

## CCF Intellectual Property Rights Policy

This CCF Intellectual Property Rights Policy (the “**Policy**”), which is an integral part of the CDMA Certification Forum Member Guidelines (the “**Member Guidelines**”), is a binding contract, entered into by and between the CCF and you, the Member (as defined in the Member Guidelines). The CCF is the coordinating entity for the development of a core global handset certification process for cellular phones utilizing CDMA [2000] technology (the “**Certification**”).

This Policy shall be effective between Member and the CCF upon approval of Member’s Membership Application by the CCF pursuant to the Member Guidelines (the “**Effective Date**”).

MEMBER’S AGREEMENT TO THE MEMBER GUIDELINES ALSO CONSTITUTES MEMBER’S AGREEMENT TO THIS POLICY, AND MEMBER’S AGREEMENT TO THIS POLICY ALSO CONSTITUTES MEMBER’S AGREEMENT TO THE MEMBER GUIDELINES. IF MEMBER DOES NOT AGREE TO THIS POLICY OR THE MEMBER GUIDELINES, IT HAS NO RIGHTS UNDER THIS POLICY OR THE MEMBER GUIDELINES, AND MUST EXIT THIS WEB SITE.

The Parties agree as follows:

### 1. DEFINITIONS.

1.1 General. All capitalized or abbreviated terms herein have the respective meanings given to them below, elsewhere in this Policy, or in the Member Guidelines or the Rules. All definitions apply to their plural or singular form, as the context may require. “**Sections**” refer to sections in this Policy. “**Herein**,” “**hereunder**,” “**hereof**” and similar expressions refer to this Policy. “**Including**” means “including without limitation.” “**Days**” refers to calendar days unless otherwise indicated herein. “**Sale**” or “**purchase**” of any software, technology or Intellectual Property Right only means the sale or purchase of a license or sub-license, as the case may be, to use the foregoing pursuant to this Policy.

1.2 “**Confidential Information**” means any confidential information of the CCF, 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, and relates to the Certification. The terms of this Policy, the CCF Certification Process, the Development Materials, all information relating to the CCF Certification Process and the Development

Materials are hereby designated and acknowledged to be the CCF's Confidential Information and shall be treated as such hereunder by Member.

1.3 “**CCF Certification Process**” means all Development Materials that, pursuant to the Rules, are accepted or incorporated by the CCF into the Certification.

1.4 “**CCF Community**” means the community that consists of the CCF, Member, and all Other Members and operates pursuant to the Rules.

1.5 “**CCF Community Process**” has the meaning given to it in Section 3.1.

1.6 “**Development Materials**” means any and all software (including Source Code), hardware, mask works, microchips, data, specifications, architectures, algorithms, know-how, designs, protocols, elements, manuals, specifications, documentation, writings, materials or any other technology or process which are affirmatively contributed to the CCF Community.

1.7 “**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 of official approval of a CCF certification procedure) to use a method that fully complies with an officially approved CCF procedure without infringing that patent (or that patent claim).

1.8 “**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.

1.9 “**Jointly Developed IP**” means any and all Intellectual Property Rights arising from any collaboration, if any, of (i) the CCF and Member, (ii) Member and one or more Other Members, or (iii) the CCF, Member and one or more Other Members, related to the Certification or the CCF Community.

1.10 “**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.

1.11 “**Member Contributions**” collectively means all Member’s Development Materials.

1.12 “**Other Members**” mean those third parties that have agreed to the Rules, Member Guidelines and Policy, which, when agreed to by such Other Members and the CCF , collectively constitute the “**Other Member Agreements.**”

1.13 “**Other Member Contributions**” collectively means all Other Members’ Development Materials.

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

1.15 “**Rules**” collectively means the terms in any of the following: (i) the CCF’s articles of in CCF incorporation; (ii) the CCF’s by-laws; (iii) the procedures adopted by the CCF and any CCF committee or designee thereof, including the CCF Community Process, and any other terms governing the CCF Community, including the procedures for the resolution of disputes concerning technical matters (the “**Dispute Resolution Procedures**”); and (iv) the Web Site, including its privacy policy (the “**Web Terms**”). Any Rule may be amended in the CCF’s discretion as provided in the Rules. The Web Terms are at \_\_\_\_\_[insert link]. The Dispute Resolution Procedures are at \_\_\_\_\_[insert link]. [The CCF’s articles of in CCF incorporation and by-laws are at \_\_\_\_\_[insert link].]

1.16 “**Source Code**” means the human perceivable form of software that is not suitable for machine execution without interpretation or compilation and any associated interface definition files and scripts used to control compilation and installation of executable or source code.

1.17 “**Web Site**” means the web site maintained and owned by the CCF located at <http://www.globalccf.org> or any other URL.

## 2. CONFIDENTIALITY.

2.1 Acknowledgement. The CCF 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, during the Term and for a five (5) year period following the expiration or termination for any reason of this Policy, 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 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’ compliance with this Section 2.

2.2 Exception. Notwithstanding Section 2.1, a Recipient may disclose Discloser’s Confidential Information which, the Recipient can prove, 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. CCF COMMUNITY OPERATION.**

3.1 Purpose. The Member is provided access to the Development Materials (other than the Member Contributions) solely subject to this Policy,

Member Guidelines and Rules, and for the sole purpose of implementing, developing, or testing potential Member Contributions or the CCF Certification Process. Member agrees to abide by the formalized process for the development, enforcement and implementation of the CCF Certification Process set forth in the Web Site (the “**CCF Community Process**”). Upon the Effective Date, Member is authorized to participate in the CCF Community Process solely through its employees authorized to participate on behalf of Member and provided they abide by the Rules.

3.2 Acknowledgment. Member hereby acknowledges that Member has reviewed the Member Guidelines and Rules and agrees to be bound and abide thereby.

#### **4. INTELLECTUAL PROPERTY.**

##### 4.1 Ownership.

###### 4.1.1 CCF Certification Process; Development Materials.

Except as set forth herein, the CCF owns and shall retain any Intellectual Property Rights that it has in the CCF Certification Process, in each case excluding any Member Contributions or Other Member Contributions, which are licensed by Member or Other Members to the CCF pursuant to this Policy.

4.1.2 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 Member Contributions.

4.1.3 Other Member Contributions. Except as set forth in each applicable Other Member Agreement and in Section 4.3, as between the CCF, the Member and each such Other Member, each such Other Member owns and shall retain all Intellectual Property Rights and all other rights, title and interest in and to all Other Member Contributions.

4.1.4 Proprietary Markings. Member shall not remove from any Development Materials, or from any medium containing any of the foregoing, Development Materials or any CCF Community materials, and shall reproduce on all copies it makes of the foregoing, all Logos (as defined in Section 5.1), patent, copyright or other proprietary markings, indications of ownership or origin previously affixed thereon or as required under the Rules.

4.2 License to use the Development Materials and Confidential Information. Subject to the terms of this Policy, the CCF grants Member a royalty-

free and non-sublicensable license to use the Development Materials and CCF Confidential Information solely during the Term to: (i) internally develop or test Member Contributions and (ii) participate in the certification implementation, development or testing.

4.3 License to Contributions and Confidential Information. Subject to the terms of this Policy, Member hereby grants to the CCF or its designee a non-exclusive, perpetual, and irrevocable, royalty-free, fully paid -up, and worldwide license under applicable copyrights 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 Development Materials, the CCF Community materials, and the Certification Process and make all the foregoing available to Other Members pursuant to the Rules; and (iii) notwithstanding Section 2, publish and otherwise make available to the public, and at the CCF's discretion to permit others to reproduce, Member Contributions as part of the Development Materials, the CCF Community materials, and/or the CCF Certification Process; and (iv) grant sublicenses for the Member Contributions, including under the Intellectual Property Rights embodied in any Member Contribution, and Member Confidential Information (collectively, "**Member Rights**") to all Other Members on the same terms and conditions that the CCF grants similar licenses to the Other Members Certification.

4.3.1 Member agrees to make all Member Contributions available to the CCF, in reasonably sufficient detail and in a form and with such documentation, including Source Code and other materials reasonably requested by the CCF or Other Members, within a commercially reasonable time not to exceed thirty (30) days after Member first notifies CCF of its decided's decision to make such Member Contribution available to the CCF Community.

4.4 Assignment of Copyright in Jointly Developed IP. Member (i) shall, and hereby does, irrevocably assign and convey to the CCF all of Member's right, title and interest, including Intellectual Property Rights in and to the copyright in all Jointly Developed IP, if, as, and when such Jointly Developed IP exists or arises, and (ii) agrees to execute all documents and undertake all other acts reasonably required or desirable to perfect the CCF's ownership in the copyright of such Jointly Developed IP.

4.5 License of Copyright in Jointly Developed IP. The CCF hereby grants Member a non-exclusive, perpetual and irrevocable, royalty-free, fully paid-

up, worldwide perpetual and sub-licensable right under the copyright in any Jointly Developed IP assigned by Member to the CCF pursuant to Section 4.4.

Other than the license grants and assignment set forth in Sections 4.3 and 4.4, Member grants no other licenses or assignments, either express or implied, in Intellectual Property Rights embodied in any Member Contribution or Jointly Developed IP. For purposes of clarification, under this Agreement, no licenses (either express or implied) are provided under any Member patents. If not already addressed by Intellectual Property policies applicable to 3GPP2, Member is prepared to license to the Other Members and/or CCF, on reasonable and non-discriminatory terms (with terms and conditions which may be agreed upon outside of and independent of the CCF organization and process and solely for the purpose of certification and solely to further the goals of the CCF), Member Essential patent claims that are necessarily infringed by implementing the Member's Contribution that is incorporated in an officially approved CCF certification procedure. However, no such license (if any is required and if any is agreed upon ) will be effective unless Other Member(s) and (as applicable) CCF reciprocate, granting a similar license on then agreed upon terms.

4.6 Member Warranties. Member hereby represents, warrants and covenants to the CCF and each Other Member, for the duration of the Term, all of the following:

4.6.1 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;

4.6.2 To the best of Member's knowledge and subject to Section 6.2, all Member Contributions, Member's contributions to Jointly Developed IP, and all Intellectual Property Rights copyright rights licensed or assigned hereunder by Member to the CCF or Other Members, do not and shall not violate, at the time of contribution, license or assignment, any Law or infringe upon any Intellectual Property Right copyright of any third party; and

4.6.3 Member shall abide by all Laws which are applicable to (i) this Policy, (ii) Member's implementation thereof, (iii) Member's use of Development Materials, or (iv) exercise of any right or license granted to Member hereunder; and

4.7 CCF Warranties. The CCF hereby represents, warrants and covenants to Member and each Other Member, for the duration of the Term, all of the following:

4.7.1 The CCF 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;

4.7.2 To the best of CCF's knowledge and subject to Section 6.2, the Development Materials, the CCF Certification Process, the CCF's contributions to Jointly Developed IP, the use of the Logos by Member, 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

4.7.3 The CCF shall abide by all Laws which are applicable to (i) this Policy, (ii) the CCF's implementation thereof, (iii) the CCF's use of Development Materials, or (iv) exercise of any right or license granted hereunder; and

## 5. **CCF LOGO.**

5.1 Logos. The CCF's logos, which are set forth in Attachment A attached hereto and incorporated herein (the "**Logos**"), shall be prominently displayed on each Member Contribution. The designation of the Logos and their usage and quality control requirements will be set forth on the Web Site or in the Rules and made available to Member. In any event, Member shall not use any Logo without first reviewing such requirements and agrees that it will fully abide by them. The CCF hereby grants to Member a non-exclusive, personal, non-transferable and worldwide royalty free and fully paid license to use the Logos solely during the Term and in accordance with such requirements and subject to the terms hereof.

5.2 Use. Member shall not use, in its letterhead, business cards, name or other means of identification, or adopt, register or attempt to register anywhere in the world, any trademark, service mark, domain name, business name, logo or other designation of origin (collectively, "**Marks**"), similar or confusingly similar to, or containing, any of the Logos or any Marks of the CCF. All rights, title and interest, including Intellectual Property Rights and goodwill, in or related to the Logos or Marks of the CCF, or deriving therefrom, belong solely and exclusively to the CCF or its licensor(s).

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

### **6.1 Disclaimer.**

6.1.1 EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.6 AND 4.7, 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 CCF CERTIFICATION PROCESS, DEVELOPMENT MATERIALS, MEMBER CONTRIBUTIONS, HARDWARE, SOFTWARE, TECHNOLOGY, OR OTHER ITEMS FURNISHED HEREUNDER. ALL THE FOREGOING ARE PROVIDED HEREUNDER STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS AND MEMBER EACH PARTY EXPRESSLY ASSUMES ALL RISKS ASSOCIATED THEREWITH.

6.1.2 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 CCF CERTIFICATION PROCESS, DEVELOPMENT MATERIALS, MEMBER CONTRIBUTIONS, HARDWARE, SOFTWARE, TECHNOLOGY, OR OTHERWISE IN CONNECTION WITH THIS POLICY, WHETHER IN A CONTRACT, TORT, OR ANY OTHER CAUSE OF ACTION.

6.1.3 IN ANY EVENT, EACH PARTY'S TOTAL LIABILITY HEREUNDER FOR ANY REASON SHALL NOT EXCEED THE AGGREGATE AMOUNT OF MEMBER'S PAYMENTS TO THE CCF PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

6.1.4 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 6.1.1, 6.1.2, 6.1.3 AND 6.2: (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.

6.2 Negation of Representation and Warranties. Nothing contained in this Policy shall be construed as: (a) requiring the filing of any patent application, securing any patent or maintaining any patent in force; (b) a warranty

or representation by either Party as to the validity or scope of any patent or other Intellectual Property Right; (c) a warranty or representation that any use of the Development Materials will be free from any Intellectual Property Right infringement, and it shall be the sole responsibility of Member to make such determination as is necessary with respect to the acquisition of licenses under patents and other Intellectual Property of third parties; (d) an agreement to bring or prosecute actions or suits against third parties for infringement; (e) an obligation to furnish any manufacturing assistance; or (f) conferring any right to use, in advertising, publicity or otherwise, any logo, name, trade name or trademark, or any contraction, abbreviation or simulation thereof.

## 7. TERM AND TERMINATION.

7.1 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 Guidelines, (ii) the termination of this Policy as provided in Section 7.2, 7.3 or 7.4, or (iii) the dismissal of Member, or Member's resignation, for any reason from the CCF Community pursuant to the Rules (the "**Term**").

7.2 Voluntary Withdrawal by Member. Member may, at any time upon written notice to the CCF, terminate this Policy and withdraw from participation in the CCF Community.

7.3 Termination for Cause by the CCF. The CCF may terminate this Policy, effective immediately by written notice to Member, (i) if for any reason the CCF dissolves or otherwise ceases to operate; (ii) pursuant to any court order or injunction, advice of the CCF's counsel or any other reasonable legal consideration involving the CCF, Member or any Intellectual Property; or (iii) if Member breaches any term herein, the Member Guidelines, or any Rule; 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) days after the date of the termination for breach notice given by the CCF.

### 7.4 Bankruptcy, Dissolution or Liquidation.

7.4.1 Each party (the "**Notifying Party**") shall provide written notice (the "**Notifying Party**") to the other party (the "**Notified Party**") immediately upon the occurrence of any of the following events involving the Notifying Party (each, an "**Event**"): (a) insolvency, bankruptcy or liquidation or filing of any application therefor, or other act of insolvency of the Notifying Party; (b) attachment, execution or seizure of substantially all of the assets, or filing of

any application therefor, of the Notifying Party; (c) assignment or transfer of that portion of the business of the Notifying Party to which this Policy pertains to a trustee for the benefit of creditors; or (d) termination or dissolution of the Notifying Party's business or dissolution.

7.4.2 The Notified Party shall have the right to terminate this Policy, effective immediately upon written notice to the Notifying Party on the earlier of: (i) sixty (60) days after the occurrence of any Event (unless such event ceases within such period), or (ii) sixty (60) days after receipt of the Event notice (unless such event ceases within such period).

#### 7.5 Rights Upon Termination.

7.5.1 Upon the expiration or termination of this Policy under Section 7.3(iii), all rights or licenses (including sublicenses) granted by the CCF to Member hereunder, including, those granted under Section 4.2, shall also terminate. However, all ownership provisions, Member's obligations to assign Intellectual Property Rights copyright rights and all licenses granted by Member hereunder to the CCF or Other Members, as set forth in Section 4.3 and 4.4, and 4.5, shall survive any termination or expiration of this Policy, the Guidelines, or Member's dismissal or resignation from the CCF Community for any reason and remain in full force and effect thereafter.

7.5.2 Upon termination of this Agreement pursuant to Section 7.4.2, all rights and licenses granted by the Notifying Party to the Notified Party under this Agreement prior to the Event shall survive any such termination. This Policy constitutes a license of "intellectual property" as defined in Section 101(35a) of the United States Bankruptcy Code that is executory in nature until terminated. If the Agreement is rejected in any bankruptcy proceeding, then in addition to all other rights hereunder, both parties agree that the Notified Party shall be entitled to all rights under Section 365(n) of the United States Bankruptcy Code, including to all Members' Development Materials and embodiment of all intellectual property copyright rights in all Member Contributions and any updates and enhancements created after the Effective Date.

7.6 Cross-termination. Notwithstanding anything to the contrary in the Member Guidelines or this Policy, upon the expiration or termination of this Policy for any reason, the Member Guidelines shall immediately terminate, subject to the survival of such rights and obligations as may be set forth therein.

## **8. ASSIGNMENT.**

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 CCF'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.

## **9. COMPLIANCE WITH U.S. REGULATIONS.**

Nothing contained in this Policy shall require or permit Member or the CCF to do any act inconsistent with, and Member hereby agrees to fully abide by, all (i) the regulations of the United States Department of Commerce, the International Traffic and Arms Regulations of the United States, the United States Foreign Corrupt Practices Act and the Anti-Boycott Laws of the United States and (ii) the foreign assets controls or foreign transactions controls regulations of the United States Treasury Department, or of any other governmental entity of the United States or any other applicable jurisdiction, in effect from time to time. To enable the CCF to export software, the CCF Certification Process or other technical data to Member, Member hereby gives its assurance to the CCF that Member will not market, sell, lease, supply, export, re-export or otherwise disclose or provide, directly or indirectly, any CCF Certification Process, Development Materials, or technical data received from the CCF or Other Members, nor allow the direct product thereof to be shipped directly or indirectly, to any country in violation of any United States laws or regulations or to any entity or end-user that it prohibited or ineligible under U.S. law to receive same, unless prior specific written authorization is obtained from the U.S. government.

## **10. INDEPENDENT CONTRACTORS.**

Nothing in this Policy shall constitute either the CCF (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.

## **11. SEVERABILITY.**

If one or more provisions in this Policy are ruled entirely or partly invalid or unenforceable 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.

**12. NON-WAIVER.**

No waiver of any term hereunder, or the failure of either Party to enforce any such term, on one or more occasions, shall be construed as a waiver of the same or of any other term of this Policy on any other occasion. To be valid, a waiver must be set forth in a writing and signed by the waiving Party.

**13. NOTICES.**

All notices under this Policy must be in writing, in English, and shall be delivered as follows, with notice deemed given as indicated: (i) by Federal Express or other major overnight courier, upon written verification of receipt as evidenced by the courier's delivery record; or (ii) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below or to such other address as either Party may specify in writing:

If to the CCF:

\_\_\_\_\_

Facsimile No.:

Telephone No.:

Attn: President

with a copy to:

And if to Member:

Facsimile No.:

Telephone No.:

Attn:

with a copy to:

The above addresses can be changed by providing notice to the other Party in accordance with this Section 13.

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

14.1 Governing Law. This Policy shall be governed by and construed and enforced solely and exclusively in accordance with the laws of the State of Delaware, without giving effect to any law which would result in the application of a different body of law. The U.N. Convention on Contracts for the International Sale of Goods is expressly excluded from, and shall not apply in any respect to, this Policy.

14.2 Dispute Resolution. Any and all disputes under or in connection with this Policy shall be resolved solely and exclusively pursuant to Paragraph X of the Members Guidelines.

14.3 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.

#### **15. FORCE MAJEURE.**

Neither Party shall be in default or liable for any loss or damage resulting from, and for the duration of, delays in performance or from failure to perform or comply with this Policy due to any causes beyond its reasonable control, which causes include acts of God; terrorism; riots and insurrections; war; fire; strikes; earthquakes, electricity problems; embargoes; judicial action; inability to obtain export permits or approvals; and acts of civil or military authorities.

#### **16. ENTIRE AGREEMENT; AMENDMENT.**

This Policy is drafted and executed in the English language, which shall control in all respect the construction and interpretation of this Policy. This Policy and the Member Guidelines constitute the sole, final and entire agreement of the Parties with respect to the subject matter hereof and may only be amended or modified in writing by an authorized representative of each Party. This Policy may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties. Execution of this Policy by electronic means, such as by clicking on an "I agree" button on the Web Site, is permitted, and any such electronic execution shall be deemed to have the same force and effect as a duly authorized, written signature on a paper copy of this Policy. Execution of this Policy by facsimile is also permitted provided that each Party promptly sends the signed original pages by courier or registered mail to the other Party. This Policy has been negotiated by the Parties and their respective counsel. It shall, therefore, be fairly interpreted without any presumption of construction in favor of or against any Party.

In the event of a conflict, which cannot reasonably be reconciled, between any version of the Member Guidelines and this Policy, the terms of this Policy shall control in all respect.

#### **17. THIRD PARTY BENEFICIARIES.**

**EACH OTHER MEMBER IS AN EXPRESSLY INTENDED THIRD PARTY BENEFICIARY OF THIS POLICY WITH FULL RIGHTS TO ENFORCE ITS RIGHTS HEREUNDER.**

**18. SURVIVAL.**

Sections 1, 2, 4 (except Section 4.2), 5, 6, 7.5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and this Section 18 shall survive any termination or expiration of this Policy for any reason.

[By clicking on the “I Agree” button below, I represent that I intend to legally bind Member to this Policy, and that I am duly authorized by Member to do so.]

CDMA Certification Forum

Member

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# ATTACHMENT A