

# ZIGBEE ALLIANCE

## ADOPTER MEMBER AGREEMENT

**Parties:**

ZIGBEE ALLIANCE

("ZIGBEE" or "ALLIANCE")

508 Second Street  
Suite 206  
Davis, California 95616

Attn: Director of  
Operations

\_\_\_\_\_  
Corporate Name ("**Adopter**")

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
This Adopter Member Agreement ("**Adopter Agreement**") is made as of the date accepted by ZIGBEE as set forth below. By executing this Adopter Agreement, Adopter agrees to be bound by the terms and conditions attached to this cover page.

**ZIGBEE ALLIANCE:**

**Adopter:**

\_\_\_\_\_  
President or Director of Operations  
Date Accepted: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

# **ADOPTER MEMBER AGREEMENT**

## **TERMS AND CONDITIONS**

### **1. Incorporation**

The ALLIANCE is organized as a nonprofit corporation under the laws of the State of California. The Articles of Incorporation and Corporate Bylaws of the ALLIANCE are set forth on the ALLIANCE website, as such documents may be amended by the ALLIANCE from time-to-time ("**Corporate Documents**"). By executing this Adopter Agreement, Adopter agrees to abide by the Corporate Documents. Adopter acknowledges that the Corporate Documents may be amended from time-to-time in accordance with the provisions of the Corporate Documents and as may be allowed by law. The ALLIANCE has filed for tax exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, and Adopter agrees not to engage in activities for or on behalf of the ALLIANCE that may adversely affect the nonprofit or tax-exempt status of the ALLIANCE.

### **2. Purposes of ALLIANCE**

The ALLIANCE is a non-profit mutual benefit corporation formed to promote the use of two-way wireless communications standards for consumer electronics, home and building automation, industrial controls, PC peripherals, medical sensor applications, toys and other related applications.

The purposes for which the ALLIANCE is organized are to:

- (a)** Bring about the existence of a broad range of interoperable consumer and industrial devices by promoting open industry Specifications for unlicensed, untethered, peripheral, control and entertainment devices;
- (b)** Provide a forum and environment whereby the Promoter, Participant, Adopter and Associate Members of the ALLIANCE may meet to approve suggested revisions and enhancements to Specifications; make appropriate submissions to established agencies and bodies with the purpose of ratifying Specifications as an international standard; and provide a forum whereby users may meet with developers and providers of related products and services to identify requirements for interoperability and general usability;
- (c)** Educate the business and consumer communities as to the value, benefits and applications for wireless consumer products and services through public statements, publications, trade shows demonstrations, seminar sponsorships and other programs established by the ALLIANCE;
- (d)** Protect the needs of consumers and increase competition among vendors by supporting the creation and implementation of uniform, industry standard conformance test procedures and processes which assure the interoperability of wireless consumer products and services;
- (e)** Maintain relationships and liaison with educational institutions, government research institutes, other technology consortia, professional organizations, trade groups

and other organizations that support and contribute to the development of the ALLIANCE's specifications and standards; and

**(f)** Foster competition in the development of new products and services based on ALLIANCE's specifications developed and/or adopted by the ALLIANCE in conformance with all applicable antitrust laws and regulations.

The ALLIANCE and its Promoter, Participant, Adopter and Associate Members shall individually and collectively be committed to open competition in the development of products, technology and services, and Promoter, Participant, Adopter and Associate Members shall not be restricted in any way from designing, developing, marketing and/or procuring hardware, software, systems, technology or services. Implementation or use of specific Adopted Specifications is voluntary. No Promoter, Participant, Adopter or Associate Member shall be required or obliged to implement Adopted Specifications by virtue of being a Promoter, Participant, Adopter or Associate Member, as applicable, of the ALLIANCE.

### **3. Participation as an Adopter; Dues and Fees**

Subject to the terms of **Section 9**, upon acceptance of this Adopter Agreement by the ALLIANCE and payment of the appropriate dues and/or fees, Adopter shall hold the status of an Adopter of the ALLIANCE for a period of twelve (12) months commencing on the acceptance date. Subject to the terms of **Section 9**, Adopter may renew its Adopter status for subsequent twelve (12) month periods by paying any then-current annual dues and/or fees established by the Board of Directors. Failure to pay annual or specially assessed dues and/or fees when due shall result in termination and/or non-renewal of Adopter's status pursuant to **Section 9(d)**. Adopter dues and fees are non-refundable, except in the case of a distribution upon the event of a dissolution as set forth in the Corporate Bylaws. The Board of Directors may increase or decrease the annual dues and/or fees required of Adopters in accordance with the Corporate Bylaws. All dues and fees shall be used in furtherance of the purposes of the ALLIANCE. Subject to the survival provisions of **Section 9(e)**, upon expiration or termination of the Adopter's status as an Adopter of the ALLIANCE, all rights and privileges provided and/or granted to Adopter and/or any Affiliate of Adopter pursuant to **Section 4** of this Adopter Agreement and/or pursuant to any policies and procedures of the ALLIANCE shall terminate.

### **4. Duties and Rights of Adopters**

The duties, rights, privileges and obligations of Adopters shall be determined by the Board of Directors from time-to-time, and, as of the date of this Adopter Agreement, are set forth in **Exhibit 1**. Unless otherwise determined by the Board of Directors, Adopter shall not be entitled to any voting rights with respect to the business or proceedings of the ALLIANCE.

The designated contact and representative of Adopter is identified by Adopter on the first page of this Adopter Agreement. The designated representative of Adopter may be changed by Adopter from time-to-time upon prior written notice to the ALLIANCE.

If Adopter is a consortium, association or other similar organization or otherwise has members or sponsors, the rights and privileges granted to Adopter as an Adopter shall extend only to Adopter, and not to Adopter's members or sponsors.

### **5. Intellectual Property Rights**

Adopter agrees to the terms and conditions of the Intellectual Property Rights ("**IPR**") Policy set forth on the ALLIANCE website, as such IPR Policy may be revised from time-to-time in accordance with the provisions of the Corporate Bylaws.

## **6. Confidential Information**

Except as otherwise identified by Adopter, any information Adopter submits or discloses to the ALLIANCE, including any committee or working group thereof, shall be treated as non-confidential and shall be available to all Promoter, Participant, Adopter and Associate Members of the ALLIANCE without restriction. Any information pertaining to the business of the ALLIANCE which Adopter submits or discloses to the ALLIANCE, including any committee or working group thereof, and which is: (a) marked by Adopter as "**Confidential**" information, or (b) if orally disclosed, identified as Confidential prior to disclosure and reduced to writing and marked as Confidential within three (3) business days from the date of disclosure, shall be treated as Confidential information with respect to third parties, except for any portion thereof that constitutes information: (c) rightfully in the public domain other than by a breach of a duty to the disclosing party; (d) rightfully received from a third party without any obligation of confidentiality; (e) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (f) independently developed by employees of the receiving party; or (g) generally made available to third parties by the disclosing party without restriction or disclosure. Such Adopter Confidential information shall be maintained by each Promoter, Participant, Adopter and Associate Member of the ALLIANCE in confidence with at least the same degree of care that it uses to protect its own proprietary information and in no event with less than reasonable care, and each Promoter, Participant, Adopter and Associate Member of the ALLIANCE that receives such Adopter Confidential information shall only use such Confidential information for the ALLIANCE purpose for which it was submitted. In the event a Promoter, Participant, Adopter and/or Associate Member of the ALLIANCE breaches the obligation of confidentiality with respect to Confidential information of Adopter, the sole and exclusive remedy of Adopter shall be to seek re-course against the breaching Promoter, Participant, Adopter and/or Associate Member of the ALLIANCE and the ALLIANCE shall have no liability with respect to such breach. Third parties seeking access to Adopter's Confidential information that has been provided to the ALLIANCE must reach an agreement with Adopter as a condition for being provided the Adopter's Confidential information. The rights and obligations set forth in this **Section 6** shall expire three (3) years after the date the Adopter discloses or submits the Adopter Confidential information to the ALLIANCE or to any other Promoter, Participant, Adopter and/or Associate Member of the ALLIANCE.

## **7. Prohibited Activities**

Adopter agrees to the terms and conditions of the Antitrust Guidelines set forth on the ALLIANCE website, as such Antitrust Guidelines may be revised from time-to-time by the ALLIANCE.

## **8. Application to Affiliates**

### **(a) Definition**

"**Affiliate**" shall mean, with respect to Adopter, any entity controlling, controlled by or under common control with Adopter, where "control" means direct or indirect ownership of or the right to exercise: (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make decisions for the subject entity. Notwithstanding the foregoing, Affiliate shall not

mean any entity that has previously been or which is currently a Promoter, Participant, Adopter or Associate Member of the ALLIANCE.

**(b) Rights of Affiliate**

As of the effective date of this Adopter Agreement and subject to all the terms of this Adopter Agreement, including without limitation, this **subsection (b)** and **subsection (c)** below, Affiliates of Adopter shall have the right to exercise the rights and benefit from the licenses granted to Adopter hereunder, provided that such Affiliates acknowledge and agree to be bound by: (i) all terms and conditions set forth in **Sections 5** through **22** of this Adopter Agreement; and (ii) any policies and procedures applicable to Adopters and/or Affiliates of Adopter as may be determined by the Board of Directors from time-to-time. For purposes of the foregoing Sections of this Adopter Agreement, all references to "Adopter" shall be deemed to also include such Affiliates of Adopter. The rights granted under this **Section 8** shall terminate immediately upon: (iii) the Affiliate's material breach of any of its obligations under this **Section 8**; or (iv) termination or expiration of this Adopter Agreement pursuant to **Section 9**.

**(c) Right to Bind**

An Affiliate of Adopter shall not have the right to exercise the rights granted to Adopter hereunder until the Board of Directors, or at the direction of the Board of Directors, an officer of the ALLIANCE reviews and approves of such Affiliate's participation in the ALLIANCE through this Adopter Agreement. As a condition of such approval, the Board of Directors, or at the direction of the Board of Directors, an officer of the ALLIANCE, may require written documentation that such Affiliate has duly authorized Adopter and/or Adopter has the corporate authority to bind such Affiliate. The Board of Directors, or at the direction of the Board of Directors, an officer of the ALLIANCE, may require additional proof of the relationship between Adopter and such Affiliate and/or may impose additional conditions or terms governing such Affiliate's participation in the ALLIANCE through this Adopter Agreement at any time, including, without limitation, prior to any access and/or use of any intellectual property or Confidential information by Adopter and/or any Affiliate under the terms of this Adopter Agreement.

**9. Term and Termination**

**(a) Term**

Adopter acknowledges that the ALLIANCE shall have a perpetual corporate term. This Adopter Agreement shall commence on the acceptance date and remain in effect until the earlier of: (i) expiration of the ALLIANCE's corporate term; (ii) such time as Adopter elects not to renew its Adopter status as provided in **Section 3**; (iii) such time as Adopter elects to voluntarily withdraw as an Adopter of the ALLIANCE as provided in **Section 9(b)**; and (iv) termination of Adopter's status as an Adopter as provided in **Section 9(c)**.

**(b) Voluntary Withdrawal as Adopter**

Upon written notice to the ALLIANCE, Adopter shall have the right to withdraw as an Adopter of the ALLIANCE. Upon such withdrawal, Adopter shall have no right to receive a refund of any previously paid dues, and the terms of **Section 9(e)** shall apply.

**(c) Termination of Participation**

Upon the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, the ALLIANCE shall have the right to terminate Adopter's status as an Adopter of the ALLIANCE for cause. The term "for cause" shall mean Adopter's failure to materially comply with its obligations under this Adopter Agreement. Upon such termination, Adopter shall have no right to receive a refund of any previously paid dues and the terms of **Section 9(e)** shall apply.

**(d) Failure to Pay Annual or Specially Assessed Dues**

Adopter acknowledges that Adopter status is conferred on an annual basis and that any renewal of participation, or in the case of a special assessment, continuation of participation, is contingent upon payment of the applicable dues. If Adopter fails to pay the applicable annual or special assessment dues when required: (i) Adopter's status in the ALLIANCE will not be renewed in the case of failure to pay the annual dues or will be terminated in the case of failure to pay the specially assessed dues; (ii) Adopter shall be entitled to continue participation only upon re-application to the ALLIANCE; (iii) Adopter waives any notice or process requirements in connection with such non-renewal and/or termination of membership status; and (iv) the terms of **Section 9(e)** shall apply.

**(e) Survival**

Upon expiration or termination of an Adopter's status as an Adopter of the ALLIANCE: (i) the following terms shall survive: (A) this **Section 9(e)** and **Sections 6, 11** and **12** of this Adopter Agreement; and (B) Sections 2 and 3 of the IPR Policy with respect to Necessary Claims of the Adopter and of other Promoter, Participant, Adopter and/or Associate Members incorporated into or a part of any Adopted Specifications existing prior to the effective date of expiration or termination of such Adopter's status as an Adopter; and (ii) the terms of Sections 2 and 3 of the IPR Policy shall not apply to any portions of Proposed Specifications which have been expressly identified and affirmatively withdrawn from the Proposed Specifications by such Adopter prior to the effective date of expiration or termination of such Adopter's status as an Adopter.

**10. Disclaimer of Warranties**

**NEITHER PARTY HERETO MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SOFTWARE, DOCUMENTATION, INTERFACES, SAMPLE IMPLEMENTATIONS, SPECIFICATIONS OR ANY OTHER ITEMS PROVIDED OR MADE AVAILABLE TO ADOPTER, THE ALLIANCE OR ANY OTHER PROMOTER, PARTICIPANT, ADOPTER AND/OR ASSOCIATE MEMBER OF THE ALLIANCE, OR WITH RESPECT TO ANY STANDARD OR INTERFACE OR SPECIFICATIONS APPROVED, PROMOTED OR ENDORSED BY THE ALLIANCE OR ANY OTHER PROMOTER, PARTICIPANT, ADOPTER AND/OR ASSOCIATE MEMBER OF THE ALLIANCE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ANY OF THE FOREGOING ITEMS DO NOT INFRINGE OR CONSTITUTE A MISAPPROPRIATION OF THE PROPRIETARY RIGHTS OF ANY THIRD PARTIES. EACH PARTY AGREES THAT ALL SUCH ITEMS ARE PROVIDED OR MADE AVAILABLE HEREUNDER "AS IS."**

**11. Limitation of Liability**

Except for the indemnity obligations under **Section 12** below, neither party shall be liable to the other for any indirect, special, exemplary, consequential, special or punitive damages, including without limitation, lost profits even if advised of the possibility of such damages. In addition to the foregoing, with respect to Adopter's participation in the ALLIANCE, the ALLIANCE shall not be liable to Adopter for any direct, indirect, incidental, consequential, special or punitive damages including, without limitation, lost profits, sustained or incurred by Adopter which are not attributable to the actions or inactions of the ALLIANCE under this Adopter Agreement.

## **12. Indemnification**

Adopter shall indemnify, defend and hold harmless the ALLIANCE and its directors, officers, employees, representatives, agents, attorneys, successors and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, suits, proceedings, liabilities, obligations, judgments, causes of action, costs and expenses (including reasonable attorneys' fees) to the extent arising out of or resulting from Adopter's failure to materially comply with any of its obligations under this Adopter Agreement. The Indemnified Parties promptly shall notify Adopter of any such claims, suits or proceedings and, at Adopter's sole cost and expense, reasonably cooperate with Adopter in the defense of such claims, suits or proceedings. Adopter's cumulative liability pursuant to this **Section 12** shall not exceed One Hundred Thousand Dollars (\$100,000).

## **13. Insurance**

The ALLIANCE may purchase and maintain insurance on behalf of any person who is or was a director, committee member, officer, employee or working group member of the ALLIANCE covering the activities of such persons related to the business of the ALLIANCE.

## **14. Notices**

Any written notice required or permitted to be delivered pursuant to this Adopter Agreement shall be in writing and shall be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier, with a confirmation copy sent via overnight mail, provided that such overnight delivery is received by the sender; (d) one (1) business day after deposit with a national overnight courier, provided that such overnight delivery is received by the sender; and/or (e) by email to Adopter's email address on file, which notice shall be deemed received when sent by the ALLIANCE; provided that in each case under **subsections (a) through (d)** addressed to the following:

If to Adopter:

The Contact/Representative at the address  
identified on the cover page of this  
Adopter Agreement

If to the ALLIANCE:

ZIGBEE ALLIANCE  
508 Second Street, Suite 206  
Davis, CA 95616

Attention: Director of Operations  
Telecopier: (530) 564-4721

or to such other individual or address as may be specified by either party hereto upon notice given to the other.

**15. Binding Nature and Assignment; Transfer of Adopter Interest**

This Adopter Agreement shall be binding on the parties and their successors and assigns. Adopter shall not assign or otherwise transfer its membership interest nor this Adopter Agreement, or any part hereof, whether by operation of law, change of control (including a merger, exchange of stock or otherwise) or otherwise, without the prior written consent of the ALLIANCE. Any assignment or transfer or attempted assignment or transfer by Adopter in violation of the terms of this Section shall be null and void and of no force or effect.

**16. Certification of Products; Use of Trademarks and Logos**

Adopter acknowledges and agrees that use of ALLIANCE trademarks and logos are highly proprietary to and regulated by ALLIANCE, and that no product or service manufactured by Adopter shall be marked, packaged, sold or distributed using ALLIANCE trademarks or logos without complying with the certification processes and policies adopted by ALLIANCE and only then in strict compliance with the ALLIANCE's Trademark and Logo Usage Guidelines and Terms published on the ALLIANCE's website, as may be updated or amended from time-to-time by the ALLIANCE ("**Trademark and Logo Usage Guidelines and Terms**"). Without limiting the foregoing, at all times Adopter shall comply with the Trademark and Logo Usage Guidelines and Terms. Further, to the extent Adopter becomes aware of any other member or non-member of ALLIANCE not complying with the Trademark and Logo Usage Guidelines and Terms, Adopter will report such non-compliance to ALLIANCE.

Adopter shall have the right to list the ALLIANCE's name and logo on Adopter's website and in advertising and promotional materials in accordance with and subject to the Trademark and Logo Usage Guidelines and Terms. ALLIANCE shall have the right to list Adopter's name and logo on the ALLIANCE website and in advertising and promotional materials, in accordance with written instructions provided to the ALLIANCE by Adopter. Except as provided herein or as may be agreed by the parties in writing, neither party shall use the name or any trademark or logo of the other party without such other party's prior written consent.

**17. Counterparts**

This Adopter Agreement may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

**18. Severability**

If any provision of this Adopter Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Adopter Agreement, but this Adopter Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

**19. Waiver**



No delay or omission by either party to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Adopter Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

**20. Governing Law**

This Adopter Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Adopter Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of California (excluding any conflict of laws provisions of the State of California that would refer to and apply the substantive laws of another jurisdiction).

**21. Relationship of Parties**

Nothing set forth in this Adopter Agreement shall be deemed or construed to render the parties as joint venturers, partners or employer and employee.

**22. Entire Agreement; Modifications**

This Adopter Agreement, together with the Corporate Documents, sets forth the entire, final and exclusive agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. This Adopter Agreement may be modified only pursuant to a writing executed by authorized representatives of the ALLIANCE and Adopter.







## **EXHIBIT 1**

### **ZIGBEE ALLIANCE**

#### **ADOPTER RIGHTS**

The current rights and privileges of Adopter are set forth below. The Board of Directors may modify such rights and privileges from time to time. Except as set forth below, nothing herein shall entitle Adopter to any voting rights with respect to the business or proceedings of the ALLIANCE.

- Receive access to final, approved ZIGBEE specification(s)
- Attend ALLIANCE interoperability events
- Attend ALLIANCE workshops and developers' conferences
- Use ZIGBEE ALLIANCE logo (in accordance with the Trademark and Logo Usage Guidelines and Terms)
- Receive ZIGBEE ALLIANCE marketing collateral
- Receive ZIGBEE ALLIANCE Member Newsletter