

## 450 MHz Alliance

### Intellectual Property Rights Policy

This 450 MHz Alliance (hereinafter “the Alliance”) Intellectual Property Rights Policy (the “**Policy**”) is entered into by and between the Alliance and you, the Member.

This Policy shall be effective between Member and the Alliance upon execution of the 450MHz Alliance Membership Agreement. (the “**Effective Date**”).

The Parties agree as follows:

#### 1. DEFINITIONS.

“**Affiliate**” of a first legal entity means any other legal entity; a) directly or indirectly owning or controlling the first legal entity, or under the same direct or indirect ownership or control as the first legal entity, or b) directly or indirectly owned or controlled by the first legal entity, in either case, for so long as such ownership or control lasts.

“**Confidential Information**” means any confidential information of the Alliance, the Member, or any other Member, that is marked as confidential when disclosed, or otherwise disclosed under circumstances or on terms clearly implying that it is confidential at the time of disclosure, and relates to the Purpose of the Alliance, as stated in Article II of the Bylaws (“Purpose”).

“**Contributions**” means any material related to the Purpose of the Alliance, and which are affirmatively contributed to the Alliance for the purpose of inclusion in an Alliance Deliverable.

“**Deliverable(s)**” means any and all white papers, market analysis, technology analysis, market requirements and other materials needed in support of Alliance objectives and which are affirmatively contributed to the Alliance.

“**Essential**” as applied to a patent (or a patent claim) means that it is not possible on technical grounds (taking into account normal technical practice and the state of the art generally available at the time) to use a method that fully complies with an officially approved standard or specification without infringing that patent (or that patent claim).

**“Intellectual Property” or “Intellectual Property Rights”**

collectively means any and all patents (including registrations, reissues, divisions, continuations and extensions thereof), database rights, utility models, business processes, trademarks, service marks, trade secrets, know-how, trade names, service names, registered or unregistered designs, mask works, copyrights, moral rights, and any other form of proprietary protection or any applications for any of the foregoing, which arises or is enforceable in the United States, any other jurisdiction or any bilateral or multilateral treaty regime.

**“Laws”** means any and all applicable international, multinational, national, federal, regional, state, or local laws, statutes, ordinances, rules, regulations, judgments, decrees, requirements, orders, procedures or provisions of any international or national governmental body, agency or court or any industry or technical standards of any industry body or organization.

**“Party”** means the Alliance or the Member, and **“Parties”** means the Alliance and the Member.

## **2. CONFIDENTIALITY.**

**2.1 Acknowledgement.** The Alliance and Member hereby acknowledge that each of them (acting as a **“Recipient”**) will have access to Confidential Information of the other Party or other Members (each acting as a **“Discloser”**). Each Recipient agrees that, for a five (5) year period following the date of disclosure, it will: (a) preserve and protect the confidentiality of the Discloser’s Confidential Information; (b) not use the Discloser’s Confidential Information, whether for Recipient’s own benefit or the benefit of any third party, except as expressly authorized herein; and (c) not disclose the Discloser’s Confidential Information except to Recipient’s own employees and contractors to implement this Policy (and only subject to legally binding restrictions at least as protective as those set forth herein). Recipient acknowledges that Discloser (or Discloser’s licensor) owns all Intellectual Property Rights in Discloser’s Confidential Information and the Recipient is responsible to ensure its employees’ and contractors’ compliance with this Section 2.

**2.2 Exception.** Notwithstanding Section 2.1, a Recipient may disclose Discloser’s Confidential Information which is:(i) already publicly known prior to the Recipient’s disclosure or publicly known through no wrongful act of Recipient; (ii) otherwise known to the Recipient through no wrongful

conduct of the Recipient; or (iii) required to be disclosed to enforce this Policy or by law or court order; provided that, the Recipient promptly so notifies the Discloser, allowing the Discloser sufficient time to challenge any proposed disclosure, including allowing sufficient time to allow the filing of a protective order (where appropriate). Recipient shall cooperate with Discloser in a reasonable manner to facilitate the filing of any such protective order. Moreover, a Recipient may disclose any Confidential Information of the Discloser to the Recipient's agents, attorneys, accountants, financial advisors, actual or potential investors, acquirers or merger parties who need to know such Confidential Information in connection with activities conducted at Recipient's request and who are subject to a written confidentiality agreement substantially similar to this Section 2.

- 2.3 Post Termination.** Recipient agrees that: (i) upon the expiration or termination of this Policy for any reason, or (ii) at any time, upon the request of Discloser, Recipient shall return, or if so instructed by Discloser, destroy and certify the destruction of, all copies of the Discloser's Confidential Information given to Recipient by Discloser, or any information derived therefrom by Recipient, that is then in Recipient's possession unless it falls within the exceptions in clause 2.2.

### **3. INTELLECTUAL PROPERTY.**

#### **3.1 Ownership.**

- 3.1.1 Alliance Deliverables.** Except as set forth herein, the Alliance owns and shall retain any Intellectual Property Rights that it has in the Alliance Deliverables, in each case excluding any Member Contributions, which are licensed by any Member to the Alliance pursuant to this Policy.
- 3.1.2 Member Contributions.** Except as set forth herein, Member owns and shall retain all Intellectual Property Rights and all other rights, title and interest in and to all of its own Member Contributions, as well as any Intellectual Property Rights and all other rights, title and interest of its own in any other Member's Contributions and any Alliance Deliverable.
- 3.1.3 License to use Alliance Deliverables and Confidential Information.** Subject to the terms of this Policy, the Alliance grants Member a royalty free and non-sublicensable license to use the Alliance Deliverables and

Confidential Information solely during the Term to further the Purpose of the Alliance.

- 3.2 **Copyright License to Contributions and Confidential Information.** Subject to the terms of this Policy, Member hereby grants to the Alliance and other Members of the Alliance; a nonexclusive, perpetual, and irrevocable, royalty-free, fully paid -up, and worldwide copyright license to: (i) evaluate, test, modify, improve, and maintain all Member Contributions and Member Confidential Information, (ii) incorporate Member Confidential Information or Member Contributions and any modification thereof into the Alliance Deliverables; and (iii) notwithstanding Section 2, publish and otherwise make available to the public, and at the Alliance's discretion to permit others to reproduce, Member Contributions as part of the Alliance Deliverables.
- 3.3 **Patent License to Alliance Deliverables.** Prior to approval of each Alliance Deliverable, each Member is to agree to one of the following:
- 3.3.1 Member does not hold the rights to license any Essential patent claims contained in the Alliance Deliverable.
- 3.3.2 **RAND License to Alliance Deliverables.** Member is prepared to license to all applicants, on reasonable and nondiscriminatory terms, with or without monetary compensation (with terms and conditions which may be agreed upon outside of and independent of the Alliance organization and process), Member Essential patent claims that are necessarily infringed by implementing the Alliance Deliverable. However, the RAND license may be conditioned upon reciprocity.
- 3.3.3 **Opt-Out of RAND License to Alliance Deliverables.** Member is not willing to make available a license to all applicants, on reasonable and nondiscriminatory terms with or without monetary compensation, Member Essential patent claims that are necessarily infringed by implementing an Alliance Deliverable.

## 4. WARRANTIES

- 4.1 **Member Warranties.** Member hereby represents, warrants and covenants to the Alliance and each other Member, for the duration of the Term, all of the following:
- 4.1.1 Member has the full right and authority to enter into and implement this Policy in all respects and is not subject to, and will not assume, any conflicting obligation or restriction; and
  - 4.1.2 To the best of Member's actual knowledge all Member Contributions and all copyrights licensed or assigned hereunder by Member to the Alliance or other Members, do not and shall not violate, at the time of contribution, license or assignment, any Law or infringe upon any copyright of any third party; and
  - 4.1.3 Member shall abide by all Laws which are applicable to (i) this Policy, (ii) Member's implementation thereof, (iii) Member's use of Alliance Deliverables, or (iv) exercise of any right or license granted to Member hereunder.
- 4.2 **Alliance Warranties.** The Alliance hereby represents, warrants and covenants to Member and each other Member, for the duration of the Term, all of the following:
- 4.2.1 The Alliance has the full right and authority to enter into and implement this Policy in all respects and is not subject to, and will not assume, any conflicting obligation or restriction; and
  - 4.2.2 To the best Alliance's knowledge the Alliance Deliverables and all copyrights licensed under this Agreement do not violate, at the time of contribution, license or assignment, any Law or infringe upon any copyright of any third party; and
  - 4.2.3 The Alliance shall abide by all Laws which are applicable to (i) this Policy, (ii) the Alliance's implementation thereof, (iii) the Alliance's use of Alliance Deliverables, or (iv) exercise of any right or license granted hereunder.

## **5. DISCLAIMER/LIMITATION OF LIABILITY.**

### **5.1 Disclaimer.**

5.1.1 EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, UNDER OR IN CONNECTION WITH THIS POLICY, WHETHER OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, INCLUDING AS TO THE ALLIANCE DELIVERABLES, MEMBER CONTRIBUTIONS, OR OTHER ITEMS FURNISHED HEREUNDER. ALL THE FOREGOING ARE PROVIDED HEREUNDER STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS AND EACH PARTY EXPRESSLY ASSUMES ALL RISKS ASSOCIATED THEREWITH.

5.1.2 NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT LOSS OR DAMAGE ARISING OUT OF OR RELATED TO THIS POLICY OR THE USE OF THE ALLIANCE DELIVERABLES, MEMBER CONTRIBUTIONS, OR OTHERWISE IN CONNECTION WITH THIS POLICY, WHETHER IN A CONTRACT, TORT, OR ANY OTHER CAUSE OF ACTION.

5.1.3 IN ANY EVENT, EACH PARTY’S TOTAL LIABILITY HEREUNDER FOR ANY REASON SHALL NOT EXCEED THE AGGREGATE AMOUNT OF MEMBER’S PAYMENTS TO THE ALLIANCE PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY

5.1.4 Each Party agrees and acknowledges that the disclaimers and liability limitations herein have been relied upon by the Parties in entering into this Policy and are fair and reasonable under the circumstances. ANY OR ALL OF SECTIONS 5.1.1, 5.1.2, AND 5.1.3: (i) MAY NOT APPLY IN CERTAIN JURISDICTIONS WHICH LIMIT OR PRECLUDE LIMITATIONS AND/OR EXCLUSIONS OF LIABILITY, OR THE DISCLAIMER OF WARRANTIES; AND (ii) SHALL APPLY ONLY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

## 6. TERM AND TERMINATION.

- 6.1 **Term.** This Policy, including all rights and licenses granted hereunder, shall be effective as of the Effective Date and shall remain in effect until the earlier of: (i) the termination or expiration of the Member Agreement, (ii) the dismissal of Member, or Member's resignation, for any reason from the Alliance (the "**Term**").
- 6.2 **Voluntary Withdrawal by Member.** Member may, at any time upon written notice to the Alliance, terminate this Policy and withdraw from participation in the Alliance. The effective date of termination upon voluntary withdrawal by a Member is the date the written notice is received by the Alliance.
- 6.3 **Termination for Cause by the Alliance.** The Alliance may terminate this Policy, effective immediately by written notice to Member, (i) if for any reason the Alliance dissolves or otherwise ceases to operate; (ii) pursuant to any court order or injunction, advice of the Alliance's counsel or any other reasonable legal consideration involving the Alliance, Member or any Intellectual Property; or (iii) if Member breaches any material term herein; provided, however, that if such breach is capable of being cured, such termination shall only be effective if Member fails to cure the breach within thirty (30) calendar days after the date of the termination for breach notice given by the Alliance.

## 7. Rights Upon Termination.

- 7.1 Upon the expiration or termination of this Policy, all rights or licenses (including sublicenses) granted by the Alliance to Member hereunder shall also terminate. However, all obligations incurred prior to the effective date of termination shall remain in full force and effect thereafter.

## 8. ASSIGNMENT.

- 8.1 Except as set forth herein, Member shall not assign this Policy or any right or interest under this Policy, nor delegate any obligation to be performed under this Policy, without the Alliance's prior written consent, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in contravention of this Section 8 shall be void.

8.2 Notwithstanding anything in this Policy to the contrary, Member's Affiliates have the same rights and obligations as those granted to and from Member hereunder. Member agrees that it shall be fully responsible and liable for any breach of the terms of this Policy by any of its Affiliates to the same extent as if Member itself had committed any such breach.

## **9. INDEPENDENT CONTRACTORS.**

Nothing in this Policy shall constitute either the Alliance (or any other Member) as a partner, principal, agent, employee, employer, joint venturer, franchisee, franchisor, representative or owner of Member, and neither Party shall represent itself as being any of the foregoing or having the authority to bind or assume any obligations on behalf of the other Party. The Parties' relationship hereunder is solely that of independent contractors, each responsible for its own actions.

## **10. SEVERABILITY.**

If one or more provisions in this Policy are ruled entirely or partly invalid or by any court or governmental authority of competent jurisdiction, then: (i) the validity and enforceability of all other provisions shall remain unaffected; (ii) the effect of such ruling shall be limited to the body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the parties shall reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended, then the provision(s) in question, as originally set forth in this Policy, shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity. **WITHOUT LIMITING THE FOREGOING, IT IS UNDERSTOOD THAT EACH PROVISION OF THIS POLICY WHICH PROVIDES LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE ENFORCEABLE TO THE MAXIMUM ALLOWED BY APPLICABLE LAW, TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET**

FORTH HEREIN SHALL REMAIN IN EFFECT TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

## **11. GOVERNING LAW/DISPUTE RESOLUTION.**

- 11.1 **Governing Law.** This Policy shall be governed by and construed and enforced solely and exclusively in accordance with the laws of the State of California, without giving effect to any law which would result in the application of a different body of law.
- 11.2 **Injunctive Relief.** The Parties acknowledge that any breach of confidentiality or infringement of a Party's Intellectual Property Rights would cause irreparable harm to the non-breaching Party, the extent of which would be difficult to ascertain. Accordingly, each Party agrees that, in addition to any other remedies to which a Party may be legally entitled, a Party shall be entitled to seek immediate injunctive relief from any court of competent jurisdiction, wherever located, without the requirement of posting a bond, in the event of a breach or threatened breach of confidentiality or infringement or threatened infringement of a Party's Intellectual Property Rights by the other Party.

## **12. SURVIVAL**

Sections 1, 2, 3 (except Section 3.1.3), 4, 5, 6, 7, 10, 11 and this Section 12 shall survive any termination or expiration of this Policy for any reason.