

# ***INTELLECTUAL PROPERTY RIGHTS POLICY***

## ***SECTION 1. DEFINITIONS***

Except as otherwise defined below, all capitalized terms shall have the meaning defined for them in the Bylaws. The following definitions shall apply to this Intellectual Property Rights Policy:

- 1.1. **“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 Final Specification, and (ii) are within the bounds of the Scope.
- 1.2. **“Contribution”** and **“Contributed”** means a submission by a Founding Promoter or Promoter (referred to herein as “Promoter” or “Promoters”) proposing an addition to or modification of a Draft Specification or portion thereof, or an existing Final Specification or portion thereof, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) and clearly marked as a “Contribution” or (ii) stated orally, memorialized with specificity in the written minutes of a meeting, and attributed in the meeting minutes to the submitting Promoter, provided that the minutes are promptly provided to the individual representing the submitting Promoter, unless the submitting Promoter 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.
- 1.3. **“Draft Specification”** means a document in development or under consideration for adoption as a Final Specification that has not been adopted or approved by the Corporation in accordance with Section 2.
- 1.4. **“Final Specification”** means a document that has been adopted and approved for release by the Corporation in accordance with Section 2.
- 1.5. **“Necessary Claims”** means those claims of all patents and published patent applications, other than design patents and design registrations, throughout the world which a Participant or its Affiliates has the right, any time during the existence of the Corporation, to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by compliance with the express terms of a Final Specification adopted and approved for release by the Corporation and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable noninfringing implementation of such Final Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.
- 1.6. **“Scope”** means those protocols, electrical signaling characteristics, register models, communication and network interface protocols, application program interfaces, service provider interfaces, physical dimensions and characteristics, and/or data structures solely to the extent disclosed with particularity in the Final Specification where the primary purpose of such disclosure is to enable products to interoperate, interconnect, or communicate as defined within the Final Specification. Notwithstanding the foregoing, the Scope shall not include: (i) any technology that may be necessary to develop, design, manufacture, sell or use any product or portion thereof that complies with the Final Specification but is not expressly set forth in Final Specification (examples of such technologies include without limitation semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology); or (ii) the implementation or use of other published specifications developed elsewhere but referred to in the body of the Final Specification; or (iii) portion of any product or any combination of

products (or portions of products) that are not required for compliance with the Final Specification. The Scope shall include only architectural and interconnection requirements of the Final Specification and shall not include any implementation examples contained in the Final Specification unless the Final Specification expressly states that such implementation examples are to be included within the Scope of the limited patent license.

## ***SECTION 2. SPECIFICATION REVIEW AND NOTICE***

2.1. Draft Specifications. A Technical Work Group to be chartered by the Board of Directors shall have the responsibility for drafting and developing Draft Specifications, as defined in Section 1.3, above. At such time as a Technical Work Group determines that the Draft Specification is ready for final review, the Draft Specification shall be sent to the Board of Directors who shall send the complete copies of the Draft Specification to the Promoter for review pursuant to Section 2.2, below. The Board of Directors may, in its sole discretion, elect to conduct a patent review on the Draft Specifications prior to considering the Draft Specifications for approval. If the Board of Directors does not approve such Draft Specification, the Secretary will return such Draft Specification to the Technical Work Group.

2.2. Draft Specifications Review Period. For a period of sixty (60) days from the date that the Board of Directors sends the Draft Specification to the Promoters as contemplated above (hereinafter the “Review Period”), the Promoters, on behalf of themselves and their Affiliates, may review the same for any Necessary Claims that may be implicated by the Draft Specification. While there is no requirement for a Promoter to review its patent portfolio for Necessary Claims, Promoters are advised that unless they provide a timely Licensing Objection pursuant to Section 2.3, or notice of withdrawal pursuant to Section 2.4, before the end of the Review Period, the Promoter is committing to the licensing provisions of Section 3 with regard to Necessary Claims implicated by the Draft Specification, if and when the Draft Specification implicating those Necessary Claims is adopted by the Corporation as a Final Specification in accordance with this Section 2.

2.3. Licensing Objection. In the event that the Promoter in good faith believes that the implementation of Necessary Claims in such Draft Specification would require a license from that Promoter, and that such Promoter is unwilling to provide a license under such Necessary Claims in accordance with Section 3, below, that Promoter must within the Review Period of Section 2.2 provide written notification to the Executive Director of its intent not to grant licenses under such Necessary Claims (“Licensing Objection”). Notwithstanding the foregoing, a Promoter shall not have the right to submit a Licensing Objection with respect to (i) any Necessary Claims in any Contribution submitted by such Promoter, or (ii) any Necessary Claims that were implicated in prior versions of the Draft Specification currently under review (and that had been previously reviewed pursuant to this Section 2). Such Licensing Objection will include written identification of any Necessary Claims that such Promoter refuses to license hereunder. In the event that a Promoter properly submits a Licensing Objection within the license Review Period set forth in Section 2.2, above, such Promoter shall not be required to grant licenses under the identified Necessary Claims. The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Licensing Objections.

2.4. Withdrawal. In lieu of delivering a Licensing Objection pursuant to Section 2.3, a Promoter who has not made a Contribution to the Draft Specification may provide notice to the Executive Director that it withdraws from participation in the Corporation pursuant to this Subsection (“Notice of Withdrawal”), if that Promoter determines that the Draft Specification implicates Necessary Claims which that Promoter is unwilling to license to the other Promoters pursuant to Section 3. A Promoter wishing to exercise the right to withdraw under this provision must deliver notice of withdrawal not later than the end of the Review Period for the applicable Draft Specification referenced in Section 2.2. Said notice must include written identification of any Necessary Claims of the Promoter that it does not wish to license hereunder.

2.5. Responding to any Licensing Objection or Notice of Withdrawal; Subsequent Draft Specification Reviews. Any and all Licensing Objections and/or Notices or Withdrawal timely received by the Executive Director shall be immediately forwarded to both the Board of Directors and Technical Work Group. Either the full Technical Work Group, or an ad-hoc subcommittee thereof, shall review and evaluate each Licensing Objection and Notice of Withdrawal, as well as alternative design options or recommendations for the Draft Specification. The Technical Work Group or subcommittee thereof shall deliver to the Board of Directors the results of its findings within a reasonable period of time (hereinafter referred to as the “Licensing Objection Evaluation”). Should the Technical Work Group or ad-hoc subcommittee thereof recommend material changes to the Draft Specification, then the Technical Work Group shall commence the necessary modifications to the Draft Specification. Once modified, the Draft Specification review process started in Section 2.1, above, shall commence again. Should the Technical Work Group or ad-hoc subcommittee thereof recommend that no material changes be made to the Draft Specification, then the Draft Specification shall proceed for final approval pursuant to Section 2.6, below.

2.6. Approval of Final Specifications. After completion of the Draft Specification review process stated in Sections 2.1 through 2.5, above, the Technical Work Group shall submit such Draft Specification to the Board of Directors for final review. If the Board of Directors approves such Draft Specification via an affirmative vote of the total number of Directors pursuant to Section 4.12(a) of the Bylaws, the Draft Specification shall become a Final Specification of the Corporation. In the event that the Board of Directors fails to approve such Draft Specification as a Final Specification, such Draft Specification shall be returned to the Technical Work Group.

### ***SECTION 3. LICENSING OF INTELLECTUAL PROPERTY RIGHTS***

When the Promoter or its Affiliate makes a Contribution to a Final Specification of the Corporation, including revisions thereto, or when the Corporation adopts and approves for release a Final Specification, the Participant and its Affiliates hereby agree to grant to other Participants and their Affiliates under reasonable terms and conditions that are demonstrably free of any unfair discrimination, a nonexclusive, nontransferable, non sub-licensable, irrevocable (except upon breach by licensee), worldwide license (with or without compensation at the Participant and its Affiliates’ option) under its Necessary Claims to allow such Participants to make, have made, use, import, offer to sell, lease, 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.

### ***SECTION 4. RECIPROCITY***

The provisions of Section 3 concerning the grant of licenses between Participants shall not be effective as to any other Participant or that other Participant’s Affiliates, if that Participant or its Affiliates do not, in fact and practice, make the license grant of Section 3 available to the other Participants and their Affiliates.

### ***SECTION 5. RETENTION OF RIGHTS***

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

### ***SECTION 6. NO OTHER LICENSE***

The Participants agree that no license, immunity or other right is granted under this IPR Policy by any Participant or its Affiliates to any other Participants or their Affiliates or to the Corporation, either directly or by implication, estoppel, or otherwise, other than the agreements to grant licenses expressly set forth herein.

### ***SECTION 7. TRANSFER OF NECESSARY CLAIMS***

Each Participant agrees that it will not transfer, and has not transferred, patents or published patent applications having Necessary Claims solely for the purpose of circumventing such Participant's obligations under this Intellectual Property Rights Policy. In the event a Participant assigns or transfers a patent or published patent application containing, or consisting of, Necessary Claims in Contributions made by the Participant prior to, or at the time of, the assignment or transfer, the Participant agrees to exercise reasonable efforts to notify the assignee or transferee that such patents or published patent applications may be subject to the licensing provisions of Section 3, above.

### ***SECTION 8. COPYRIGHTS***

8.1. To the Corporation. The Promoters grant 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 the Contributions of the granting Promoter solely for the purposes of developing, publishing, and distributing Final Specifications and related materials.

8.2. From the Corporation. As to copyrighted materials published by the Corporation, including but not limited to Final Specifications adopted by the Corporation prior to or during a Participant's membership in the Corporation, the Corporation grants each Participant a worldwide, irrevocable (except for breach), nonexclusive, nonsublicensable, nontransferable copyright license to internally (within the Participant company including Affiliates or, subject to a restricted use nondisclosure agreement, third party contractors of the Participant) reproduce, distribute, perform, create derivative works of and display such works solely for the purposes of: i) developing or promoting products based upon the Final Specification; ii) procuring products based upon the Final Specifications; or iii) designing, developing or implementing internal systems and processes based upon the Final Specifications. This license to the Participants expressly excludes the right to create derivative works except under the restrictions set forth in this Section 8.2.

### ***SECTION 9. 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 Participants 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 such Trademarks adopted for use by the Corporation. In furtherance thereof, the Board of Directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the Participants.

### ***SECTION 10. SURVIVAL OF AGREEMENT TO GRANT LICENSE***

Notwithstanding the dissolution of the Corporation or a Participant's termination, withdrawal, or non-renewal of its participation in the Corporation and except as provided in Section 11, a Participant's agreement to grant a license as provided in Section 3 and Section 4 shall remain in full force and effect for: (a) any Necessary Claim to a Contribution made to a later adopted Final Specification or any Necessary Claim to a Final Specification adopted before the effective date of dissolution or before the

effective date of a Participant's termination, withdrawal, or expiration of participation; and (b) any Necessary Claims to a Final Specification adopted by the Corporation after the effective date of the Participant's termination, withdrawal or expiration of participation that are necessary for the future Final Specification to be backwards compatible with the Final Specifications subject to (a), above, provided that subject matter licensed under the new Final Specification are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the subject matter under the prior Final Specification for which the Participant is obligated to grant licenses. In no event is a withdrawn, terminated, or non-renewed Participant obligated to license any additional Necessary Claims under this Section 10. A withdrawn, terminated, or non-renewed Participant shall remain entitled to reciprocity pursuant to Section 4 so long as that withdrawn, terminated, or non-renewed Participant remains obligated to license any Necessary Claims under this Section 10. This agreement to the survival of reciprocal licensing shall extend to all Participants, including Participants who become Participants after the effective date of a departing Participant's termination or expiration.

#### ***SECTION 11. EXCEPTION IN THE EVENT OF NONCOMPLIANCE***

The agreement to license, which survives under Section 10, shall terminate completely as to any Final Specification which does not include all applicable requirements for interoperating, communicating, or connecting with or to products that comply with Final Specifications that were in effect sixty (60) days prior to the effective date of the Participant's withdrawal, termination, or expiration of participation, or sixty (60) days prior to the effective date of dissolution of the Corporation; provided, however, that should Participant's withdrawal, termination or expiration of participation occur prior to the adoption of its initial Final Specification, the agreement to license shall terminate completely as to any Final Specification which is not within the Scope that was currently defined prior to the effective date of the Participant's termination or expiration of participation.

#### ***SECTION 13. RIGHT TO MAKE VOLUNTARY DISCLOSURES OF NECESSARY CLAIMS***

Nothing in this IPR Policy shall be construed as prohibiting the Participants from voluntarily disclosing the presence of Necessary Claims of the Participants that may be found in Draft Specifications or Final Specifications of the Corporation. Such disclosure shall not, however, be deemed as a waiver of a Participant's rights under Section 2, above.

#### ***SECTION 14. OBLIGATION OF GOOD FAITH***

The Participants acknowledge and agree that the obligations of this Intellectual Property Rights Policy shall be governed by the principles of good faith and fair dealing.

#### ***SECTION 15. AMENDMENTS***

This Intellectual Property Rights Policy shall only be altered, amended, or repealed, and new Intellectual Property Rights Policy adopted, upon approval of the Board of Directors with not more than one (1) dissenting vote.

**CERTIFICATE OF SECRETARY**

I hereby certify:

That I am the duly appointed Secretary of the AVnu Alliance Corporation, a Delaware Corporation; and

The foregoing Intellectual Property Right Policy, comprising six (6) pages, including this page, constitute the duly adopted Intellectual Property Rights Policy of the AVnu Alliance as duly adopted by the Board of Directors of said Corporation, effective \_\_\_\_\_, 2009.

IN WITNESS WHEREOF, I have hereunder subscribed my name this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature