



**NETWORK TEST AUTOMATION FORUM (NTAF)  
INTELLECTUAL PROPERTY RIGHTS POLICY  
ADOPTED: June 18, 2010**

## **1. PURPOSE**

The purpose of this intellectual property rights policy is to:

(1) facilitate and develop NTAF standards of interoperability of commercial testing tools, testing solutions and test infrastructure for the data communications and telecommunications industry and (2) promote through a number of means the widespread adoption and use of products employing the NTAF standards.

At times, the activities of the NTAF 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 NTAF 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 NTAF Intellectual Property Rights Policy (the “IPR Policy”) outlines the policy of the NTAF regarding the use of proprietary materials in the work product of the NTAF and in other activities that result in the creation or use of intellectual property rights.

No Member of the NTAF, or any other individual or entity, may participate in any working group or committee governed by this IPR Policy without agreeing to the terms and conditions in this IPR Policy, as it may be amended from time to time.

NTAF membership, or continued membership, as the case may be, will be conditioned upon agreement and adherence to the IPR Policy.

## **2. DEFINITIONS**

**2.1. Affiliate** shall mean any entity that directly or indirectly Controls (as defined herein), is Controlled by, or is under common Control with another entity. An entity shall be an Affiliate only for so long as the conditions set forth in the prior sentence are met, and if such conditions are not met or are lost for any such entity, such entity shall no longer be deemed an Affiliate. For purposes hereof, “*Control*” or “*Controlled*,” with respect to an entity means having the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other equity interests, if not a stock



corporation) of such entity that has voting rights in the election of the directors or the equivalent managers of such entity.

- 2.2. Contribution** shall mean a submission to or for the Technical Committee proposing an addition to or modification of an existing Implementation Agreement or a Draft Implementation Agreement or a new Implementation Agreement 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 the Technical Committee 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).
- 2.3. Draft Implementation Agreement** shall mean a preliminary draft of a proposed Implementation Agreement to be circulated within the Technical Committee to solicit feedback and input in an effort to prepare an Implementation Agreement.
- 2.4. Implementation Agreement** shall mean a final technical standards document adopted and approved for release by the NTAF pursuant to the NTAF Bylaws or other applicable document, and any updates or revisions adopted and approved for release by the NTAF.
- 2.5. Licensor** shall mean any entity granting a license under Necessary Claims, as may be required by this IPR Policy.
- 2.6. Licensee** shall mean any entity that has been granted a license under Necessary Claims, as may be required by this IPR Policy.
- 2.7. Member** shall mean a member of the NTAF who so qualifies in accordance with the provisions of the Bylaws of the NTAF.
- 2.8. Necessary Claims** see Section 4.1
- 2.9. Non-Contributed Necessary Claims** means a Necessary Claim that covers a Contribution made by a Member other than the Member that owns, controls, or has the right to grant a license under such Necessary Claim.
- 2.10. Non-Technical IPR** shall mean non-patent intellectual property rights that the NTAF may develop or use from time to time except for those intellectual property rights contained in Contributions, Draft Implementation Agreements, and Implementation Agreements.
- 2.11. NTAF Management** shall mean the duly appointed officers and staff of the NTAF.
- 2.12. RAND Terms** shall mean reasonable and non-discriminatory, as further set forth in Section 4.3 herein.
- 2.13. Royalty Free** shall mean that the Licensee need not pay a royalty, license fee, or other monetary compensation of any kind to the Licensor.
- 2.14. Technical Committee** shall mean a group created by authorization of the NTAF Board to undertake certain specific defined tasks for the purposes of generating, developing or revising Implementation Agreements. “Technical Committee” shall be used to refer to Working Groups, subcommittees, and



Implementation Agreement development committees governed by this IPR Policy.

### **3. PUBLIC DISCLOSURE GUIDELINES**

#### **3.1. Board Approval for Disclosure of NTAF Information**

Public disclosure (i.e., disclosure to anyone who is not a Member) of any version or revision of a NTAF Implementation Agreement or Draft Implementation Agreement, or other related materials of the NTAF, shall be subject to the advance written approval of the Board pursuant to the terms hereof. In addition, Members shall not, without the prior written authorization of the NTAF, publicly disclose other information or materials of the NTAF 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.

#### **3.2. Internal Disclosure of NTAF Information**

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

### **4. PATENT DISCLOSURE STANDARDS**

#### **4.1. Disclosure by Technical Committee Participants**

(a) **General Disclosure Standard.** All individuals participating in any way in a Technical Committee 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 Necessary Claims (as defined herein), related to a Draft Implementation Agreement or an Implementation Agreement that is generated, developed, reviewed or revised by such Technical Committee.

(1) **Necessary Claims** shall mean (with respect to, as applicable, an Implementation Agreement or a Draft Implementation Agreement 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 Implementation Agreement or Draft Implementation Agreement, as applicable. For purposes of the foregoing, a “fully compliant implementation” specifically includes the implementation of any or all relevant portions of the Implementation Agreement or Draft Implementation Agreement, as applicable, that are required to implement a mandatory feature or function under that Implementation Agreement or Draft Implementation Agreement.

- (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 portion of an Implementation Agreement 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 Implementation Agreement or Draft Implementation Agreement, 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 an Implementation Agreement or Draft Implementation Agreement, but are not themselves expressly set forth in an Implementation Agreement or Draft Implementation Agreement; or (iv) covering only the implementation of other published specifications not developed by or for the NTAF, but referred to in the body of an Implementation Agreement or Draft Implementation Agreement, without being required for implementation of any portion of the specification itself.

#### **4.2. CHAIRPERSON INSTRUCTIONS**

The Technical Committee chairperson shall remind participants of this encouragement of early disclosure at the beginning of each Technical Committee plenary meeting and shall provide a copy of this IPR Policy to any requesting party. The NTAF Management shall remind each Member of this encouragement of early disclosure at each Technical Committee Straw Ballot and Final Ballot vote. Each Member shall receive a ballot, regardless of whether or not they were involved in the development of the Draft Implementation Agreement or Implementation Agreement that has been submitted for a vote. Disclosure under Section 4.1 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 Section 4.1.

#### **4.3. MINIMUM CONTENTS OF DISCLOSURE**

- (a) When disclosing patents and/or patent applications pursuant to this IPR 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 Implementation Agreement or Draft Implementation Agreement.
- (b) Where disclosure is *required* under this IPR Policy as set forth further herein (i.e., Section 6.4), the following minimum information shall be provided to NTAF in writing. 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. Nothing herein requires disclosure of unpublished pending patent applications, but a Member may choose to do so on a voluntary basis or pursuant to a non-disclosure agreement. Once an unpublished pending patent application that would have been required to be disclosed had it been published, is published, the Member must disclose the identifying information about the published application as specified above, or disclose the fact that such application has been abandoned, upon written request from the NTAF 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 NTAF Management at [ipr@ntaforum.org](mailto:ipr@ntaforum.org) declaring with regard to any Necessary Claims that:
  - (1) it will grant a license on Royalty-Free and other reasonable and nondiscriminatory terms (RAND) and conditions; or
  - (2) it will grant a license on reasonable and nondiscriminatory (RAND) terms and conditions that may include a reasonable royalty or fee; or
  - (3) 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.

## **5. LICENSING OF MEMBER INTELLECTUAL PROPERTY RIGHTS**

### **5.1. REQUIRED LICENSING OF NECESSARY CLAIMS**

- (a) Each Member, as a condition to membership in the NTAF, hereby agrees that it will, subject to Section 5.2, grant to other Members, nonmembers, and their respective Affiliates, under reasonable and nondiscriminatory terms, 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 products that are compliant with the required portions of an Implementation Agreement relevant to such Necessary Claims (“Compliant Portions”), provided that such agreement to license shall not extend to (i) any part, function or feature of a product that is not covered by the Implementation Agreement, or (ii) any product, part, function or feature that implements only *part* of the Implementation Agreement and fails to interoperate with other products that are compliant with *all* required portions of the Implementation Agreement. It is acknowledged that references in this IPR 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 6.3 below.

For the avoidance of doubt, such agreement to grant licenses under Section 5.1 shall apply only to Necessary Claims applicable to Implementation Agreements as adopted and approved for release by the NTAF.

## **5.2. RECIPROCITY**

The Members acknowledge that the willingness of Members to make available a license above under Section 5.1 is based on the condition of a reciprocal willingness of the Licensee.

- (a) The provisions of Section 5.1 shall not be effective with respect to any other Member or its Affiliates that does not agree to grant a license under reciprocal terms under its Necessary Claims to such Member and its Affiliates in accordance with the requirements of Section 5.1.
- (b) The eligibility of a nonmember to receive a license under Section 5.1 is expressly conditioned upon its willingness to grant a license under reciprocal terms under its Necessary Claims to such Member in accordance with the requirements of Section 5.1 and subject to the transfer restrictions in Section 5.4 to all Members and nonmembers and their respective Affiliates. No Member is obligated to grant a license under Section 5.1 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 5.1 or if it fails to grant such license under Section 5.1 in accordance with the requirements of that section.

## **5.3. 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 IPR Policy by any



Member or its Affiliates to any other Members, their Affiliates, nonmembers or to the NTAF, either directly or by implication, estoppel or otherwise, subject to the agreements to grant licenses expressly set forth in this IPR Policy.

#### **5.4. TRANSFER OF NECESSARY CLAIMS**

Each Member agrees that it will not transfer, and has not transferred, patents or patent applications having Necessary Claims for the purpose of circumventing this IPR Policy. Any transfer by a Member 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 IPR Policy; and
- (b) an on-going agreement to grant licenses under such transferred patents and published patent applications by the acquirer pursuant to this IPR 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 Member by standards bodies, specification development organizations, or similar organizations (or language of similar import) shall clearly be sufficient to comply with this Article.

#### **5.5. COPYRIGHTS**

- (a) Each Member grants to the NTAF 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 Draft Implementation Agreement, Implementation Agreements and related materials, and of performing other activities deemed by the NTAF to be appropriate to the development of products compliant with a Implementation Agreement, based on such documents, and consistent with the NTAF Bylaws.
- (b) The NTAF shall own the copyright in the Draft Implementation Agreement and the published Implementation Agreements themselves, subject to the underlying copyright rights of the contributing Members and other copyright owners in their contributions. Any publication of an Implementation Agreement shall contain an appropriate copyright notice in the name of the NTAF. The NTAF may exercise any and all rights of copyright ownership in the Implementation Agreement and will be authorized to license such rights to all implementers of the Implementation Agreement and to other entities as approved by the Board and in accordance with this IPR Policy. The NTAF hereby grants, under such copyright rights, to each voting Member a royalty-free, non-sublicensable right to reproduce, create derivative works, distribute and display Implementation Agreements only to develop, implement or otherwise use published Implementation Agreements to test compliance or



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

- (c) For the avoidance of doubt, the provisions in this Section 5.5 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 Implementation Agreements, to the NTAF or to any other of its Members or to any nonmembers.
- (d) Each Member grants to the NTAF 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 NTAF activities. Such grant shall be solely for the purpose of permitting the NTAF and its Members to use the Non-Technical IPR internally and publicly in connection with activities relating to the NTAF 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 NTAF 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.

## **6. IMPLEMENTATION AGREEMENT NOTICE, REVIEW AND MEMBER WITHDRAWAL**

### **6.1. NOTICE OF THIRTY (30) DAY REVIEW PERIOD**

The NTAF shall provide all Members with not less than thirty (30) days' prior written notice of the proposed adoption of a new or revised Implementation Agreement. Such notice shall include a complete draft of the Implementation Agreement as approved by the Board and state the effective date when the Implementation Agreement (if approved), and all Necessary Claims therein, shall be subject to the licensing provisions of Section 5.1.

### **6.2. REVIEW OF IMPLEMENTATION AGREEMENT**

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 Implementation Agreement shall be subject to the licensing provisions of Section 5.1 upon final adoption of the Implementation Agreement 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 6.3.



### **6.3. OPT-OUT PROVISION**

In order to avoid a licensing obligation for Non-Contributed Necessary Claims in the Implementation Agreement, a Member must, prior to the end of the review period, declare in writing its intention *not* to license such Non-Contributed Necessary Claims under the terms of this IPR Policy and specify which Non-Contributed Necessary Claims are affected; provided, however, any Non-Contributed Necessary Claims for which a Member has not submitted a declaration under this Section 6.3 by the end of the review period shall be subject to the obligations set forth in this IPR Policy. A member may also declare in writing its intention not to license Non-Contributed Necessary Claims prior to the review period, provided, however, that a Member may only make such declarations with respect to specifically identified Non-Contributed Necessary Claims of patents or patent applications. In case a Member opts out with respect to Non-Contributed Necessary Claims in an unpublished patent application, the Member is required, upon signing of a non-disclosure agreement, to provide the unpublished patent application for review. A Member may not issue a blanket declaration that it will not license Non-Contributed Necessary Claims under this IPR Policy. For the avoidance of doubt, each Member's commitment to license as described in this IPR Policy applies to *all* of a Member's Necessary Claims, despite lack of knowledge thereof by individuals participating in the Technical Committee on behalf of such Member. A Member is only permitted to declare its intention *not* to license its Necessary Claims to an Implementation Agreement if such Necessary Claims are relevant to such Implementation Agreement 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 Implementation Agreement, such Member discloses its patent rights including such Non-Contributed Necessary Claims and provides the minimum contents of disclosure set forth in Section 4.3(b). If this "no license" option is selected, or in a situation where a Member alleged to have Necessary Claims refuses to provide a licensing declaration, the NTAF Technical Committee developing the affected Implementation Agreement will, in consultation with the Board, determine how best to proceed, such as by attempting to develop a revised version of the Implementation Agreement that works around the potentially blocking patent rights that the Member has declined to license to Members and nonmembers and their Affiliates pursuant to this IPR Policy.

### **6.4. WITHDRAWAL**

- (a) At any time, a Member may withdraw from the NTAF as a whole, or may withdraw from a particular Technical Committee without withdrawing from the NTAF 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 NTAF Management at [ipr@ntaforum.org](mailto:ipr@ntaforum.org). Such withdrawal shall become effective as of the specified date upon the receipt of such written notice by the NTAF Management.

A Member that participated in a Technical Committee, and then withdraws



before the end of the review period specified in Section 6.1 for a Draft Implementation Agreement being developed by that Technical Committee, shall be obligated to disclose all its patent rights that include Necessary Claims related to such Draft Implementation Agreement known by the individuals participating in the Technical Committee on behalf of such Member. Specifically, if an individual participating in a particular Technical Committee 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 Implementation Agreement, then the individual or Member shall give notice to the NTAF Management at [ipr@ntaforum.org](mailto:ipr@ntaforum.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 5.1; 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.

#### **6.5. NO IP SEARCH REQUIRED**

Nothing in this Section or this IPR 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.

### **7. OTHER PROVISIONS**

#### **7.1. TRADEMARKS**

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

#### **7.2. SURVIVAL OF AGREEMENT TO GRANT LICENSE**

Notwithstanding any dissolution of the NTAF or a Member's termination,



expiration or withdrawal of its membership in the NTAF (or its withdrawal from a particular Technical Committee) 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 5.1 shall remain in full force and effect for patents owned, controlled, or for which it has a right to grant a license without payment to a third party as of the date of such termination, expiration, or withdrawal, as follows:

- (a) any of its Necessary Claims in a Contribution made by such Member or former Member (or its Affiliate) that is incorporated into a Implementation Agreement to which such Contribution was offered;
- (b) any Non-Contributed Necessary Claims in a Implementation Agreement adopted by the NTAF 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 an Implementation Agreement adopted by the NTAF *after* the effective date of the Member's termination, expiration or withdrawal of membership that:
  - (1) are necessary for the later-adopted Implementation Agreement to be backwards compatible with the prior Implementation Agreement(s), and
  - (2) 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 Implementation Agreement 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 IPR Policy (and thus, for example, a Member that withdraws *before* the end of the review period for a Draft Implementation Agreement and makes the required disclosures under Section 6.3 has no obligation to license its Non-Contributed Necessary Claims in the Implementation Agreement, 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 5.2 so long as that former Member remains obligated to license any Necessary Claims under this IPR 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 NTAF or a Member's termination, expiration or withdrawal of its membership in the NTAF (or its withdrawal from a particular Technical Committee) 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.



### **7.3. NO REPRESENTATIONS OR WARRANTIES**

EACH MEMBER HEREBY AGREES AND ACKNOWLEDGES THAT: (A) THE NTA Forum AND EACH MEMBER, INCLUDING TECHNICAL COMMITTEE REPRESENTATIVES AND WORKING GROUP CHAIRS, TAKE NO POSITION AS TO WHETHER ANY INTELLECTUAL PROPERTY RIGHTS EXIST IN ANY DRAFT OR FINAL IMPLEMENTATION AGREEMENTS; (B) THE IMPLEMENTATION AGREEMENTS AND ANY CONTRIBUTIONS THERETO ARE ALL PROVIDED “AS IS” AND “WITH ALL FAULTS”; (C) THE NTA Forum AND EACH MEMBER, INCLUDING TECHNICAL COMMITTEE REPRESENTATIVES AND WORKING GROUP CHAIRS, MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE IMPLEMENTATION AGREEMENTS OR ANY CONTRIBUTIONS THERETO, OR USE THEREOF, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SUFFICIENCY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OR RESULTS OR OF LACK OF NEGLIGENCE; AND (D) NEITHER THE NTA Forum NOR ANY OF ITS MEMBERS, INCLUDING TECHNICAL COMMITTEE REPRESENTATIVES AND WORKING GROUP CHAIRS, HAS UNDERTAKEN ON BEHALF OF THE NTA Forum OR ITS MEMBERS, ANY PATENT SEARCH WITH RESPECT TO THE IMPLEMENTATION AGREEMENTS. 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 IMPLEMENTATION AGREEMENTS.

### **7.4. LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE NTA 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 IPR 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.

### **7.5. REVISIONS TO THIS IPR POLICY**

Any revisions or other amendments to this IPR Policy will become effective only upon approval by a three-fourths (3/4) vote of all occupied Board seats, 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 IPR Policy (with the revisions highlighted) is posted on the home page of the NTA Forum Web site (currently [www.ntaforum.org](http://www.ntaforum.org)); and (c) Members are afforded at least thirty (30) days from the date of receiving notice of such revisions to withdraw from the NTA Forum; provided, however,



that ministerial changes to this IPR 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 NTAF prior to the end of this thirty(30)-day period will be subject to the surviving provisions of the IPR Policy in accordance with their terms, but will not be subject to terms of the revised or amended IPR Policy.