

WIRELESS INDUSTRIAL TECHNOLOGY KONSORTIUM
INTELLECTUAL PROPERTY POLICY

Adopted: May 16, 2008

Background: The Wireless Industrial Technology Konsortium (“the Konsortium”) was formed to develop, implement, promote and distribute on a nonprofit basis one or more software communication stacks, and supporting products (collectively, “Konsortium Products”), the first of which will be the WirelessHART™ Specification published by the HART Communication Foundation, and to encourage the use of such Konsortium Products on a standardized basis within, for example, the process automation and factory automation communities. To that end, the Konsortium has adopted the following policy (“Policy”) for the potential interaction between the intellectual property rights of its own Members or of third parties and the Konsortium Products. For purposes of this Policy, “Member” means any member of the Konsortium, regardless of category of membership under the Konsortium’s bylaws.

1. KONSORTIUM PRODUCTS

This Policy is addressed solely to the Konsortium’s development, implementation, promotion and distribution of its own Konsortium Products, which will be based on the published specifications or standards of third parties, such as the HART Communication Foundation (collectively, “Third Party Specifications”). Questions regarding intellectual property rights about a given Third Party Specification should be referred directly to the source of such Third Party Specification.

For avoidance of doubt, under this Policy, a “Konsortium Product” refers to any Stack or other product in any stage of conception, development, implementation or distribution by the Konsortium, including, without limitation, any (a) documentation of user, functional or system requirements; (b) architecture, technical approach or system design; (c) component and unit specifications or design; (d) coding, unit test planning or unit test; (e) unit testing or system testing; (f) system integration or testing, including beta testing; (g) commercial release or version; (h) unit or system upgrade or routine software maintenance release; and (i) any new replacement release or future Version, Upgrade or Update of any prior Konsortium Products. However, “Konsortium Product” shall not include any hardware that may be volunteered or contributed by a Member of the Konsortium to develop a Konsortium Product.

2. INTELLECTUAL PROPERTY RIGHTS ARISING FROM KONSORTIUM ACTIVITIES

IPR arising out of or resulting from Konsortium activities shall belong to the Member who generated the IPR. If such IPR are generated jointly by more than one Member and the separate parts thereof cannot be distinguished between or among those Members, then such IPR shall be jointly owned by those Members, unless those Members otherwise agree in writing on different ownership rights. Whether individually or jointly owned, each Member who owns such IPR arising out of or resulting from Konsortium activities shall be deemed to have granted the Konsortium a perpetual, royalty-free, paid-up, worldwide, non-exclusive and sublicensable license thereof to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of Final Releases of the Konsortium Products solely in Industrial Applications. The Konsortium and its Licensing Agents shall honor this licensing policy.

3. INTELLECTUAL PROPERTY RIGHTS NOT ARISING FROM KONSORTIUM ACTIVITIES

If the owner of any IPR that did not arise out of or result from Konsortium activities desires to offer any portion thereof for use or inclusion in a Konsortium Product, it shall do so only by means of a written assignment or license agreement duly executed between such owner and the Konsortium.

Subject to the written agreement to be reached with the owner of any IPR, the Konsortium may accept such IPR for use or inclusion in the Konsortium's specifications or standards through:

- a. an outright assignment of all right, title and interest thereto; or
- b. a perpetual, royalty-free, paid-up, worldwide, non-exclusive license to the Konsortium with the right to sublicense the same in the Konsortium's sole discretion without further obligation or accounting to such original owner to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of Final Releases of the Konsortium Products solely in Industrial Applications.

This Section 3 shall apply equally to Members and non-Members of the Konsortium. Any such assignment or license to the Konsortium shall be accomplished by reasonably uniform standard forms of assignments or licenses to ensure fair, consistent and efficient

administration by the Konsortium of any subsequent licenses or sublicenses of such rights to Members, non-Members and the general public.

4. NOTIFICATION OF POTENTIALLY CONFLICTING ESSENTIAL IPR DURING DEVELOPMENT OF KONSORTIUM PRODUCT

Within ninety (90) days of the Konsortium issuing a call for experts at the commencement of a project to develop a Konsortium Product, each Member, including any Member that joins the Konsortium prior to the end of any such ninety (90) day period, shall provide the Konsortium written notice of any Essential IPR that such Member knows did not or will not arise out of or result from Konsortium activities¹ and that may be infringed by such Konsortium Product. In the written notice, such Member shall inform the Konsortium if it will in good faith (a) assign such Essential IPR, or any part thereof, to the Konsortium; or (b) enter into a reasonable and non-discriminatory non-exclusive license of such Essential IPR to the Konsortium, and such Member shall not unreasonably withhold or delay its agreement to such assignment or license, as it may elect in its discretion. If such Member will not so assign or license such Essential IPR, or any part thereof, to the Konsortium on such basis, and if the Konsortium deems that there would otherwise be an infringement, then the Konsortium shall modify the development of such Konsortium Product to avoid any such infringement.

If a Member does not provide the Konsortium with such written notice within ninety (90) days of the Konsortium issuing a call for experts at the commencement of a project to develop a Konsortium Product that such Essential IPR exist, then such Member shall be deemed to have been granted to the Konsortium a perpetual, royalty-free, paid-up, worldwide, non-exclusive license to such Essential IPR to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of Final Releases of the Konsortium Products solely in Industrial Applications with the right to sublicense the same in the Konsortium's sole discretion and without further obligation or accounting to such Member.

5. NOTIFICATION OF POTENTIALLY CONFLICTING ESSENTIAL IPR BEFORE FINAL RELEASE OF KONSORTIUM PRODUCT

¹ That is, this rule only applies to IPR other than those already covered by Section 2 of this Policy.

Prior to a Final Release of a Konsortium Product, the Konsortium's President shall publish or cause to be published a written notice thereof to all Members of the Konsortium. Such notice shall expressly request Members (including their affiliates) to inform the Konsortium promptly and in writing if they have any knowledge or reason to know of the existence of any IPR under the law of any nation which might legally bar or adversely affect such Final Release. In the absence of any affirmative response, the Konsortium may proceed with such Final Release not less than ninety (90) days after the date of the notice to all Members. However, if any affirmative response is received from such notice, the Konsortium shall defer such Final Release until appropriate legal review has been made by the Konsortium's intellectual property counsel, subject to Section 3 or Section 4 of this Policy, as applicable.

If any Member or non-Member notifies the Konsortium of the alleged existence of any conflicting IPR that might legally bar or adversely affect the proposed Final Release of a Konsortium Product,

- a. Such notice shall contain a reasonably detailed description of the IPR and of the precise nature and extent of the alleged conflict between such IPR and the proposed Konsortium Product, provided, however, no such notice shall be deemed admissible as evidence in any legal proceeding against the party providing such notice;
- b. All such communications between the Konsortium and the notifying party or between the Konsortium and the owner of that IPR (and between their respective counsel) shall be held in confidence to the maximum practical extent. Such duty of confidentiality, however, shall not extend to any information that is: (i) or becomes publicly known through no act or omission of the Konsortium; (ii) independently developed by the Konsortium without any use of or reliance upon disclosing party's confidential information, as shown by the Konsortium's books and records; (iii) obtained from a third party without obligation to the disclosing party; (iv) already known to the Konsortium prior to its receipt from the disclosing party, as shown by the Konsortium's books and records; or (v) required to be disclosed pursuant to law, provided, however, the Konsortium shall give prompt and prior written notice thereof to the disclosing party and, provided further, the Konsortium shall give

reasonable cooperation to the disclosing party to limit any public release of such information to the extent provided by law;

- c. If the IPR in question is owned by a Member of the Konsortium, the President of the Konsortium and such Member shall consult with one another in good faith to determine if Section 2 or Section 3 of this Policy would be applicable to obtain a license of such IPR for the Konsortium or if there would be any other mutually acceptable resolution of the apparent conflict between such IPR and the Konsortium Product at issue; and
- d. If the IPR in question is owned by a non-Member, the President of the Konsortium shall endeavor in good faith to determine if rights comparable to those contained in Section 3 of this Policy can be obtained from such non-Member for the benefit of the Konsortium or if there would be any other mutually acceptable resolution of the conflict between such IPR and the Konsortium Product at issue.

6. NEW MEMBERS WITH POTENTIALLY CONFLICTING ESSENTIAL IPR

If a party desires to become a Member of the Konsortium and to enjoy the benefits of such membership and if such party owns any Essential IPR that is known or reasonably believed by the Konsortium to conflict with any Konsortium Product, then, as a condition of its membership in the Konsortium, such party shall grant the Konsortium a perpetual, royalty-free, paid-up, worldwide, non-exclusive license to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of Final Releases of the Konsortium Products solely in Industrial Applications with the right to sublicense the same in the Konsortium's sole discretion and without further obligation or accounting to such party, effective from and after the first date of any such conflict between a Konsortium Product and such party's IPR. For avoidance of doubt, such license to the Konsortium and such sublicenses shall inure to the benefit of all Members and shall preclude any suit or claim, whether in law or in equity, by such party against any other Member who enjoys rights with respect to the Konsortium Products under this Policy.

7. KONSORTIUM PRODUCT DEVELOPMENT

The Konsortium shall not knowingly use or incorporate any information or data into any Konsortium Product or any other materials to be made available to Members, non-

Members or the general public which the Konsortium does not own or have lawful rights to use through a license or assignment of title under Sections 2, 3 or 4 of this Policy.

8. PROTECTION OF KONSORTIUM INTELLECTUAL PROPERTY

The Konsortium may consult with intellectual property counsel from time to time. The Konsortium may seek to register and protect such Patents, copyrights, trademarks or other IPR of the Konsortium as reasonably necessary or appropriate to further the general purposes of the Konsortium and to ensure the broadest possible dissemination and implementation of the Konsortium Products.

9. TERMS OF KONSORTIUM LICENSES TO PROMOTER MEMBERS

In recognition and consideration of the extensive financial and technical support provided by the Promoter Members to the Konsortium, the Konsortium shall grant to each Promoter Member and its affiliates a perpetual, royalty-free, paid-up, worldwide, non-exclusive, sublicensable and transferable license under the Konsortium's Essential IPR and other IPR (a) to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of each Stack subject to a Final Release or derivative works solely in Industrial Applications; and (b), if and to the extent the Konsortium owns all right, title and interest to such Essential IPR and other IPR, to develop, have developed, make, have made, import, export, use, sell, offer for sale or otherwise dispose of each Stack subject to a Final Release outside Industrial Applications.² Such a license shall include rights in both the Object Code and Source Code of the Stack in its Final Release form (or any enhancements or improvements thereof), provided, (x) a Promoter Member or affiliate thereof may only sublicense Object Code as embedded within hardware to a third party, subject to normal and customary non-disclosure and no "reverse engineering" obligations, and (y) a Promoter Member or affiliate thereof may not sublicense or disclose Source Code to a third party without the Konsortium's prior written approval. In addition, the Board

² The intent of this Section 9 is to provide licenses for the Essential IPR or other IPR for the Promoter Members solely in the field of use of Industrial Applications and, to the extent the Konsortium owns outright any Essential IPR or other IPR, also in any other field of use. Any Konsortium Product or subset thereof can also be utilized in other fields of use, but then each Promoter Member that desires authorization for such uses outside of Industrial Applications shall be individually responsible for negotiating any IPR licenses from the respective IPR owners, as appropriate, that might be required to do so and may not rely upon the licenses in this Section 9 for such authorization except insofar as an authorization from the Konsortium itself to such Promoter Member.

of Directors shall identify one or more individual software modules of a Stack subject to a Final Release or of a Stack which does not achieve Final Release to be separately licensed to all Promoter Members for use in non-competitive applications (that is, for other than Industrial Applications) on the same terms and conditions but only on an “as-is” basis and without any further obligation on the part of the Konsortium. Each Promoter Member shall also be licensed to use certain trade marks and logos of the Konsortium on a terminable, royalty-free, paid-up, worldwide and non-exclusive basis, subject to the Konsortium’s standard and reasonable trademark usage policies and procedures.

10. RIGHTS OF ADOPTER OR OTHER MEMBERS

In recognition and consideration of the fees paid, or other contributions made, by Adopter Members of the Konsortium and by any other Members of the Konsortium who are not Promoter Members, the Konsortium shall grant such Adopter Members and other Members: (a) licensed access to certain Konsortium documents as determined by the Konsortium’s Board of Directors, provided such access shall be limited to such Member’s internal use only and not for reuse by or distribution to others without the Konsortium’s prior written consent; and (b) a license to use certain trade marks and logos of the Konsortium on a terminable, royalty-free, paid-up, worldwide and non-exclusive basis, subject to the Konsortium’s standard and reasonable trademark usage policies and procedures. For avoidance of doubt, Adopter Members may gain access to any Stack subject to a Final Release through a duly authorized Licensing Agent under such reasonable and non-discriminatory terms and conditions as the Konsortium may prescribe from time to time.

11. TERM OF LICENSES IN EVENT OF DISSOLUTION

As noted above, the licenses granted to the Konsortium under Section 4 of this Policy or any other licenses granted to the Konsortium are to be perpetual except, as to any license of a Patent, such license shall be for the maximum term of such Patent under applicable law. If the Konsortium is acquired by or merged into another entity or the Konsortium is legally dissolved or otherwise ceases to do business, all such licenses shall inure to the benefit of any successors or assigns and shall, in any case, have a term of not less than twenty (20) years from the effective date of such event or the maximum term of any Patent, as applicable and, in any case, such event shall not terminate, shorten, limit,

modify or otherwise affect any sublicenses of such rights granted by the Konsortium to its Members or to others prior to the effective date of such event.

12. IMPLEMENTATION PROCEDURES

The Konsortium's Board of Directors or its President may adopt administrative measures and procedures to implement this Policy.

13. APPROVAL AND AMENDMENT

This Policy shall become effective upon approval by a unanimous vote of the Konsortium's Board of Directors. After such approval, this Policy may then be amended only upon approval by at least a two-third (2/3rd) vote by the Konsortium's Board of Directors. Upon such approvals, the President shall promptly publish this Policy (or amendments thereto) and inform the Members of its purpose and effect.

14. HEADINGS

Headings and captions used in this Policy are only for convenience and shall not be deemed to modify, expand, limit or otherwise alter the terms and conditions stated herein.

APPENDIX A

DEFINITIONS

Unless otherwise defined in this Policy, any capitalized terms used in this Policy shall have the definitions assigned to them in this Appendix A and shall include the singular as well as the plural.

1. "Adopter Member" means such Member as defined in the Konsortium's bylaws.
2. "Essential IPR" means IPR that are any of the following: (a) IPR that are associated with and embodied within any technical standard relating to WirelessHART or any other technical standard upon which the Konsortium has decided to develop a Konsortium Product, whether open or restricted; (b) IPR that are considered in good faith by the Konsortium's Board of Directors to be essential to the realization, representation or implementation of such a Konsortium Product; or (c) IPR that cannot be practically or economically avoided or circumvented to comply with such standard.
3. "Final Release" means a Konsortium Product (as defined in the Background and Section 1 of this Policy) that has been approved by the Board of Directors as being ready for licensing through a Licensing Agent for commercial adoption and use.
4. "Industrial Application" means, in particular, any application in process automation or factory automation, especially in WirelessHART™ measurement systems. For avoidance of doubt, "Industrial Application" shall not include the telecommunication, building automation, transportation, or information technology industries as such but may include process or factory automation applications to produce hardware for those industries.
5. "IPR" means any type of intellectual property right, under the laws of any nation, including, but not limited to, Patent, copyright, registered design, trademark, service mark, design right, trade secret and/or know-how and other forms of protection from time to time subsisting in relation to the same, including the right to apply for any such protection and trade secrets and other unpublished information.
6. "Licensing Agent" means a legal entity chosen by the Konsortium's Board of Directors to distribute licenses for Final Releases of the Stacks developed by the Konsortium.

7. "Object Code" means the representation of code that a compiler or assembler generates by processing a source code file. Object files contain object code, often called "binaries." A linker is typically used to generate an executable or library by linking object files together.
8. "Patent" means any class or type of patent or patent application (including, without limitation, original, divisional, continuation, continuation-in-part, extension, reexamination, reissue or utility model for the aforementioned in any country of the world) that may arise in the process of a Stack's development.
9. "Promoter Member" means such Member as defined in the Konsortium's bylaws.
10. "Source Code" means software usually written in programming language and used as input to a process that produces executable (compiled or interpreted) programs.
11. "Stack" means a software stack following the Open Systems Interconnection (OSI) model.
12. "Update" means software that fixes at least one deficiency of a Konsortium Product.
13. "Upgrade" means any improvement of a Konsortium Product which is not already a new Version.
14. "Version" means any software for a Konsortium Product that has significant new code or functionality for such Konsortium Product, including but not limited to software (a) to realize a new product generation; (b) to meet the requirements of a new version of an applicable standard; or (c) to meet the requirements of a new baseband chipset and/or radio frequency (RF) chipset.
15. "WirelessHART Specification" means HART 7, the wireless industrial mesh specification released by the HART Communication Foundation in 2007.