alliance Intellectual Property.** All right, title and interest in and to the Alliance Intellectual Property shall be owned exclusively by the Alliance. The Alliance shall have the right to obtain in its own name patents, copyrights, registrations and other Intellectual Property protections for the Alliance Intellectual Property. For the avoidance of doubt and without limitation, the Alliance Intellectual Property shall not include any Single Member Intellectual Property.

3.1.2 **Single Member Intellectual Property.** All right, title and interest in and to the Single Member Intellectual Property shall be owned exclusively by the Member who conceived, reduced to practice, created, derived, developed, or made such Intellectual Property.

3.1.3 **Multiple Member Intellectual Property.** All right, title and interest in and to the Multiple Member Intellectual Property shall be owned exclusively by the Member(s) and/or the Alliance who developed the Intellectual Property pursuant to such terms and conditions as such Member(s)/Alliance may agree in a written agreement executed by such Member(s)/Alliance. If not otherwise agreed in writing, then the Member(s)/Alliance shall be joint owners of such Multiple Member Intellectual Property.

3.1.4 **Representation and Warranty.** Alliance and each Member represents, warrants and covenants to the other party and to other Members that all employees and Subcontractors used in connection with the conception, reduction to practice, creation, derivation, development or making of inventions, works of authorship, trade secrets, Confidential Information, and Intellectual Property have executed and will execute Intellectual Property rights assignment agreements pursuant to which such employees and Subcontractors assigned or will assign to the Alliance or the Member, as applicable all such employee's and Subcontractors' right, title and interest in and to such inventions and works of authorship, and all Intellectual Property rights therein.

3.2 **Intellectual Property of Third Parties.** No licenses to third party non-Member Intellectual Property in the Draft Deliverables, Approved Draft Deliverables or Deliverables are granted herein and neither the Alliance nor any Member is responsible for obtaining licenses to such third party Intellectual Property for the benefit of or on behalf of the Alliance or any other Member. Member and Alliance shall be required to obtain any rights or licenses from third party non-Members necessary to use, make, reproduce, have made, offer for sale, sell or otherwise distribute, or import Fully Compliant Products by another Member.

4. **LICENSES.**

4.1 **RAND Licenses.**

4.1.1 **Limited Obligation to License Essential Patent Claims.** Subject to the terms in this IPR Policy, at the time the Board of Directors approves an Approved Draft Deliverable and upon the written request of the Alliance or any other then-current Member, each Member shall offer to license to the Alliance and the requesting Member(s), under the terms of a separate written agreement, such Member's and its Affiliates' Essential Patent Claims to the extent necessary to use, make, have made, offer for sale, sell and import Fully Compliant Products in conformance with or as described in such Approved Draft Deliverable. Such licenses shall be non-exclusive, non-transferable, non-sublicensable, world wide, and on fair, reasonable and nondiscriminatory terms and conditions (collectively, "**RAND**"), and shall, subject to certain grant back licenses to the granting Member, include the right to develop improvements of such Essential Patent Claims. The license agreement evidencing such license will include such other terms as are customary in licenses of this nature. Such grant back licenses to the granting Member shall be non-exclusive, non-transferable, non-sublicensable, world wide, and RAND. Member (on behalf of itself and its Affiliates) hereby agrees that it shall not seek an injunction and hereby waives its rights to an injunction with respect to infringement of the Member's Essential Patent Claims by Fully Compliant Products in conformance with or as described in an Approved Draft Deliverable, against any other Alliance Members that are entitled to receive a RAND license described this Section, except if such other Alliance Member is in material breach of its separate written agreement with the licensing Alliance Members and fails to cure said breach within 60 days. Such waiver of injunctive relief shall not prohibit the Member from seeking or receiving damages in connection with such infringement from any other Member.

4.1.2 **Limited Obligation to License Essential Copyrights.** Subject to the terms in this IPR Policy, at the time the Board of Directors approves an Approved Draft Deliverable and upon the written request of the Alliance or any other then-current Member, each Member shall offer to license to the Alliance and the requesting Member(s), under the terms of a separate written agreement, such Member's and its Affiliates' Essential Copyrights to the extent necessary to reproduce and distribute Fully Compliant Products in conformance with or as described in such Approved Draft Deliverable and such license shall be on a RAND basis. Such license shall, subject to certain grant back licenses to the granting Member, include the right to develop derivative works of the works of authorship that are the subject of such Essential Copyrights. The license agreement evidencing such license will include such other terms as are customary in licenses of this nature. Such grant back licenses to the granting Member shall be non-exclusive, non-transferable, non-sublicensable, world wide, and RAND. Member (on behalf of itself and its Affiliates) hereby agrees that it shall not seek an injunction and hereby waives its rights to an injunction with respect to infringement of the Member's Essential Copyrights by Fully Compliant Products in conformance with or as described in an Approved Draft Deliverable, against any other Alliance Members that are entitled to receive a RAND license described this Section, except if such other Alliance Member is in material breach of its separate written agreement with the licensing Alliance Members and fails to cure said breach within 60 days. Such waiver of injunctive relief shall not prohibit the Member from seeking or receiving damages in connection with such infringement from any other Member.

4.1.3 **Transfer of Essential Patent Claims and Essential Copyrights.** Any sale, assignment or other transfer by a Member or its Affiliates to a third party of an Essential Patent Claim or Essential Copyright shall be subject to (i) the terms in this IPR Policy

and (ii) the written agreement of such third party to grant licenses to the other Members pursuant to the terms in this Section 4.1 (RAND Licenses).

4.1.4 **Limitations.** The license described in Sections 4.1.1 (Limited Obligation to License Essential Patent Claims) and 4.1.2 (Limited Obligation to License Essential Copyrights) (i) shall be granted only to the extent that the Fully Compliant Product is used for purposes of home networking over existing wiring, (ii) shall not extend to features of a product which are not required to comply with the Approved Draft Deliverable, and/or (iii) shall not apply to Essential Patent Claims or Essential Copyrights not otherwise required to use, make or sell Fully Compliant Products.

4.2 **Licenses.**

4.2.1 **No Other Licenses.** Except for the express license set forth in this Section 4.2 (Licenses), for the avoidance of doubt, the Alliance and Member agree that no other licenses (express, implied or by way of estoppel) or immunity from suit are granted in the Member's membership agreement with the Alliance or in this IPR Policy under any Intellectual Property (i) by the Alliance to Member, (ii) by any Member to any other Member or (iii) by Member to the Alliance. Any such licenses must be set forth in separate written agreements executed and delivered by the applicable parties thereto.

4.2.2 **License from Alliance to Member.** Subject to the ownership of any underlying Single Member Intellectual Property or Multiple Member Intellectual Property provided or delivered to the Alliance and included in any Approved Draft Deliverable or in any Alliance Intellectual Property, Alliance hereby grants to Member a non-exclusive, royalty free, fully paid, worldwide, perpetual and irrevocable (except as provided below), transferable license, without the right to sublicense, under all Alliance Intellectual Property conceived, reduced to practice, created, derived, developed, or made by Alliance, prior to and during the period in which Member was an Alliance member, and under any derivative works and improvements conceived, reduced to practice, created, derived, developed, or made by Alliance, prior to and during the period in which a Member was an Alliance member, to any Single Member Intellectual Property or Multiple Member Intellectual Property, to use, make, have made, modify, improve, reproduce, offer for sale, sell or otherwise distribute, and import Fully Compliant Products in conformance with or as described in Approved Draft Deliverables approved by the Board of Directors prior to termination of the Member's membership agreement with the Alliance. The foregoing license shall not grant to Member any rights or licenses (express, implied or by way of estoppel) in or to or any immunity from suit for any underlying Single Member Intellectual Property or Multiple Member Intellectual Property provided or delivered to the Alliance in connection with the development or preparation of Draft Deliverables and that are included in any Approved Draft Deliverable or in any Alliance Intellectual Property.

4.2.3 **License Granted by Member to Alliance and Other Members.** Member hereby grants to Alliance a non-exclusive, non-assignable, royalty-free, limited license (i) to reproduce and (ii) to distribute solely to other Members, copies of all Draft Deliverables and Approved Draft Deliverables and solely for such Member's use in connection with working on Draft Deliverables and participating in Alliance meetings, but not for any other purpose.

Member hereby grants to each other Member a non-exclusive, non-assignable, royalty-free, limited license to reproduce a limited number of copies of such Draft Deliverables and Approved Draft Deliverables as are necessary for such use described in the foregoing sentence. Each such other Member shall not have the right to distribute or modify such Draft Deliverables or Approved Draft Deliverables or to use any of the foregoing for any other purpose. The licenses granted in this Section shall not include the right to grant sublicenses.

4.3 **Conduct.** Member shall:

4.3.1 Use commercially reasonable efforts to ensure the accuracy of all information provided by it and its Affiliates and Subcontractors pursuant to this IPR Policy, and, promptly upon being notified of or becoming aware of any error or other deficiency in such information, to supply the appropriate corrections; and

4.3.2 Promptly disclose to the Alliance and other Members any third party Intellectual Property that might be infringed by an implementation of a proposed Draft Deliverable (including without limitation any Fully Compliant Product) if one or more of Member's representatives participating in the Alliance are or become actually aware of such third party Intellectual Property, such disclosure to be made at the earliest time between when any Member contributes or makes a contribution to the proposed Draft Deliverable and the date the Draft Deliverable is approved by the Board of Directors as an Approved Draft Deliverable that they become actually aware of such third party Intellectual Property. For the purpose of this Section the term "representatives participating in the Alliance" means and is limited to the employees and Subcontractors of a Member that attend Alliance meetings, participate in one or more Alliance working groups, work with other Members or their representatives on Deliverables, Draft Deliverables or Approved Draft Deliverables, or that have access to Alliance or other Members' Confidential Information. Promptly disclose to the Alliance and other Members any breach of confidentiality claim which it believes would be actionable against any of the Members or Alliance by virtue of an implementation of any Deliverables, Draft Deliverables or Approved Draft Deliverables or using, making, reproducing, importing, selling or otherwise distributing a Fully Compliant Product; and

4.3.3 Require that its employees and Subcontractors, who participate in the development of Draft Deliverables at the premises of or at locations provided by another Member, abide by its own rules and the rules which apply to visitors working at the premises of said other Member.

5. **Disclosure of Intellectual Property.**

Member will take reasonable steps (as defined below) to disclose to the Alliance and to other Members whether Member or an Affiliate of the Member owns or otherwise controls any known Essential Patent Claims and known Essential Copyrights with respect to a Draft Deliverable, Approved Draft Deliverable, or Deliverable (or any portion of a Draft Deliverable, Approved Draft Deliverable, or Deliverable) or to a product that is based on, uses, relies on, implements the subject matter of or incorporates the Draft Deliverable, Approved Draft Deliverable, or Deliverable, or portion thereof. Member will make such disclosure (i) at the time a Draft Deliverable is submitted by Member to the Alliance, (ii) no later than ten (10) business days

before the vote of the Board of Directors for evaluation of the Draft Deliverable as an Approved Draft Deliverable, and (iii) promptly upon determining that a Draft Deliverable, Approved Draft Deliverable and/or Deliverable would otherwise incorporate, read on or infringe an Essential Patent Claim or Essential Copyright. All such disclosures shall be in writing. In addition, in connection with any such disclosure, Member shall acknowledge its obligation to grant licenses of that Intellectual Property to the Alliance and all Members pursuant to the terms and conditions set forth in Section 4.1.1 (Limited Obligation to License Essential Patent Claims) and Section 4.1.2 (Limited Obligation to License Essential Copyrights), as applicable. The failure by Member to make the disclosure required by this Section shall not otherwise relieve Member from being required to offer and to grant to the Alliance and other Members the licenses specified in Section 4.1.1 (Limited Obligation to License Essential Patent Claims) and Section 4.1.2 (Limited Obligation to License Essential Copyrights) on RAND terms as specified in such Sections. "**Reasonable steps**" shall not require that Member search and/or analyze its intellectual property portfolio for Essential Patent Claims and/or Essential Copyrights.

6. FREEDOM OF ACTION

Nothing contained in this Agreement or this IPR Policy shall be construed as restricting the right of any Member to independently design, develop, acquire, manufacture, market or service or otherwise deal in, directly or indirectly, competitive products or services independent of any Draft Deliverables or Approved Draft Deliverables or any Deliverable. The foregoing shall not be construed or deemed as a license (express, implied or by way of estoppel) or an immunity from suit under any Intellectual Property or Confidential Information of the Alliance or any Member. This Section shall survive any termination or expiration of this Agreement.

7. TERMINATION; SURVIVAL OF IPR POLICY

7.1 **Other Termination of This Agreement.** If this Agreement expires or terminates for any reason other than termination by the Alliance without cause as provided in the Bylaws or if the Member's membership in the Alliance terminates or expires for any other reason, then (i) the terminated Member shall no longer be entitled to request or require any Member of the Alliance to license such Member's Essential Patent Claims and/or Essential Copyrights to the terminated Member as provided in Section 4.1 (RAND Licenses) and (ii) the terminated Member and its Affiliates shall, after such termination, continue to offer and to license to any other Members of the Alliance the terminated Member's (and its Affiliates') Essential Patent Claims and Essential Copyright Claims as provided as provided in Section 4.1 (RAND Licenses), including Members that become Members after such termination. The terminated Member's obligations under (ii) above shall only apply to Essential Patent Claims and Essential Copyright Claims that are required to use, make and sell Fully Compliant Products described in or covered by Approved Draft Deliverables approved by the Board of Directors prior to such expiration or termination. The terminated Member's obligations under (ii) above shall not apply to Essential Patent Claims and Essential Copyright that are required to use, make and sell Fully Compliant Products described in Draft Deliverables approved by the Board of Directors as Approved Draft Deliverables after such expiration or termination, except as to portions of such Approved Draft Deliverable approved by the Board of Directors as a separate Approved Draft Deliverable prior to such termination or expiration (e.g., an earlier version of the Approved Draft Deliverable).

7.2 **Identification of Confidential Information and Intellectual Property.**

Within twenty (20) business days after the termination of a Member's membership in the Alliance, that Member shall identify in writing to the Alliance, with reasonable specificity, any of such Member's Confidential Information or Intellectual Property that the Member has delivered or provided to the Alliance with regard to any as yet Draft Deliverables or proposed Draft Deliverables being developed or worked on by the Alliance at the time of such termination or expiration or to any Approved Draft Deliverable approved prior to such termination or expiration.

8. **AMENDMENTS**

This IPR Policy may only be amended in accordance with the terms and conditions in the Alliance Bylaws.