



## EMerge Alliance (“EMerge”) Intellectual Property Rights Policy

### SECTION 1 DEFINITIONS

The following definitions shall apply to this Intellectual Property Rights Policy:

(a) **“Affiliate”** or **“Affiliates”** means an entity that directly or indirectly controls another entity, or is controlled, or is under common control with another entity. For purposes of this definition, control shall mean beneficial ownership of more than fifty percent (50%) of the voting power or equity of an entity.

(b) **“Bylaws”** means the EMerge corporate bylaws, as proposed and attached hereto, and as adopted and in effect and amended from time to time.

(c) **“Compliant Portion”** means only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with all relevant portions of a Specification, and (ii) are within the bounds of the Scope.

(d) **“Contribution”** means a submission by a Member proposing an addition to or modification of a Draft Specification or portion thereof, or an existing Specification or portion thereof, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a meeting, and attributed in the meeting minutes to the submitting Member, provided that the minutes are promptly provided to the individual representing the submitting Member, unless in either case, the submitting Member withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

(e) **“Corresponding Member(s)”** shall have the meaning set forth in Section 14.4 of the Bylaws.

(f) **“Draft Specification”** means a document in development or under consideration for adoption as a Specification that has not been adopted or approved by the Corporation in accordance with the Process for Approval of Specifications.

(g) **“EMerge”** or **“Corporation”** means the EMerge Alliance.

(h) **“General Member(s)”** shall have the meaning set forth in Section 14.4 of the Bylaws.

(i) **“Governing Member(s)”** shall have the meaning set forth in the Bylaws.

(j) **“Member(s)”** means all Governing Members, and to the extent otherwise applicable pursuant to the terms of the Bylaws and any requisite action of the Board of Directors, Participating Members, General Members, and Corresponding Members of the Corporation, in each case who have qualified for the classification according to the provision of the Bylaws and who remain in good standing; provided; however, that designation in this Intellectual Property Rights Policy as a Member shall not bestow any rights of statutory membership in the Corporation.

(k) **“Necessary Claims”** shall mean claims of a patent, patent application, certificate of invention, application for certificate of invention, or any other claim-based exclusionary right granted by a governmental authority, other than design patents and design registrations, throughout the world that: (i) are owned, controlled or licensable by a Member or its Affiliates now or at any future time; and (ii) are necessarily infringed by implementing those portions of the Specification that are within the bounds of the Scope, provided that a claim is necessarily infringed only when there is no commercially reasonable non-infringing alternative for implementing such portions of the Specification within the bounds of the Scope. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims (x) other than those set forth above even if contained in the same patent or patent application as Necessary Claims; or (y) that read solely on any implementations of any portion of the Specification that are not within the bounds of the Scope; or (z) that, if licensable, would require a payment of royalties or other consideration by the licensor to third parties.

(l) **“Participating Member(s)”** shall have the meaning set forth in Section 14.4 of the Bylaws.

(m) **“Scope”** means those protocols, application program interfaces, service provider interfaces, and/or data structures solely to the extent disclosed with particularity in the Specification where the sole purpose of such disclosure is to enable reliable, high quality distribution of low voltage power or signaling to ceiling peripherals (including, but not limited to ceiling tiles and lighting) via the electrically active components of the system. Notwithstanding the foregoing, the Scope shall not include: (i) any technology that may be necessary to develop, design, manufacturer, sell or use any product or portion thereof that complies with the Specification but is not expressly set forth as mandatory in the Specification (examples of such technologies include without limitation basic computer or network technology, semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and component design, material or manufacturing technologies; or (ii) the implementation or use of specifications published or otherwise made available for implementation by entities other than EMerge (such as companies and standards organizations) but referred to in the body of the Specification; or (iii) any portion of any product or any combination of products (or portions of products) that are not required for compliance with the Specification. The Scope shall include only architectural and interconnection requirements of the Specification and shall not include any implementation examples contained in the Specification unless the Specification expressly states that such implementation examples are to be included within the Scope of the limited patent license.

(n) **"Specification"** means a document entitled "Specification" adopted and approved for release by the Corporation, and any updates or revisions adopted and approved for release by the Corporation in accordance with Section 2, below (**"Process for Approval of Specifications"**). A Specification shall also include the covenants or licensing terms required for disclosure pursuant to Sections 2(a)(i) and (ii), below.

Unless otherwise defined herein, all capitalized terms used in this Intellectual Property Rights Policy shall have the respective meanings ascribed to such terms in the Bylaws.

## **SECTION 2 PROCESS FOR APPROVAL OF SPECIFICATIONS**

(a) **Draft Specifications; License Review Period.** A Technical Committee, to be chartered by the Board of Directors, shall have the responsibility for drafting and developing Draft Specifications. Any Governing Member may propose to the Committee the development of a Specification or Specifications pursuant to the purposes of the Corporation.

Prior to submitting a Draft Specification for review and/or approval to the Board of Directors, the Chairperson of the Technical Committee shall obtain from any and all Members who have made Contributions thereto either:

(i) a written covenant that they will not enforce their Necessary Claims against such other Members and their Affiliates who elect to make, have made, use, import, offer to sell, lease and sell or otherwise distribute Compliant Portions, provided that such covenant shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion; or

(ii) the terms and conditions of the license by which the Member making the Contribution will grant to other Members pursuant to Section 4, below. Such terms and conditions must at a minimum provide for a reasonable, non-discriminatory, nonexclusive, nontransferable, worldwide license under its Necessary Claims to allow such other Members and their Affiliates to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such agreement to license shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Each Member agrees that it will not transfer, and have not transferred, patents having Necessary Claims solely for the purpose of circumventing such Member's obligations under this Intellectual Property Rights Policy.

The Board of Directors shall have the discretion to implement and require a standard form document for the submission of written covenants and terms and conditions of licenses. No license is implied by the submission of a written covenant not to enforce Necessary Claims. The Corporation is not responsible for identifying Necessary Claims for which a license may be required, for conducting inquiries into the legal validity or scope of Necessary Claims or for determining whether any licensing terms or conditions are reasonable or non-discriminatory.

When the Chairperson of the Technical Committee determines that a Draft Specification is ready to be released for review and/or approval, he or she shall provide the Members with notice of the Technical Committee's intent to submit such Draft Specification to the Board of Directors for review and/or approval. Such notice shall include a complete draft of the Draft Specification that is the subject of such notice. Each Member, on behalf of itself and its Affiliates, shall have sixty (60) days following the date of such notice (the "License Review Period") to review such Draft Specification with respect to any intellectual property licensing issues including, without limitation, consideration of such Member's licensing obligations with respect to any Necessary Claims that may be contained therein. Nothing in this Section is intended to create a duty for a Member to conduct a search of its patent portfolio or for the Corporation to conduct a patent search.

(b) **Licensing Objections.** In the event that a Member in good faith believes that the implementation of Necessary Claims in such Draft Specification would require a license from that Member, and that such Member is unwilling to provide a license under such Necessary Claims in accordance with Section 4 of this Intellectual Property Rights Policy, that Member must within the License Review Period provide written notification to the Chairperson of the Technical Committee and the Secretary of its intent not to grant licenses under such Necessary Claims ("**Licensing Objection**"). Such Licensing Objection will include written identification of any Necessary Claims that such Member refuses to license hereunder. Notwithstanding the foregoing, a Member shall not have the right to submit a Licensing Objection with respect to any Necessary Claims in any Contribution submitted by such Member. In the event that a Member properly submits a Licensing Objection within the License Review Period, such Member shall not be required to grant licenses under the identified Necessary Claims. In the event that a Member does not properly submit a Licensing Objection within the License Review Period, the licensing provisions recited in Section 4 shall apply. The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Licensing Objections.

In the event that one or more Licensing Objections is timely received by the Secretary, the Board of Directors shall (i) notify all Members of the receipt of such Licensing Objection(s) and (ii) designate either the Technical Committee or an ad-hoc subcommittee thereof to review and evaluate each Licensing Objection, as well as alternative design options or recommendations for the Draft Specification. The Technical Committee or subcommittee thereof shall deliver to the Board of Directors the results of its findings within a reasonable period of time.

(c) **Member Notice of Necessary Claims.** In order for this Intellectual Property Rights Policy to function efficiently, representatives of Members participating in the development of Draft Specifications: (1) shall inform the Corporation (or cause the Corporation to be informed) of the holder of any potential Necessary Claims of which they are already personally aware and that are not already the subject of an existing written covenant not to enforce Necessary Claim, owned or controlled by such Member; and (b) should inform the Corporation (or cause the Corporation to be informed) of any other holders of such potential Necessary Claims that are not already the subject of an existing written covenant not to enforce Necessary Claim.

(d) **Final Approval of Specifications.** Upon completion of the License Review Period and upon majority votes of all members of the Technical Committee who have attended not less than two (2) of the previous three (3) meetings of the Technical Committee, the Technical Committee shall submit such Draft Specification to the Board of Directors for review, comment and approval. In the event there are no Licensing Objections, a vote for approval by a Super Majority of the Board of Directors shall be necessary for approval of the Draft Specifications. In the event that one or more Licensing Objections have been raised and have not been withdrawn, a vote of approval by an Absolute Super Majority of the Board of Directors shall be necessary for approval of the Draft Specifications. If the Board of Directors does not approve the Draft Specifications, the Secretary will return such Draft Specification to the Technical Committee.

(e) **Notice of Licensing Objections.** In the event that a Specification to which one or more bona fide Licensing Objection(s) has been timely received and not withdrawn is finally adopted in accordance with the procedures set forth above, the Board of Directors shall, in publishing or otherwise distributing such Specification, take actions reasonably calculated to call attention of Members to the existence of such Licensing Objection(s).

### **SECTION 3 NEW MEMBER SPECIFICATION REVIEW**

If a prospective Member shall apply for statutory or nonstatutory membership in the Corporation at the level of Governing Member or Participating Member, then subject to the execution of such confidentiality and/or nondisclosure agreements as the Corporation may determine necessary, such prospective Member shall be permitted not less than forty-five (45), but no more than sixty (60), days to review any Draft Specification then under review and any previously adopted and published Specifications of the Corporation for any and all Necessary Claims and to agree in separate affirmative writing to be committed to the licensing provisions of Section 4, as to such pending Specification if it is adopted by the Corporation and any previously adopted and published Specifications of the Corporation. Failure to provide such written affirmation shall be deemed a withdrawal of the prospective Member's application for membership.

## **SECTION 4 LICENSING OF MEMBER INTELLECTUAL PROPERTY RIGHTS**

Upon adoption by the Corporation of a Specification in accordance with the Process for Approval of Specifications contained in Section 2, and unless a Member has timely made and not withdrawn a Licensing Objection (as defined in Section 2):

(a) such (i) Member, (ii) Affiliates of which such Member owns or controls more than fifty percent (50%), and (iii) its Affiliates that either (A) hold, own or control Necessary Claims on behalf of such Member or (B) license Necessary Claims to such Member, hereby agree to grant to other Members and their Affiliates a written covenant in accord with item (i) of Section 2(a) above or license terms and conditions in accord with item (ii) of Section 2(a) above; and,

(b) in the event that an Affiliate of a Member holds, owns or controls Necessary Claims but not on behalf of such Member, such Member shall use reasonable commercial efforts to encourage its parent Affiliate to license such Necessary Claims on reasonable terms to other Members.

## **SECTION 5 RECIPROCITY**

The provisions of Section 4 concerning the grant of patent licenses between Members shall be reciprocal in nature and shall not be effective as to any other Member, or that other Member's Affiliates, if that Member, or its Affiliates, do not, in fact and practice, make the license or covenant provided for under Section 4 available to the other Members and their Affiliates.

## **SECTION 6 RETENTION OF RIGHTS**

Nothing contained in this Intellectual Property Rights Policy shall be deemed as requiring a Member or its Affiliates to grant or withhold a nonexclusive license or sublicense of an individual Member's patents containing Necessary Claims to non-Members.

## **SECTION 7 NO OTHER LICENSE**

The Members agree that no patent license, immunity or other right is granted under the Bylaws by any Member or its Affiliates to any other Member or its Affiliates or to the Corporation, either directly or by implication, estoppel, or otherwise, other than the agreements to grant licenses expressly set forth in this Intellectual Property Rights Policy.

## **SECTION 8 TRANSFER OF NECESSARY CLAIMS**

Any transfer by a Member or its Affiliates to a third party of a patent having Necessary Claims shall be subject to the terms and conditions of this Intellectual Property Rights Policy, including but not limited to all obligations to grant licenses hereunder.

## SECTION 9      COPYRIGHTS

(a)      **To the Corporation.** Each Member and its Affiliates hereby grants to the Corporation and each other Member and its Affiliates, a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, and perform and sublicense the rights to reproduce, distribute, display and perform its Contributions solely for the purposes of developing, publishing and distributing Draft Specifications and Specifications and related materials. Further, each Member and its Affiliates hereby grants to the Corporation a worldwide, irrevocable, nonexclusive, nontransferable 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 and its Affiliates, solely for the purpose of promoting the Corporation or a Specification, a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, distribute, display and perform promotional material. Effective as of the approval of a Specification, each Member and its Affiliates hereby conveys to the Corporation a non-exclusive, undivided, and equal ownership in the copyrights in the Specification and any Contribution made by such Member that is included in the Specification (collectively “**Materials**”). The Corporation 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 Corporation, without permission of the granting Member and without any duty to account. This Section 9(a) survives any withdrawal from membership of such granting Member.

(b)      **From the Corporation.** As to the Specifications adopted by the Corporation prior to or during a Member’s participation in the Corporation, or other copyrighted materials of the Corporation, the Corporation hereby grants each Member an irrevocable (except for breach), nonexclusive, nonsublicensable, nontransferable 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 Specifications and promotional materials, as reasonably necessary to develop products based upon the Specifications, procure products based upon the Specifications, or design, develop or implement internal systems and processes based upon the Specifications. This license to the Members expressly excludes the right to create derivative works except under the restrictions set forth in this Section 9.

## **SECTION 10 TRADEMARKS**

In the event that the Corporation proposes to adopt any other name or logo as a trademark or trade name (collectively, “**Trademarks**”), the Corporation shall notify the Members in writing of the proposal. The Corporation 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 Corporation and the Corporation shall own such Trademarks and the goodwill from the Trademarks shall be for the benefit of the Corporation. 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 Corporation, demonstrably free of any unfair discrimination among the Members. Each Member agrees that unless it provides written notice to the Executive Director of that Member’s challenge to the proposed Trademark prior to its adoption by the Board of Directors, then the Member and its Affiliates shall not assert against the Corporation 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 or specification likely to cause confusion with any of the Trademarks adopted by the Corporation, unless agreed by the Board of Directors.

## **SECTION 11 SURVIVAL OF AGREEMENT TO GRANT LICENSE**

Notwithstanding the dissolution of the Corporation or a Member’s withdrawal from the Corporation, termination, or non-renewal of its membership in the Corporation, and except as provided herein, unless a Member has timely made and not withdrawn a Licensing Objection (as defined in the Process for Approval of Specifications), a Member’s agreement to grant a license as provided in Sections 3 and 4 shall remain in full force and effect for: (a) any Necessary Claim to a Contribution made by such Member that becomes part of the particular version of the Specification for which the Contribution was made; as well as (b) any Necessary Claim to a Specification that has been finally adopted by the Corporation pursuant to the Process for Approval of Specifications prior to the effective date of the Member’s termination or expiration of membership. Notwithstanding the generality of the foregoing, the obligations set forth in (a) and (b) above will additionally survive to the extent such Necessary Claims are both: (i) necessary for future Specifications to be backwards compatible with the prior Specifications (i.e., designed to fully interoperate, communicate or connect with or to products that comply with the prior Specifications); and (ii) used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Necessary Claims were used in a prior Specification for which the Member is obligated to grant licenses. Except as set forth in this Section 11, a withdrawn, terminated or former Member shall not be subject to any additional obligation to license its Necessary Claims. Any requirements to grant licenses to a Member or its Affiliates under this Intellectual Property Rights Policy are terminated immediately upon termination or withdrawal of such Member. Further, for the purposes of this Section 11, an Affiliate of a Member that ceases to be an Affiliate of such Member will be considered a withdrawn Member under this Section 11 at the time such Affiliate ceases to be an Affiliate of such Member.

## **SECTION 12. NOTICE.**

The Members shall include the following copyright notice on all copies of the Draft Specifications or Specifications, or such other additional attribution as the parties may mutually agree:

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## **SECTION 13. DISCLAIMER**

ALL CONTRIBUTIONS AND SPECIFICATIONS PROVIDED OR RELEASED TO EMerge BY ITS MEMBERS OR AFFILIATES OR BY THE CORPORATION TO ITS MEMBERS, AFFILIATES AND IMPLEMENTERS ARE PROVIDED AND RELEASED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY CONTRIBUTION OR SPECIFICATION.

## **SECTION 14. LIMITATION OF LIABILITY**

IN NO EVENT SHALL ANY MEMBERS OR AFFILIATES OR THE CORPORATION BE LIABLE TO OTHER MEMBERS OR AFFILIATES OR TO THE CORPORATION, EITHER DIRECTLY, OR INDIRECTLY BASED ON A THIRD-PARTY CLAIM, FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.