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## INTELLECTUAL PROPERTY POLICY

### INTRODUCTION

The Fieldcomm Group (Foundation) seeks to establish its specifications as an open and interoperable standard for worldwide use by all process and factory automation suppliers and end-users. To that end, the Foundation has adopted the following Intellectual Property Policy (Policy) to govern the rights of the Foundation and its Members and to promote widespread use of Foundation Specifications and technology by Foundation Members, the industry, and the public.

### 1. DEFINITIONS

The following terms have the meanings given below unless otherwise specified in this Policy:

- 1.1 **Member** refers to any individual, company, or institution, that has submitted an application for Foundation membership and has been approved for membership by the Foundation, including each officer, director, employee, consultant, independent contractor, or other agent/representative thereof.
- 1.2 **Designated Affiliate(s)** refers to any individual, company, or institution designated by a Member on their membership application to whom benefits of Foundation membership extend. Designated Affiliate(s) further refers to any Affiliate individual, company, or institution holding ownership of Intellectual Property developed by a Member or holding ownership of Intellectual Property developed using materials accessible to a Member by virtue of their membership in the Foundation.
- 1.3 **Affiliate** refers to refers to any individual, company, or institution that directly or indirectly controls, is controlled by, or is under common control with, a Member. For purposes of this definition control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make decisions for the subject entity. In the case of less than fifty percent (50%) of the shares or ownership interest, if such Member has a right, by contractual arrangement or through supply of resources, to make decisions for the subject entity, or the subject entity has a right, by contractual arrangement or through supply resources, to make decisions for such Member, "control" shall exist.
- 1.4 **Intellectual Property (IP)** includes copyrights, trademarks, trade secrets, designs, mask works, and patents, including any applications for the same.
- 1.5 **Specification, Specifications** refer to the technical description of a Foundation standard that has been developed by a Foundation Committee.
- 1.6 **Essential IP** refers to IP that is necessary in practice to implement a Foundation Specification. When referring to patents, Essential IP means a patent that includes at least one claim that either (1) reads directly on a Foundation Specification, or (2) creates a barrier such that, as a practical matter, implementation of a Foundation Specification would not be commercially and/or technically feasible without rights to the patent.

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- 1.7 **Notifying Party** refers to any Member or non-member who, in writing, notifies the Foundation of IP.
- 1.8 **IP Review Procedure** refers to the process by which the Foundation determines whether IP is Essential IP.
- 1.9 **Foundation Committee** refers to any committee, working group, task force, or other technical body of the Foundation.

## 2. IP RIGHTS GRANTED TO THE FOUNDATION

- 2.1 Members and Designated Affiliates shall be obligated to provide a compulsory license consistent with this Section 2 to Essential IP that is possessed or acquired by the Member or Designated Affiliate during or within two (2) years of the Member's membership term, except IP disclosed to a Foundation Committee under Section 3.6 as being unavailable. Members or Designated Affiliates shall grant the Foundation rights consistent with this Section 2 promptly on notifying the Foundation of the Member's or Designated Affiliate's Essential IP or at the conclusion of the procedure set forth in Section 6.
- 2.2 **Compulsory License.** Members and Designated Affiliates shall grant the Foundation rights in Essential IP as follows:
  - (a) a written assignment of Essential IP from the Member or Designated Affiliate to the Foundation, which assignment may be subject to a royalty-free grant back to the Member or Designated Affiliate, without any further obligation to account to the Member or Designated Affiliate; or
  - (b) a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license to the Foundation to the Essential IP with the right to sub-license solely to the extent reasonably necessary to proceed with implementation of the Foundation's Specifications in commercial systems, products, or methods to be manufactured, distributed, imported, sold, performed, or used, without any further obligation to account to the Member or Designated Affiliate; "perpetual" in the case of a patent shall mean for the life of such patent in any country.
  - (c) Generally, but subject to variance at the discretion of the Foundation's Board of Directors, the assignment or license provided in this Section shall be made without any compensation from the Foundation to the original owner (e.g., an assignment or license in consideration of membership granted to a Member or Designated Affiliate). The choice between assignment under Section 2.2(a) and license under Section 2.2(b) shall be at the discretion of the Member or Designated Affiliate.
- 2.3 **Non-compulsory License.** The Foundation may accept non-compulsory assignments or licenses of non-Essential IP from Members. The Foundation may accept non-compulsory assignments or licenses of Essential or non-Essential IP from non-members. Generally, but subject to variance by the discretion of the Foundation's Board of Directors, the Foundation will only accept such an assignment or license if such transfer of the IP rights is without any compensation from the Foundation to the original owner or

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through a nonexclusive, worldwide, royalty-free license to the Foundation with the right to sublicense the same in the Foundation's sole discretion without further obligation to the original owner.

- 2.4 If the Foundation is acquired by or merged into another entity, or if the Foundation is legally dissolved or otherwise ceases to do business, the compulsory licenses obtained pursuant to Section 2.2 shall inure to the benefit of any successors or assigns and shall, in any case, have a term of not less than twenty (20) years from the effective date of such event or the maximum life of any patent, as applicable.
- 2.5 In the case of any non-compulsory licenses granted to the Foundation under Section 2.3, if the Foundation is acquired or merged into another entity, or if the Foundation is legally dissolved or otherwise ceases to do business, then such licenses shall be assignable or terminable, as the case may be, in accordance with their respective terms, provided, however, that any permitted assignment or required termination shall not terminate, shorten, limit, modify, or otherwise affect any sublicenses of such rights granted by the Foundation to others prior to the effective date of such event.

### 3. IP ARISING FROM FOUNDATION ACTIVITIES

- 3.1 The Foundation's staff shall consult with IP counsel from time to time and shall seek to register and protect such patents, copyrights, trademarks, or other IP of the Foundation as the staff deems reasonably necessary or appropriate to further the general purposes of the Foundation and to ensure the broadest possible dissemination and implementation of the Foundation's Specifications. Any such IP protected or registered by the Foundation itself shall be made available to Members, including the right to sublicense, pursuant to Section 4.
- 3.2 **Foundation Committee Member Obligations.** Members who have representation on any Foundation Committee agree and acknowledge that:
- (a) the Foundation shall own all right, title, and interest in all works, information, ideas, publications, reports, trade secrets, copyrights, or other rights of property, either personal or intellectual, arising from the work and/or proceedings of such Foundation Committee;
  - (b) no proprietary information shall be disclosed to the Foundation or any Foundation Committee without the appropriate consent of its owner; and
  - (c) no work or proceedings of any such Foundation Committee shall be disclosed to any outside third party or any other Member prior to the publication of such work by the Foundation Committee.
- 3.3 All contributions by Members to the work and/or proceedings of any Foundation Committee are made "as is." Neither the Foundation nor Members warrant or represent that such contributions do not infringe any third party IP. Furthermore, neither the Foundation nor Members are obligated to provide indemnification in the event such contributions are alleged to infringe any third party IP.

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- 3.4 Each individual Member or each officer, director, employee, consultant, independent contractor or other agent of a Member who participates on any Foundation Committee shall be deemed to have assigned to the Foundation, irrevocably and without compensation, all rights, title, and interest in and to that individual's contribution if and only if it is material to the collective output of the collaborative effort.<sup>1</sup> To encourage free and open technical discussions, the foregoing is not intended to cause an owner of proprietary rights to lose or alter any rights merely because an idea or suggestion is raised and discussed, for example, during a Foundation Committee meeting.
- 3.5 The Foundation desires to avoid proprietary interests of Foundation Committee participants or their associated Member organization flowing into a Foundation Committee or other collaborative work without the appropriate consent of the owner of the proprietary interest. The Foundation therefore requests all such individuals to refrain from any contributions of ideas or suggestions that they know to be proprietary in nature unless appropriate consent of the owner of the proprietary interest has been obtained.
- 3.6 Each Member participating in a Foundation Committee of the Foundation shall disclose any actual or reasonably foreseeable conflict between any draft Specification and any IP owned, entirely or partially, by the Member that is not or will not be made available to the Foundation under terms described in Section 2. Moreover, each individual participating in a Foundation Committee shall disclose any actual or reasonably foreseeable conflict between any draft Specification and any IP actually known to that individual that is not or will not be made available to the Foundation under terms described in Section 2, including any IP held by a Member, Affiliate, Designated Affiliate, or non-Member. These disclosure obligations include issued patents and published or unpublished patent applications. Each Member's obligation to disclose as described herein Section 3.6 shall survive such Member's termination or withdrawal from the Foundation.
- 3.7 If a Member desires both to make a contribution known to be the subject of IP held by the Member and to make the contribution subject to different terms than those required in Section 2, then, prior to making such a contribution, the Member should notify the Foundation in writing of that proposal and allow the Foundation to make a specific decision on whether to accept or reject the same. Conversely, if a Member puts forward any contribution during such Foundation Committee's efforts or through participation in its work or deliberations and discussions without such a prior written notice to the Foundation and without any express acceptance of the same from the Foundation, such contribution will become subject to the compulsory license obligations of Section 2 if it is later incorporated into any Specification as the final output of such collaborative effort.
- 3.8 The Foundation shall not knowingly use or incorporate any information, data, or IP into its Specifications that the Foundation does not own or have lawful rights to use under this Policy.

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<sup>1</sup> To the extent a Member or individual Foundation Committee participant is legally unable to assign that individual's contribution, the individual shall provide the Foundation rights in the contribution as closely equivalent to assignment as legally permissible, such as an exclusive long-term royalty-free irrevocable license.

**4. IP RIGHTS GRANTED BY THE FOUNDATION**

- 4.1 **To Members.** As a benefit of membership, while a Member in good standing, each Member shall be entitled to receive sub-licenses to any IP licensed to the Foundation pursuant to this Policy and licenses to any IP owned by the Foundation pursuant to this Policy solely to the extent reasonably necessary to proceed with implementation of the Foundation's Specifications in commercial systems, products, or methods to be manufactured, distributed, imported, sold, performed, or used. The Foundation reserves the right to set commercially reasonable, uniform, and non-discriminatory license fees for some or all of the IP provided to Members. Any IP provided by the Foundation to Members is provided "as is." The Foundation does not warrant or represent that the IP does not infringe third party IP. Furthermore, the Foundation is not obligated to indemnify Members in the event that the IP provided to Members is alleged to infringe third party IP.
- 4.2 **To Non-Members.** The Foundation shall make available sub-licenses of IP licensed to the Foundation and licenses of IP owned by the Foundation pursuant to this Policy to non-members solely to the extent reasonably necessary to proceed with implementation of the Foundation's Specifications in commercial systems, products, or methods to be manufactured, distributed, imported, sold, performed, or used. The Foundation reserves the right to set commercially reasonable, uniform, and non-discriminatory license fees for some or all of the IP provided to non-members, which fees may be different than those applied to Members. Any IP provided by the Foundation to non-Members is provided "as is." The Foundation does not warrant or represent that the IP does not infringe third party IP. Furthermore, the Foundation is not obligated to indemnify non-Members in the event that the IP provided to non-Members is alleged to infringe third party owned IP.

**5. NOTICE AND REQUEST FOR COMMENTS FOR PROPOSED SPECIFICATIONS**

- 5.1 Before the adoption of any proposed Specification, the Foundation shall publish notification to all Members expressly requesting that the Foundation be notified should any Members have any knowledge as to the existence of any IP owned by either a Member or a non-member that would conflict, legally bar, or adversely affect application or implementation of the proposed Specification in any commercial products. The Foundation may also publish similar notification to non-members as well as the factory and process automation industry at large, generally through trade and industrial media or other appropriate channels or means.
- 5.2 The Foundation shall not adopt the proposed Specification for a period of at least ninety (90) calendar days following the publication of notice as described in Section 5.1 above to all Foundation Members. During this period, if the Foundation is notified of the existence of any conflicting IP, then the Foundation shall defer adoption of the Specification pending completion of legal review by the Foundation IP Counsel and the resolution pertaining to any conflicting IP.
- 5.3 A Notifying Party notifying the Foundation of the existence of any allegedly conflicting IP shall provide written request containing a reasonably detailed description of the IP, as well as the precise nature and extent of the alleged conflict between the IP and the proposed Specification.

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- 5.4 All communication between the Foundation and the Notifying Party or between the Foundation and the owner of the allegedly conflicting IP shall be held in strict confidence. However, this confidentiality may not extend to any information that: (i) is or becomes publicly known through no act or omission of the Foundation; (ii) is independently developed by the Foundation without any use or reliance upon the disclosing party's confidential information; (iii) is obtained from a third party without obligation to the disclosing party; (iv) is already known to the Foundation prior to receipt from the disclosing party; (v) is required to be disclosed by law, provided however, that the Foundation gives prompt and written notice thereof to the disclosing party and gives reasonable cooperation to the disclosing party to limit any public release of such information to the extent provided by law.
- 5.5 Should the conflicting IP be owned by a Foundation Member or Designated Affiliate, the Foundation President and CEO shall consult with the Member or Designated Affiliate in good faith to determine a mutually acceptable resolution to alleviate the conflict between the IP and the proposed Specification under Sections 2 and 3 of this Policy.
- 5.6 Should the conflicting IP be owned by a non-member, the Foundation shall endeavor in good faith to determine a mutually acceptable resolution in order to eliminate conflict between the IP and the proposed Specification. This mutually acceptable resolution shall be comparable to the licensing and transfer arrangements described herein.
- 5.7 The Foundation shall endeavor to reasonably attempt to avoid conflicting IP in the development of the proposed Specification, taking reasonable precautions and actions to avoid such conflicts, including modifying the proposed Specifications in order to avoid alleged conflicts with such IP that is not or will not be made available under terms described in Section 2.
- 6. IP REVIEW PROCEDURE FOR DETERMINING ESSENTIAL IP**
- 6.1 In order to determine whether IP is deemed Essential IP, the Foundation shall proceed according to this IP Review Procedure described in Section 6.
- 6.2 The IP Review Procedure is initiated when a Notifying Party submits a written request to the Foundation specifically identifying particular IP to be reviewed with a detailed explanation of why the IP should be examined and why a determination should be made under this Policy. Either a Member or a non-member of the Foundation may submit the request. The IP Review Procedure may also be initiated by the Foundation itself if the Foundation independently identifies Member-owned IP that may be Essential IP. The IP Review Procedure may be initiated for issued patents or for patent applications.
- 6.3 Following receipt of the written request, an IP review is scheduled, and the Notifying Party is notified that the IP Review Procedure has begun. The Foundation enters the IP information into the Foundation IP Review Database. The Foundation will update the status as the review progresses.
- 6.4 For the first level of review, the Foundation staff will review the IP and determine preliminarily, with reference to the definition above, whether it is Essential IP or, in the case of a patent application, would be Essential IP if the application were to issue. If the IP is preliminarily deemed Essential IP, then Foundation IP Counsel shall review the IP. If the IP is deemed non-Essential IP, then the Notifying Party will be notified of the

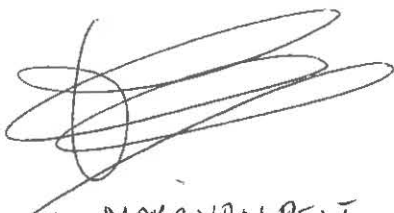
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determination. Should the Notifying Party accept the determination, the IP Review Procedure ends. If the Notifying Party does not accept the Foundation staff's determination, then Foundation IP Counsel shall perform a second level review of the IP.

- 6.5 For the second level of review, the Notifying Party will be notified that the IP needs to be reviewed by Foundation IP Counsel. The Notifying Party shall bear the Foundation IP Counsel's fees for this review. Foundation IP Counsel will review the IP in view of any further comments and/or evidence that the Notifying Party offers in order to determine whether the IP is Essential IP or non-Essential IP.
- 6.6 If the IP is deemed non-Essential IP by Foundation IP Counsel, then the Notifying Party may choose to further argue the determination with the Foundation IP Counsel. No matter what the outcome of this argument, the Notifying Party will bear the costs and fees of Foundation IP Counsel for this choice. If the IP is deemed non-Essential IP, the Foundation may still determine that the IP would be beneficial to Foundation Members and may contact the IP owner for access to the IP rights.
- 6.7 If the IP is deemed Essential IP by Foundation IP Counsel, then the IP owner may choose to argue this determination with Foundation IP Counsel. No matter what the outcome of this argument, the IP owner will bear the costs and fees of Foundation IP Counsel for this choice. For Essential IP held by Members or Designated Affiliates, the Foundation will request that the IP owner execute an agreement to assign or license to the Foundation pursuant to Section 2. If no agreement is reached, and without prejudice to its rights to seek specific performance of the Member's prior commitment to assign or license Essential IP, the Foundation shall analyze the impact of changing the Specification to avoid the IP. The Foundation Board of Directors shall then review the situation and decide how to proceed.
- 6.8 The Foundation shall notify the Notifying Party and the IP owner of the final outcome of the IP Review Procedure. The Foundation will inform the Foundation's Board of Directors of any IP deemed Essential IP or any non-member IP dispute.

## 7. ARBITRATION

- 7.1 Any controversy or claim arising out of or relating to this Policy that cannot be resolved by good faith discussion between a Member and the Foundation shall be settled by final and binding arbitration in Chicago, Illinois, U.S.A. under the then current Commercial Arbitration Rules and/or, as applicable, the then current Supplementary Rules for the Resolution of Patent Disputes of the American Arbitration Association with the reasonable costs of such arbitration split equally between the Member and the Foundation. The prevailing party will be entitled to recover its reasonable legal fees and costs incurred. Except as may be required by law, neither the Member, the Foundation, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both the Member and the Foundation.



MARK VAN PELT

12 FEB 2015

