

Certification Mark License Agreement

This License Agreement (“**Agreement**”) is entered into effective as of its full execution by the parties (“**Effective Date**”) by and between the WiMAX Forum, a California nonprofit mutual benefit corporation, and the WiMAX Forum principal member company identified on the signature page of this Agreement (“**Licensee**”).

BACKGROUND

The WiMAX Forum owns the “WiMAX Forum Certified” design mark shown on **Exhibit A** and defined herein as the “Certification Mark,” which it licenses as a certification mark to its principal members to identify products that the WiMAX Forum has certified for conformance and interoperability under the applicable WiMAX specifications. Licensee is a principal member of the WiMAX Forum and wishes to obtain a license to use the Certification Mark and the WiMAX Forum is willing to grant the license, subject to the terms and conditions herein.

AGREEMENT

1. **Definitions.** For purpose of this Agreement:

(a) “**Certification**” consists of the technical process in which Licensee submits its product for certification testing at the WiMAX Forum’s designated certification testing facility, the testing process by which the WiMAX Forum confirms that the product meets the technical certification requirements, and the administrative process by which the WiMAX Forum determines that Licensee is a member in good standing and authorizes the issuance of the certification. For purposes of this Agreement, “Certification” has occurred only after Licensee’s product has successfully passed certification testing, as confirmed to it by the WiMAX Forum, *and* the WiMAX Forum or its designee has issued its final formal certification authorization to Licensee in accordance with its standard administrative practices.

(b) “**Certified Product**” means a product implementing WiMAX profiles under the IEEE 802.16 wireless networking standard that has successfully completed the Certification process.

(c) “**Certification Mark**” means the marks identified on **Exhibit A** hereto and each variation thereof for which the WiMAX Forum written authorization for use by its Certification Mark licensees.

(d) “**Effective Date**” shall have the meaning given in the preamble.

(e) “**Manual**” means the “WiMAX Forum Certification Mark Usage Guidelines,” as in effect from time to time.

2. **Certification Mark License.**

(a) **License Grant.** Provided that Licensee complies with the terms, conditions and provisions hereof:

(i) **Materials Preparation License.** The WiMAX Forum hereby grants to Licensee a limited right to use the Certification Mark prior to Certification for its internal purposes only in connection with each product that Licensee intends to submit for Certification within a reasonable period of time not to exceed six (6) months. The scope of this license is limited to the preparation of labels, packaging, marketing materials and other materials that Licensee intends to use with the product should it successfully complete Certification. All such materials shall comply with the requirements of the Manual and this Agreement. Licensee may not use or display the Certification Mark publicly on such materials or in connection with the product that it intends to submit for Certification until such time as the product becomes a Certified Product. If Licensee does not obtain Certification for its product for any reason, Licensee shall immediately upon its abandonment of Certification efforts destroy all materials prepared under this license.

(ii) **Certified Product License.** The WiMAX Forum hereby grants Licensee a limited, non-exclusive, worldwide, revocable, non-transferable royalty-free license, with limited right of sublicense solely as provided in Section 2(a)(iii), to use the Certification Mark on or in connection with its Certified Products.

(iii) **Sublicense Grant.** The WiMAX Forum hereby grants to the Licensee a limited, non-exclusive, worldwide, revocable, non-transferable license to sublicense the Certification Mark to third parties with which Licensee has contracted to advertise, promote or market the Certified Products. Licensee shall require all such third parties to agree in writing to all terms and conditions necessary and appropriate to protect the WiMAX Forum's right, title and interest to the Certification Mark, which shall include, but not be limited to, all applicable terms and conditions of this Agreement, and which shall also provide that the WiMAX Forum shall be a third party beneficiary of each such agreement.

(b) **Reservation of Rights.** Except for the limited license rights granted herein, the WiMAX Forum reserves to itself all right, title and interest in and to the Certification Mark.

3. **License Requirements and Limitations.** The licenses granted pursuant to Section 2 are granted subject to the following requirements and limitations:

(a) **Compliance with Manual and Trademark Policies.** Licensee shall comply with all requirements in the Manual and with all applicable WiMAX Forum policies relating to trademark usage (**the "Trademark Policies"**) as such policies are in effect from time to time, including the WiMAX Forum policy governing the use of "WiMAX." Licensee is solely responsible for keeping itself informed of the current requirements in the Manual and the Trademark Policies by reviewing from time to time

the version posted on the WiMAX Forum Web site and for making any necessary changes to its practices to remain in compliance with any revisions to the Manual and with the Trademark Policies. The WiMAX Forum is under no obligation to inform Licensee of changes to the Manual or the Trademark Policies other than by posting the revised version on its Web site, but the WiMAX Forum agrees to refrain from taking action without prior affirmative notice to Licensee if the provision upon which the WiMAX Forum action is to be based is materially different from the requirements of the Manual or the Trademark Policies that are applicable to this Agreement on the Effective Date. If Licensee does not agree with any changes to the Manual or the Trademark Policies, Licensee's sole remedy is to terminate this Agreement as provided herein and to discontinue all use of the Certification Mark.

(b) **Certification Requirements.** Licensee shall at all times comply with all requirements of Certification as the WiMAX Forum may communicate to it in connection with the Certification authorization and otherwise.

(c) **Product Name Changes.** Licensee will notify the WiMAX Forum in writing of any change to the name of the Certified Product and will not adopt a name for the Certified Product that may cause confusion as to the Certification status of any feature or function of the Certified Product.

(d) **Product Modification.** Licensee shall not modify the Certified Product in any manner that results in more than an immaterial change in features, function, or performance, without disclosing such modifications to the WiMAX Forum in writing and re-submitting the Certified Product for Certification at Licensee's sole cost and expense in accordance with the requirements and procedures of the WiMAX Forum Certification Program Manual.

(e) **Membership Status.** Licensee will maintain its membership status as a WiMAX Forum Principal member in good standing at all times while it is using the Certification Mark.

(f) **Certain Geographic or Usage Limitations.** In the event the WiMAX Forum determines that use of the Certification Mark may in any particular manner or jurisdiction violates any applicable laws or regulations, is contrary to public policy or may subject Licensee or the WiMAX Forum to any third party claims, legal proceedings, governmental investigations or proceedings, penalties or liabilities, Licensee agrees, upon receipt of notice and request from the WiMAX Forum, to promptly cease and desist from all use of the Certification Mark in such particular manner or jurisdiction.

(g) **Control.** The WiMAX Forum shall have absolute determination and control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, manner and degree of application, manner and extent of registration, maintenance, protection, enforcement, ownership, licensing, use and termination of the Certification Mark, the Manual, and its process for certifying Products and Services.

(h) **Specific Use Restrictions.** The licenses granted in this Section 2 may be used solely in connection with the Certified Products and are subject to the restrictions and obligations of Licensee set forth in this Agreement, including, without limitation, the following:

(i) Licensee shall not modify, enhance or change the Certification Mark or combine it with another mark, or use, adopt or register any marks confusingly similar to the Certification Mark, including specifically any mark with “WiMAX” as an element.

(ii) Licensee shall not omit portions or use a partial version of the Certification Mark.

(iii) Licensee shall not use the Certification Mark, or any portion thereof, as a domain name, including, without limitation, as a sub-domain name or name of the service or company.

(iv) Licensee shall not use the Certification Mark: (a) in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Certification Mark; (b) in any manner as would violate the rights of any third party; (c) in any manner as would result in a third-party claim or in any governmental investigation, claim or proceeding alleging unlawful or improper use of the Certification Mark; (d) on or in connection with any products or services other than the Certified Products and promotional materials pertaining to the Certified Products; or (e) in any manner other than as a certification mark.

(i) **Inspection.** Licensee will, upon the WiMAX Forum’s request and at no cost to the WiMAX Forum, provide the WiMAX Forum with a reasonable number of samples of the Certified Product within ten (10) business days from receipt of its written request.

(j) **Nonconforming Products.** If at any time the Certified Product fails in more than an immaterial degree to conform to the standards and specifications that were the basis for the Certification, Licensee will immediately cease all use of the Certification Mark on its undistributed Certified Product units. Licensee will also notify all distributors and customers who may have noncompliant Certified Product units and advertising therefor bearing the Certification Mark if the WiMAX Forum requests that it do so.

(k) **Third-Party Infringement.** Licensee will promptly notify the WiMAX Forum if it becomes aware of any infringement of the Certification Mark by a third party. Licensee shall have neither the right nor the obligation to prosecute any infringement claims against third-party infringers.

(l) **Noncompliance.** Licensee shall immediately and at its sole cost and expense correct any usage of the Certification Mark that the WiMAX Forum regards as failing to comply with the requirements of this Agreement or the Manual.

(m) **Unauthorized Use of the Certification Mark by Licensee.** Licensee acknowledges that if it engages in any unauthorized use or reference to the Certification Mark, its right to continue using the Certification Mark may be terminated and that irreparable injury will occur if such unauthorized use continues.

(n) **Relationship of Agreement and WiMAX Forum Membership.** This Agreement constitutes a portion of the “rules and regulations” of the WiMAX Forum as contemplated by the corporation’s Bylaws. Licensee acknowledges that a breach of this Agreement is also a breach of those rules and regulations and may give rise to the suspension or termination of Licensee’s membership in the WiMAX Forum.

4. **License Fees and Royalties.** The licenses granted hereunder are fully paid and without royalty.

5. **WiMAX Forum Ownership of the Certification Mark.** Licensee acknowledges the WiMAX Forum’s exclusive right, title, and interest in and to the Certification Mark and acknowledges that nothing herein shall be construed to accord to Licensee any rights in the Certification Mark except as otherwise expressly so provided. Licensee acknowledges that its use of the Certification Mark hereunder will not create in it any right, title or interest in the Certification Mark other than the limited license rights granted herein and that all such use of the Certification Mark and the goodwill generated thereby will inure to the benefit of the WiMAX Forum. Should the WiMAX Forum, in its sole discretion, deem it necessary to record Licensee as a registered licensee of the Certification Mark in any jurisdiction, it shall do so at Licensee’s expense (provided that Licensee may avoid such expenses by covenanting in an amendment to this Agreement that it will not use the Certification Mark in such countries), and Licensee will cooperate with WiMAX Forum to effect such recordation. Licensee warrants and represents with respect thereto that (a) it will not at any time challenge the WiMAX Forum’s right, title, or interest in the Certification Mark or the validity the Certification Mark or any registration thereof; (b) it will not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the WiMAX Forum in the Certification Mark; (c) it will not represent that it has any ownership in or rights with respect to the Certification Mark; and (d) it will not, either during or subsequent to the term of this Agreement, adopt, use, or register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of the Certification Mark or any of the WiMAX Forum’s other marks.

6. **Representations of Licensee.** Licensee represents and warrants that

(a) It is duly organized and in good standing under the laws of its jurisdiction of organization;

(b) Licensee has taken all actions that are necessary or advisable in order for it to enter into this Agreement;

(c) The person executing this Agreement on behalf of Licensee is authorized to do so;

(d) The Agreement, upon its execution by Licensee (and assuming due execution by the WiMAX Forum) shall be the binding obligation of Licensee, enforceable in accordance with its terms;

(e) Each Certified Product unit that it sells or distributes to the public will substantially conform to the specifications of the product unit that Licensee submitted for Certification;

(f) Licensee will comply with all changes to the Manual and the Certification requirements within three (3) months from the date of receipt of written notice of such changes; and

(g) Licensee will not challenge the WiMAX Forum's rights under its Certification program, the Manual, or this Agreement and will not challenge the validity of any WiMAX Forum mark.

7. **No Warranty by the WiMAX Forum.** The WiMAX Forum provides the licenses granted hereunder without warranty of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WIMAX FORUM DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES.

8. **Limitation of Liability.** IN NO EVENT SHALL THE WIMAX FORUM BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE WIMAX FORUM HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

9. **Indemnity.** Licensee agrees to defend, indemnify and hold WiMAX Forum and its respective representatives, employees, officers, directors and agents harmless against all claims, suits, costs, damages, judgments, attorney's fees, settlements or expenses incurred caused by, arising from or relating to any breach of this Agreement by Licensee or claimed, obtained or sustained by any third party, whether for personal injury, misrepresentation, or otherwise arising out of or relating to the manufacture, advertising, promotion, use, marketing or sale of the Certified Products, provided such claims are not caused by WiMAX Forum's negligence or breach of this Agreement.

10. **Term and Termination.**

(a) **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by a party as provided herein.

(b) **Termination.**

(i) **Termination by Licensee.** Licensee may terminate this Agreement at any time by providing notice to the WiMAX Forum and by discontinuing all use of the Certification Mark. Termination in this manner shall be effective upon receipt of the notice by the WiMAX Forum or at such time (not to exceed thirty (30) days) specified in the notice from Licensee.

(ii) **Termination by the WiMAX Forum.** The WiMAX Forum may terminate this Agreement upon thirty (30) days notice if Licensee breaches any provision of this Agreement and fails to cure such breach within such thirty (30)-day period. The WiMAX Forum may terminate this Agreement upon written notice if Licensee ceases to be a member in good standing of the WiMAX Forum. The WiMAX Forum may terminate this Agreement for convenience upon not less than thirty (30) days' written notice to Licensee if it discontinues its use of the Certification Mark as a certification mark.

(iii) **Consequences of Termination.** Upon termination of this Agreement, the licenses and all sublicenses granted hereunder shall immediately terminate. Licensee will immediately discontinue all use of the Certification Mark and shall immediately cause each sublicensee of the Certification Mark to discontinue its use. Licensee and its sublicensee(s) shall thereafter immediately destroy all materials in their possession containing the Certification Mark and shall certify to the destruction of such materials if the WiMAX Forum requests that they do so.

11. **Compliance with Laws.** Licensee will at all times comply with all laws, regulations, ordinances, rules and orders that are applicable to it in connection with its manufacture and sale of the Certified Product and the operation of its business generally.

12. **Miscellaneous.**

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California as applied to agreements entered into and fully performed therein by residents thereof. Both parties submit to jurisdiction in California and further agree that any cause of action arising under this Agreement shall be brought in a court in the County of Santa Clara, California.

(b) **Severability; Headings.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

(c) **Independent Contractors.** The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.

(d) **Notice.** The WiMAX Forum may give notice to Licensee by personal delivery, mail, courier, or facsimile to Licensee's physical address as identified in the WiMAX Forum's membership records. Licensee may give notice to the WiMAX Forum by personal delivery, mail, courier, or facsimile to the WiMAX Forum's physical address as identified at www.wimaxforum.org. Notice shall be deemed given: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. Notices by e-mail shall be deemed given by the end of the business day on which they are sent.

(e) **Entire Agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be changed only by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

(f) **Assignment.** Licensee may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the WiMAX Forum and any attempt to do so is void.

(g) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Licensee:

(Company Name)

(Signature)

(Print Name)

(Print Title)

(Date)

WiMAX Forum

Bruce D. Holloway
Secretary

(Date)

Exhibit A
Certification Mark



“WiMAX Forum Certified”