

ZIGBEE ALLIANCE

ASSOCIATE MEMBER AGREEMENT

Parties:

Zigbee Alliance

("Alliance")

508 Second Street
Suite 206
Davis, California 95616

Corporate Name ("**Associate**")

Address

City, State, Zip Code

Contact Name

E-Mail Address

Phone

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

Zigbee Alliance:

President and Chief Executive Officer

Date Accepted: _____

Associate:

By: _____

Its: _____

Date: _____

ASSOCIATE MEMBER AGREEMENT
TERMS AND CONDITIONS

1. Incorporation

The Alliance is organized as a non-profit mutual benefit 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 Associate Agreement, Associate agrees to abide by the Corporate Documents. Associate 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 Associate 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 the Alliance

The Alliance is formed to promote the use of connected devices for consumer electronics, home and building automation, energy management, 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 business connected devices by promoting open industry specifications and standards;
- (b) Provide a forum and environment whereby members of the Alliance ("**Members**") may meet to approve suggested revisions and enhancements to Alliance specifications and standards; coordinate with appropriate agencies and bodies to align, promote and harmonize specifications and standards; 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 connected devices and services through public statements, publications, trade shows demonstrations, seminar sponsorships and other programs established by the Alliance;
- (d) Protect the needs of business and 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 connected devices 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 Alliance 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 Members shall individually and collectively be committed to open competition in the development of products, technology and services, and 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 Member shall be required or obliged to implement Adopted Specifications by virtue of being a Member of the Alliance.

3. Participation as an Associate; Dues and Fees

Subject to the terms of **Section 9**, upon acceptance of this Associate Agreement by the Alliance and payment of the appropriate dues and/or fees, Associate shall hold the status of an Associate of the Alliance for a period of twelve (12) months commencing on the acceptance date. Subject to the terms of **Section 9**, Associate may renew its Associate 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 Associate's membership pursuant to **Section 9(d)**. Associate 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 Associates 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 Associate's membership as an Associate of the Alliance, all rights and privileges provided and/or granted to Associate and/or any Affiliate of Associate pursuant to **Section 4** of this Associate Agreement and/or pursuant to any policies and procedures of the Alliance shall terminate.

4. Duties and Rights of Associates

The duties, rights, privileges and obligations of Associates shall be determined by the Board of Directors from time to time. Unless otherwise determined by the Board of Directors, Associate shall not be entitled to any voting rights with respect to the business or proceedings of the Alliance.

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

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

5. Intellectual Property Rights

Associate 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 Associate, any information Associate submits or discloses to the Alliance, including any committee or working group thereof, shall be treated as non-confidential. Information provided by Associate may be made available to other members of the Alliance in accordance with Alliance policies. Any information pertaining to the business of the Alliance which Associate submits or discloses to the Alliance, including any committee or working group thereof, and which is: (a) marked by Associate 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 Associate Confidential information shall be maintained by each 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 Member of the Alliance that receives such Associate Confidential information shall only use such Confidential information for the Alliance purpose for which it was submitted. In the event a Member of the Alliance breaches the obligation of confidentiality with respect to Confidential information of Associate, the sole and exclusive remedy of Associate shall be to seek recourse against the breaching Member of the Alliance and the Alliance shall have no liability with respect to such breach. Third parties seeking access to Associate's Confidential information that has been provided to the Alliance must reach an agreement with Associate as a condition for being provided the Associate's Confidential information. The rights and obligations set forth in this **Section 6** shall expire three (3) years after the date the Associate discloses or submits the Associate Confidential information to the Alliance or to any other Member of the Alliance.

7. Prohibited Activities

Associate 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 Associate, any entity controlling, controlled by or under common control with Associate, 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 Member of the Alliance.

(b) Rights of Affiliate

As of the effective date of this Associate Agreement and subject to all the terms of this Associate Agreement, including without limitation, this **subsection (b)** and **subsection (c)** below, Affiliates of Associate shall have the right to exercise the rights and benefit from the licenses granted to Associate 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 Associate Agreement; and (ii) any policies and procedures applicable to Associates and/or Affiliates of Associate as may be determined by the Board of Directors from time to time. For purposes of the foregoing Sections of this Associate Agreement, all references to "Associate" shall be deemed to also include such Affiliates of Associate. 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 Associate Agreement pursuant to **Section 9**.

(c) Right to Bind

An Affiliate of Associate shall not have the right to exercise the rights granted to Associate 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 Associate 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 Associate and/or Associate 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 Associate and such Affiliate and/or may impose additional conditions or terms governing such Affiliate's participation in the Alliance through this Associate Agreement at any time, including, without limitation, prior to any access and/or use of any intellectual property or Confidential information by Associate and/or any Affiliate under the terms of this Associate Agreement.

9. Term and Termination

(a) Term

Associate acknowledges that the Alliance shall have a perpetual corporate term. This Associate 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 Associate elects not to renew its Associate status as provided in **Section 3**; (iii) such time as Associate elects to voluntarily withdraw as an Associate of the Alliance as provided in **Section 9(b)**; and (iv) termination of Associate's status as an Associate as provided in **Section 9(c)**.

(b) Voluntary Withdrawal as Associate

Upon written notice to the Alliance, Associate shall have the right to withdraw as an Associate of the Alliance. Upon such withdrawal, Associate 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 Membership

Upon the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, , and subject to the requirements of Section 7341 of the California Nonprofit Corporation Law,

the Alliance shall have the right to terminate Associate's status as an Associate of the Alliance for cause. The term "for cause" shall mean Associate's failure to materially comply with its obligations under this Associate Agreement. Upon such termination, Associate 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

Associate acknowledges that Associate 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 Associate fails to pay the applicable annual or special assessment dues when required: (i) Associate'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) Associate shall be entitled to continue participation only upon re-application to the Alliance; (iii) Associate 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 Associate's status as an Associate of the Alliance: (i) the following terms shall survive: (A) this **Section 9(e)** and **Sections 6, 11** and **12** of this Associate Agreement; and (B) Sections 2 and 3 of the IPR Policy with respect to Necessary Claims of the Associate and of other Members incorporated into or a part of any Adopted Specifications existing prior to the effective date of expiration or termination of such Associate's status as an Associate; 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 Associate prior to the effective date of expiration or termination of such Associate's status as an Associate.

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 ASSOCIATE, THE ALLIANCE OR ANY OTHER MEMBER OF THE ALLIANCE, OR WITH RESPECT TO ANY STANDARD OR INTERFACE OR SPECIFICATIONS APPROVED, PROMOTED OR ENDORSED BY THE ALLIANCE OR ANY OTHER 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 Associate's participation in the Alliance, the Alliance shall not be liable

to Associate for any direct, indirect, incidental, consequential, special or punitive damages including, without limitation, lost profits, sustained or incurred by Associate which are not attributable to the actions or inactions of the Alliance under this Associate Agreement.

12. Indemnification

Associate 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 Associate's failure to materially comply with any of its obligations under this Associate Agreement. The Indemnified Parties promptly shall notify Associate of any such claims, suits or proceedings and, at Associate's sole cost and expense, reasonably cooperate with Associate in the defense of such claims, suits or proceedings. Associate'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 Associate 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 Associate'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 Associate:

The Contact/Representative at the address
identified on the cover page of this Associate 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 Membership Interest

This Associate Agreement shall be binding on the parties and their successors and assigns. Associate shall not assign or otherwise transfer its membership interest nor this Associate 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 Associate 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

Associate 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 Associate 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 Associate shall comply with the Trademark and Logo Usage Guidelines and Terms. Further, to the extent Associate becomes aware of any other member or non-member of Alliance not complying with the Trademark and Logo Usage Guidelines and Terms, Associate will report such non-compliance to Alliance.

Associate shall have the right to list the Alliance's name and logo on Associate's website and in advertising and promotional materials in accordance with and subject to the Trademark and Logo Usage Guidelines and Terms. Associate agrees that the Alliance shall have the right to list Associate's name and logo on the Alliance website and in advertising and promotional materials, in accordance with written instructions provided to the Alliance by Associate. 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 Associate 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 Associate 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 Associate Agreement, but this Associate 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 Associate 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 Associate Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Associate 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 Associate Agreement shall be deemed or construed to render the parties as joint venturers, partners or employer and employee.

22. Entire Agreement; Modifications

This Associate 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 Associate Agreement may be modified only pursuant to a writing executed by authorized representatives of the Alliance and Associate.