

WiMAX FORUM INTELLECTUAL PROPERTY RIGHTS POLICY

BACKGROUND

The purpose of the WiMAX Forum is to promote the IEEE 802.16 wireless networking standard and interoperable standards by, among other things: (1) encouraging manufacturers of broadband wireless access products to achieve a high degree of interoperability among all products employing the standard; and (2) promoting through a number of means the widespread adoption and use of products employing the IEEE 802.16 standard.

At times, the activities of the WiMAX Forum may result in the creation of documents and other work product that includes newly created intellectual property rights and/or intellectual property rights of others. To encourage participation in the WiMAX Forum and allow it to achieve its objectives, it is important to have an intellectual property policy in place that clearly delineates in advance how such intellectual property rights will be treated.

This WiMAX Forum Intellectual Property Rights Policy (the “Policy”) outlines the policy of the WiMAX Forum regarding the use of proprietary materials in the work product of the WiMAX Forum Working Groups and in other activities that result in the creation or use of intellectual property rights. The Policy is the complete and exclusive statement of the WiMAX Forum intellectual property rights policy, and applies to and governs all of the WiMAX Forum’s activity as of the effective date. This Policy supersedes any and all prior documentation regarding the WiMAX Forum’s intellectual property rights policy, including, but not limited to, statements in the WiMAX Forum Bylaws, the WiMAX Forum White Papers, the WiMAX Forum Membership Agreement and any other documents attempting to explain or clarify such agreements or policies. No Member of the WiMAX Forum, or any other individual or entity, may participate in any Working Group governed by this Policy without agreeing to the terms and conditions in this Policy

ARTICLE 1: DEFINITIONS

The following definitions shall apply to this Policy:

(a) “Affiliate” or “Affiliates” shall mean an entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of the voting power or equity in another entity (“Control”), or is Controlled by another entity, or is under common Control with another entity, so long as such Control exists.

(b) “Contribution” shall mean a submission to or for a Working Group or the Board proposing an addition to or modification of an existing Specification or a Draft Specification or a new Specification or portion thereof, or a submission proposing changes or modifications to reference design documents, 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 Working Group and attributed in the written meeting minutes specifically to the

submitting Member (without objection from such Member within thirty (30) days of receipt of such minutes).

(c) “Draft Specification” shall mean a preliminary draft of a proposed Specification to be circulated within a Working Group to solicit feedback and input in an effort to prepare a Specification.

(d) “Licensor” shall mean (i) a Member or (ii) a nonmember granting a license to Necessary Claims, as required under Section 4.2.

(e) “Member” shall mean a member of the WiMAX Forum who so qualifies in accordance with the provisions of the Bylaws of the WiMAX Forum.

(f) “Non-Technical IPR” shall mean intellectual property rights that the WiMAX Forum may develop or use from time to time except for those intellectual property rights contained in Contributions, Draft Specifications, and Specifications.

(g) “Specification” shall mean a final technical standards document adopted and approved for release by the WiMAX Forum pursuant to the WiMAX Forum Bylaws or other applicable document, and any updates or revisions adopted and approved for release by the WiMAX Forum.

(h) “WiMAX Forum Management” shall mean the duly appointed officers and staff of the WiMAX Forum

(i) “Working Group” shall mean a group created by authorization of the WiMAX Forum Board to undertake certain specific defined tasks for the purposes of generating, developing or revising Specifications. “Working Group” shall be used to refer to Working Groups, subcommittees, and Specification development committees governed by this Policy. For the avoidance of doubt, “Working Group” for purposes of this Policy shall not mean those certain groups created by the Board to undertake solely non-technical related activities. Such groups may be designated as “non-IPR” groups by the Board.

ARTICLE 2. PUBLIC DISCLOSURE GUIDELINES

SECTION 2.1. BOARD APPROVAL FOR DISCLOSURE OF WiMAX FORUM INFORMATION

Public disclosure (i.e., disclosure to anyone who is not a Member) of any version or revision of a the WiMAX Forum Specification or Draft Specification, or other related materials of the WiMAX Forum, shall be subject to the advance approval of the Board pursuant to the terms hereof. In addition, Members shall not, without the prior authorization of the WiMAX Forum, publicly disclose other information or materials of the WiMAX Forum except for information and materials that are already generally known or available to the public or are clearly intended for public release, such as approved marketing and promotional materials.

SECTION 2.2. INTERNAL DISCLOSURE OF WiMAX FORUM INFORMATION

The representatives of Members who participate in any Working Group acknowledge that they will not, prior to the internal approval and internal publication of a Draft Specification containing information of another Member, disclose or exchange such information except to other participants of such Working Group as part of the WiMAX Forum activities among themselves, or to non-participating Members or nonmembers where the disclosure to such non-participating Members or nonmembers has been approved in advance by the Board. Notwithstanding the non-disclosure objective of the previous sentence, all information disclosed as a part of the Working Group's activities shall be deemed non-confidential except as otherwise agreed to in a written agreement of the parties.

ARTICLE 3. PATENT DISCLOSURE STANDARDS

SECTION 3.1. DISCLOSURE BY WORKING GROUP PARTICIPANTS

(a) General Disclosure Standard. All individuals participating in any way in a particular Working Group are strongly encouraged on an ongoing basis to disclose patents or patent applications held by themselves or their represented Members where such patents or patent applications include claims that may be necessary to implement a Draft Specification or a Specification (as such terms are defined under this Policy) that is generated, developed, reviewed or revised by such Working Group. More specifically, individual representatives of members are encouraged to disclose patents containing "Necessary Claims," where "Necessary Claims" are defined below in Section 3.1(a)(1)

(1) "Necessary Claims" shall mean (with respect to, as applicable, a Specification or a Draft Specification as such terms are defined under this Policy) only those claims of any and/or all patents and patent applications, throughout the world that (i) a Licensor or its Affiliates, either now or in the future, owns, controls, or has the right to grant licenses under such claims of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties; and (ii) such claims would necessarily be infringed by fully compliant implementation of such Specification or Draft Specification, as applicable. For purposes of the foregoing, a "fully compliant implementation" specifically includes the implementation of any or all relevant portions of the Specification or Draft Specification, as applicable, that are required to implement a mandatory or an optional feature or function under that Specification or Draft Specification.

(2) For purposes of the definition of "Necessary Claims," above, a patent claim is "necessarily infringed" only when there is no commercially practicable way of implementing the relevant and required or optional portion of a specification without infringing the relevant patent claim. Notwithstanding the above or anything in this document to the contrary, Necessary Claims do not under any circumstances include any claims: (i) other than those set forth above even if contained in the same patent or patent application as Necessary Claims; or (ii) that are necessarily infringed only by practicing any reference or informational portions of the specification, including any elements that are required only for conformance with any such reference or informational portions; or

(iii) covering any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a specification, but are not themselves expressly set forth in a specification (e.g., semiconductor manufacturing technology, basic semiconductor technology, microprocessors, compiler technology, object oriented technology, basic operating system technology, basic network operating system technology, memory chip technology, or the like); or (iv) covering only the implementation of other published specifications not developed by or for the WiMAX Forum, but referred to in the body of a specification, without being required for implementation of any portion of the specification itself.

SECTION 3.2. CHAIRPERSON INSTRUCTIONS

All chairpersons of Working Groups shall remind participants of this encouragement of early disclosure at the beginning of each Working Group meeting and shall provide a copy of this Policy to any requesting party. Disclosure under Section 3.1 is based on an individual representative's own actual and personal knowledge, and no knowledge of the Member on whose behalf the representative is acting (or its employees) or requirement to search regarding patent information will be imputed to such individual representative. However, a Member acknowledges that it is prohibited from intentionally isolating, and will not intentionally isolate, a participant from potentially relevant patent information within the Member organization for the deliberate reason of avoiding the terms of this Section 3.1.

SECTION 3.3. MINIMUM CONTENTS OF DISCLOSURE.

(a) When disclosing patents and/or patent applications pursuant to this Policy, members and participants are encouraged to provide the most complete information possible concerning the patents and/or patent applications, and to indicate briefly how they may apply to the relevant Specification or Draft Specification.

(b) Where disclosure is *required* under this Policy as set forth further herein (i.e., Section 5.4), the following minimum information shall be provided. With respect to issued patents and published pending patent applications, disclosure must include the identity of the patent rights holder and/or applicant and the patent number or application number of the patent rights. With respect to unpublished pending patent applications, such disclosure must include the existence of the application containing the possible Necessary Claims, but need not disclose identifying information (e.g., application number, contents) of the patent rights. Nothing herein precludes broader disclosure of unpublished pending patent applications on a voluntary basis or pursuant to a non-disclosure agreement. Once an unpublished pending patent application that has been disclosed is published, the Member must disclose the additional identifying information about the published application as specified above, or disclose the fact that such application has been abandoned, upon written request from the WiMAX Forum Management. At the same time as a disclosure is made, or as soon as practical thereafter, the participant shall also submit a written statement from a person authorized to represent the patent rights holder to the WiMAX Forum Management at board@wimaxforum.org declaring with regard to any Necessary Claims that: (a) it will grant a license on royalty-free and other reasonable and nondiscriminatory terms and conditions; or (b) it will grant a license on reasonable and nondiscriminatory terms and conditions that may include a reasonable royalty or fee; or (c) its intention is to not license its

Necessary Claims, if expressly permitted under this document. As used herein, “royalty-free” means that the licensee need not pay a royalty, license fee, or other monetary compensation of any kind to the licensor.

ARTICLE 4. LICENSING OF MEMBER INTELLECTUAL PROPERTY RIGHTS

SECTION 4.1. REQUIRED LICENSING OF NECESSARY CLAIMS.

(a) Each Member, as a condition to membership in the WiMAX Forum, hereby agrees that it will, subject to Section 4.2, grant to other Members, nonmembers, and their respective Affiliates, under reasonable and nondiscriminatory terms (including without limitation a field of use of sufficient scope to cover at least implementation of the Specification and compliance with IEEE 802.16 standards and protocols), a nonexclusive, nontransferable (except to a successor in interest of all or the relevant part of the business of such other Members, nonmembers, or Affiliates), non-sublicensable, worldwide license under its Necessary Claims to allow such Members, nonmembers, and Affiliates to make, have made, use, import, offer to sell, and sell and otherwise distribute implementations compliant with all relevant required portions of such Specification (“Compliant Portions”), provided that such agreement to license shall not extend to (i) any part, function or feature of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion, or (ii) any Compliant Portion that implements only *part* of the Specification and which causes a failure to interoperate with other Compliant Portions that are compliant with *all* required portions of the Specification. It is acknowledged that references in this Policy to a license agreement containing reasonable and nondiscriminatory terms may include a license agreement with reasonable defensive suspension provisions. This obligation shall not apply to any non-contributed Necessary Claims that the Member has expressly excluded by “opting out” pursuant to the procedures in Section 5.3 below.

For the avoidance of doubt, such agreement to grant licenses under Section 4.1(a) shall apply only to Necessary Claims applicable to Specifications as adopted and approved for release by the WiMAX Forum.

SECTION 4.2. RECIPROCITY

The Members acknowledge that the willingness of Members to make available a license above under Section 4.1 is based on the assumption of a reciprocal willingness of the licensee.

(a) The provisions of Section 4.1 shall not be effective with respect to any other Member or its Affiliates if such Member or its Affiliate does not grant a license to its Necessary Claims to other Members, to nonmembers, and to their respective Affiliates in accordance with the requirements of Section 4.1.

(b) The eligibility of each nonmember to receive a license under Section 4.1 is expressly conditioned upon its willingness to grant licenses to its Necessary Claims in accordance with the requirements of Section 4.1 and subject to the transfer restrictions in Section 4.4 to all Members and nonmembers and their respective Affiliates. No Member is obligated to grant a license under Section 4.1 to a nonmember if that nonmember or its Affiliate does not sign an undertaking to license its Necessary Claims that is substantially identical to the Members’

obligations under Section 4.1 or if it fails to grant such license under Section 4.1 in accordance with the requirements of that section.

SECTION 4.3. NO OTHER LICENSE

The Members agree that no patent license, immunity or other right, or any copyright, trade secret or other intellectual property right, is granted under this Policy by any Member or its Affiliates to any other Members, their Affiliates, nonmembers or to the WiMAX Forum, either directly or by implication, estoppel or otherwise, subject to the agreements to grant licenses expressly set forth in this Policy.

SECTION 4.4. TRANSFER OF NECESSARY CLAIMS

Each Licensor agrees that it will not transfer, and has not transferred, patents or patent applications having Necessary Claims for the purpose of circumventing this Section 4.1. Any transfer by a Member, nonmember, or its Affiliates to a third party of a patent or patent application having Necessary Claims shall be subject to: (a) the terms and conditions of this Policy; and (b) the agreement to grant licenses by the Licensor and its Affiliates to other Members, nonmembers, and their Affiliates, pursuant to Section 4.1 and Section 4.2 of this Policy. Licensor may choose the manner in which it complies with this Article, provided that the inclusion, in any agreement for transferring or assigning a patent or patent application containing a Necessary Claim, of a provision that such a transfer or assignment is subject to existing licenses and obligations to license imposed on the Licensor by standards bodies, specification development organizations, or similar organizations (or language or similar import) shall clearly be sufficient to comply with this Article.

SECTION 4.5. COPYRIGHTS

(a) Each Member grants to the WiMAX Forum a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free 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 Member. Such grant shall be solely for the purposes of developing, publishing and distributing Specifications and related materials, and of performing other activities deemed by the WiMAX Forum to be appropriate to the development of products compliant with a Specification, based on such documents, and consistent with the WiMAX Forum bylaws.

(b) The WiMAX Forum shall own the copyright in the Draft Specification and the published Specifications themselves, subject to the underlying copyright rights of the contributing Members and other copyright owners in their contributions. Any publication of a Specification shall contain an appropriate copyright notice in the name of the WiMAX Forum. The WiMAX Forum may exercise any and all rights of copyright ownership in the Specification and will be authorized to license such rights to all implementers of the Specification and to other entities (e.g. IEEE) as approved by the Board and in accordance with this Policy. The WiMAX Forum hereby grants, under such copyright rights, to each voting Member a royalty-free, nonsublicensable right to reproduce, create derivative works, distribute and display Specifications only to develop, implement or otherwise use published Specifications to test

compliance or interoperability of products it implements, develops or manufactures from any such Specifications, and not for any other purpose.

(c) For the avoidance of doubt, these provisions in Section 4.5 shall not assign, convey, transfer or grant ownership, title or any rights in or to a Member's computer program or its results, or any copyrights to such computer programs or results that may be implemented from such Specifications, to the WiMAX Forum or to any other of its Members or to any nonmembers.

(d) Each Member grants to the WiMAX Forum a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Non-Technical IPR that the granting Member provides to it while participating in WiMAX Forum activities. Such grant shall be solely for the purpose of permitting the WiMAX Forum and its Members to use the Non-Technical IPR internally and publicly in connection with activities relating to the WiMAX Forum corporate purpose, as stated in its Bylaws. This grant shall be subject to limitations that the Member imposes on the grant at the time it provides the Non-Technical IPR. This grant shall not be construed as a waiver of any separate mutually agreed confidentiality obligation with respect to the materials embodying the Non-Technical IPR. The WiMAX Forum shall own the copyright in any resulting work embodying the Non-Technical IPR, subject to each Member's retained ownership rights in the individual contributions that it is licensing hereunder.

ARTICLE 5. SPECIFICATION NOTICE, REVIEW AND MEMBER WITHDRAWAL

SECTION 5.1. NOTICE OF THIRTY (30) DAY REVIEW PERIOD. The WiMAX Forum shall provide all Members with not less than thirty (30) days' prior written notice of the proposed adoption of a new or revised Specification. Such notice shall include a complete draft of the Specification as approved by the Board and state the effective date when the Specification (if approved), and all Necessary Claims therein, shall be subject to the licensing provisions of Section 4.1.

SECTION 5.2. REVIEW OF SPECIFICATION. There is no requirement for a Member to review or search its patent portfolio for Necessary Claims. However, all of Necessary Claims contained in the Draft Specification shall be subject to the licensing provisions of Section 4.1 upon final adoption of the Specification except for those Necessary Claims, if any, that such Member did not contribute, provided that such Member has exercised the Opt-Out Provision set forth in Section 5.3.

SECTION 5.3 OPT-OUT PROVISION.

In order to avoid a licensing obligation for non-contributed Necessary Claims in the Specification, a Member must, prior to the end of the review period, declare its intention *not* to license non-contributed Necessary Claims in the Specification and specify which non-contributed Necessary Claims it is not licensing; provided, however, any non-contributed Necessary Claims for which there is no declaration by the end of the review period shall be subject to the reasonable and nondiscriminatory license obligation set forth in Section 4.1. A member may also declare its intention not to license non-contributed Necessary Claims that it

becomes aware of prior to the review period, provided, however, that a Member may only make such declarations with respect to specifically identified patents or patent applications. A Member may not issue a blanket declaration that it will not license non-contributed Necessary Claims under Section 4.1. For the avoidance of doubt, each Member's commitment to license as described in this Policy applies to *all* of a Member's undisclosed Necessary Claims, despite lack of knowledge thereof by individuals participating in the Working Group on behalf of such Member. A Member is only permitted to declare its intention *not* to license its Necessary Claims in a Specification if such Necessary Claims are included in the Specification other than by such Member's own Contribution (i.e., non-contributed Necessary Claims), and if, prior to the end of the review period for such Specification, such Member discloses its patent rights including such non-contributed Necessary Claims and provides the minimum contents of disclosure set forth in Section 3.3(b). If this "no license" option is selected, or in a situation where a party alleged to have Necessary Claims refuses to provide a licensing declaration, the WiMAX Forum Working Group developing the affected specification will, in consultation with the Board, determine how best to proceed, such as by attempting to develop a revised version of the specification that works around the potentially blocking patent rights that the patent rights holder has declined to license to Members and nonmembers and their Affiliates.

SECTION 5.4 WITHDRAWAL.

(a) At any time, a Member may withdraw from the WiMAX Forum as a whole, or may withdraw from a particular Working Group without withdrawing from the WiMAX Forum as a whole. In either circumstance, the Member shall provide reasonable notice of its intent to withdraw as of a specified date in writing to the WiMAX Forum Management at board@wimaxforum.org. Such withdrawal shall become effective as of the specified date upon the receipt of such written notice by the WiMAX Forum Management.

(b) A Member that participated in a Working Group, and then withdraws *before* the end of the review period specified in Section 5.1 for a Draft Specification being developed by that Working Group, shall be obligated to disclose all its patent rights that include Necessary Claims related to such Draft Specification known by the individuals participating in the Working Group on behalf of such Member. Specifically, if an individual participating in a particular Working Group believes that he or she, or the Member on whose behalf the individual is acting (or its Affiliate), owns or controls patent rights including Necessary Claims relating to such Draft Specification, then the individual or Member shall give notice to the WiMAX Forum Management at board@wimaxforum.org in a writing as soon as reasonably possible. Disclosure under this Section shall (i) include the minimum contents of disclosure set forth in Section 3.3(b); and (ii) be based on a participant's own actual and personal knowledge, and no knowledge of the Member on whose behalf the participant is acting (or its employees) regarding patent information will be imputed to such participant. However, a Member acknowledges that it will not intentionally isolate a participant from potentially relevant patent information within the Member organization so as to deliberately avoid the terms of this Section.

SECTION 5.5. NO IP SEARCH REQUIRED. Nothing in this Section or this Policy imposes any duty or obligation on any participant, Member or prospective member to perform a patent search or other search of intellectual property portfolios.

ARTICLE 6. OTHER PROVISIONS.

SECTION 6.1. TRADEMARKS

In the event that the WiMAX Forum proposes to adopt any other name or logo as a trademark or trade name (collectively "Trademarks"), the WiMAX Forum shall notify the Members in writing of the proposal. The WiMAX Forum shall take such steps as the Board deems necessary and proper to protect its rights under such Trademarks adopted for use by the WiMAX Forum. In furtherance thereof, the Board shall establish and disseminate reasonable and nondiscriminatory terms and conditions and procedures for the licensing and use of such Trademarks among the Members. The WiMAX Forum hereby grants each Member a paid up, royalty-free, personal, non-exclusive, non-transferable, worldwide right to use the WiMAX Forum trademark or logo to identify Member as participating in the WiMAX Forum and to use it in association with a link to the WiMAX Forum website on its internal intranet or for other internal business purposes relating to the Member's participation in the WiMAX Forum for so long as Member remains a Member. This license does not grant the Member a right to use any certification mark of the WiMAX Forum. The use of such marks is governed by a separate license that is granted as part of the WiMAX Forum certification program.

SECTION 6.2. SURVIVAL OF AGREEMENT TO GRANT LICENSE

Notwithstanding any dissolution of the WiMAX Forum or a Member's termination, expiration or withdrawal of its membership in the WiMAX Forum (or its withdrawal from a particular Working Group) and except as otherwise expressly provided in this document, a Member or former Member's agreement to make available a license as provided in Sections 4.1 shall remain in full force and effect for: (a) any of its Necessary Claims in a Contribution made by such Member or former Member (or its Affiliate) that is incorporated into a Specification to which such Contribution was offered; (b) any non-contributed Necessary Claims in a Specification adopted by the WiMAX Forum for which the applicable review period ended *before* the effective date of dissolution or *before* the effective date of a Member's termination, expiration or withdrawal of membership; and (c) any Necessary Claims to a Specification adopted by the WiMAX Forum *after* the effective date of the Member's termination, expiration or withdrawal of membership that (i) are necessary for the later-adopted Specification to be backwards compatible with the prior Specification(s), and (ii) are 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 former Member is obligated to grant licenses. In no event is a former Member obligated to license any additional Necessary Claims under this Policy (and thus, for example, a Member that withdraws *before* the end of the review period for a Draft Specification and makes the required disclosures under Section 5.3 has no obligation to license its non-contributed Necessary Claims in the Specification, once adopted, other than such of its non-contributed Necessary Claims that it previously disclosed and for which it declared a commitment to license). A former Member shall remain entitled to reciprocity pursuant to Section 4.2 so long as that former Member remains obligated to license any Necessary Claims under this Policy. This agreement to the survival of reciprocal licensing shall extend to all Members and nonmembers, including entities that become Members and nonmembers who grant licenses to their Necessary Claims, after the effective date of the former Member's termination, expiration or withdrawal. Dissolution of the WiMAX Forum or a Member's termination,

expiration or withdrawal of its membership in the WiMAX Forum (or its withdrawal from a particular Working Group) shall not have any impact on a Member's or former Member's licenses with other Members, their Affiliates and nonmembers that existed prior to such termination, expiration or withdrawal, other than in accordance with the individual terms of such pre-existing licenses.

SECTION 6.3. NONMEMBER PARTICIPATION.

Only Members may participate in the WiMAX Forum Working Groups. Subject to any additional limitations or requirements that the Board may impose from time to time, a Working Group may specifically approve the attendance at Working Group meetings by nonmembers, provided that: (1) such attendance furthers an identifiable purpose of the WiMAX Forum; and (2) such individuals or entities agree in writing prior to participation to be bound by all of the obligations of Members in this Policy with respect to such participation. Prior to participation in any Working Group meeting, any nonmember must also sign a nondisclosure agreement approved by the Board.

SECTION 6.4. NO REPRESENTATIONS OR WARRANTIES

EACH MEMBER HEREBY AGREES AND ACKNOWLEDGES THAT: (A) THE WiMAX FORUM AND EACH MEMBER, INCLUDING WORKING GROUP REPRESENTATIVES AND WORKING GROUP CHAIRS, TAKE NO POSITION AS TO WHETHER ANY INTELLECTUAL PROPERTY RIGHTS EXIST IN ANY DRAFT OR FINAL SPECIFICATIONS; (B) THE SPECIFICATIONS AND ANY CONTRIBUTIONS THERETO ARE ALL PROVIDED "AS IS" AND "WITH ALL FAULTS"; (C) THE WiMAX FORUM AND EACH MEMBER, INCLUDING WORKING GROUP REPRESENTATIVES AND WORKING GROUP CHAIRS, MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SPECIFICATIONS OR ANY CONTRIBUTIONS THERETO, OR USE THEREOF, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SUFFICIENCY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OR RESULTS OR OF LACK OF NEGLIGENCE; AND (D) NEITHER THE WiMAX FORUM NOR ANY OF ITS MEMBERS, INCLUDING WORKING GROUP REPRESENTATIVES AND WORKING GROUP CHAIRS, HAS UNDERTAKEN ON BEHALF OF THE WiMAX FORUM OR ITS MEMBERS, ANY PATENT SEARCH WITH RESPECT TO THE SPECIFICATIONS. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED AS A RESTRICTION ON ANY MEMBER CONDUCTING ITS OWN DUE DILIGENCE OR OTHER TECHNOLOGY SEARCH OR SCREENING WITH RESPECT TO THE SPECIFICATIONS.

SECTION 6.5. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE WiMAX FORUM OR ANY MEMBER BE LIABLE TO ANY OTHER MEMBER OR TO ANY OTHER THIRD PARTY FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING UNDER THIS POLICY, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF

THE POSSIBILITY OF SUCH DAMAGES; OR (B) THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, OR LOSS OF DATA.

SECTION 6.6. REVISIONS TO THIS POLICY.

Any revisions or other amendments to this Policy will become effective only upon approval by a three-fourths (3/4) vote of the Board in accordance with the WiMAX Forum Bylaws, and only after: (a) the Board takes reasonable measures to notify all Members in writing (such as by e-mail) of such revisions; (b) a clear and conspicuous link to the revised Policy (with the revisions highlighted) is posted on the home page of the WiMAX Forum Web site (currently www.wimaxforum.org); and (c) Members are afforded at least thirty (30) days from the date of receiving notice of such revisions to withdraw from the WiMAX Forum; provided, however, that ministerial changes to this Policy (such as proofreading corrections or formatting changes) may be unilaterally executed by the Board, so long as the Board takes reasonable measures to communicate all such changes to all Members. Any Member that withdraws from the WiMAX Forum prior to the end of this thirty (30)-day period will be subject to the surviving provisions of the Policy in accordance with their terms, but will not be subject to terms of the revised or amended Policy.