

# WiSUN Alliance

## Adopter Member Agreement

**Parties:**

Wi-SUN Alliance, Inc.

("Wi-SUN" or "Alliance")

Wi-SUN Alliance, Inc.  
275 Tennant Avenue, Suite 202  
Morgan Hill, CA 95037 U.S.A.

Attn: Membership

Corporate Name ("*Adopter Member*")

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Contact/Director Name

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

\_\_\_\_\_  
Phone

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

**Wi-SUN Alliance**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Adopter Member**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **Wi-SUN ALLIANCE ADOPTER** **MEMBER AGREEMENT**

## **TERMS AND CONDITIONS**

### **1. Incorporation**

The Alliance is organized as a not-for-profit Corporation registered under the General Corporation Law of Delaware. The Articles of Incorporation and initial form of Corporate Bylaws of the Alliance are set forth in **Exhibit 1** ("*Corporate Documents*"). By executing this Adopter Member Agreement, Adopter Member consents to the form of the Corporate Documents. Adopter Member acknowledges that the Corporate Documents may be amended from time to time in conformance with appropriate law.

### **2. Purposes of Alliance**

The Alliance is a mutual benefit corporation formed to promote the use of two-way wireless communications standards for Smart Grid Networks and Services. The Alliance may expand its activities into technologies and services that utilize two-way wireless communications for consumer electronics, home and building automation, industrial controls, PC peripherals, and other related applications. Each Promoter Member will have a representative on the Board of Directors of the Alliance, and the Board of Directors may modify the charter and scope of the Alliance in the future.

The purposes for which the Corporation 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 and licensed, peripheral, control and monitoring devices.
- b. Provide a forum and environment whereby the Corporation's Members may meet to approve suggested revisions and enhancements that evolve the relevant specifications; make appropriate submissions to established agencies and bodies with the purpose of ratifying these 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 Corporation.
- 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, and other organizations that support and contribute to the development of the specifications and standards; and

- a) Foster competition in the development of new products and services based on specifications developed by the Corporation in conformance with all applicable anti-trust laws and regulations.

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

### **3. Participation as an Adopter Member; Dues**

Subject to the terms of **Section 9**, upon acceptance of this Adopter Member Agreement by the Alliance, and payment of the appropriate dues, the Adopter Member shall hold the status of an Adopter Member of the Alliance for a period of twelve (12) months commencing on the acceptance date. Subject to the terms of **Section 9**, the Adopter Member may renew its Adopter Member status for subsequent twelve (12) month periods by paying any then current annual dues established by the Board of Directors (The structure and formation of the Board of Directors is described in the Corporate Bylaws attached to this agreement as Exhibit 1). Failure to timely pay dues shall result in non-renewal and termination of Adopter Member's membership pursuant to **Section 9(d)**. Membership dues are non-refundable, except in the case of a distribution upon the event of dissolution as set forth in the Corporate Bylaws. The Board of Directors may increase or decrease the annual dues required of Adopter Members in accordance with the Corporate Bylaws. All dues 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 Member's status as a Adopter Member of the Alliance, all rights and privileges provided and/or granted to the Adopter Member and/or any Affiliate of the Adopter Member pursuant to **Section 4** of this Adopter Member Agreement will terminate.

### **4. Duties and Rights of Adopter Members**

The duties, rights, privileges and obligations of Adopter Members are set forth in the Corporate Bylaws and as may otherwise be provided under Delaware Corporation Law, with additional rights as described below. The Board of Directors may modify such rights and privileges from time to time. Except as set forth below, nothing herein shall entitle the Adopter Member to any voting rights with respect to the business or proceedings of the Alliance.

Adopter Members are entitled to:

1. Receive access to final, approved Wi-SUN profile specifications and associated test specifications.

2. Attend certain Wi-SUN Alliance interoperability events, specific to the Adopter Member's selected profile;
3. Attend Alliance workshops and developers' conferences;
4. Use Wi-SUN Alliance logo (within usage guidelines);
5. Receive Wi-SUN Alliance marketing collateral;

Receive Wi-SUN Alliance Member Newsletter

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

## **5. Intellectual Property Rights**

The Adopter Member agrees to the terms and conditions of the Intellectual Property Rights ("*IPR*") Policy attached hereto as **Exhibit 2**. The Adopter Member acknowledges and understands that the 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 the Adopter Member, any information the Adopter Member submits or discloses to the Alliance, including its committees and/or working groups thereof, shall be treated as non-confidential and shall be available to all Promoter Members, Contributor Members and Adopter Members of the Alliance without restriction. Any information pertaining to the business of the Alliance which is produced during Alliance activities including, but not limited to, Committee and Working Group meetings, email reflectors, document submissions, or which the Adopter Member submits or discloses to the Alliance, including any committee or working group thereof, and which is: (a) marked by the Alliance or Adopter Member 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 Member Confidential information shall be maintained by each Promoter Member, Contributor Member and Adopter 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 Member, Contributor Member and Adopter Member of the Alliance that receives such Adopter Member Confidential information shall only use such Adopter Member Confidential information for the Alliance purpose for which it was submitted. In the event a Promoter Member and/or Contributor Member and/or Adopter Member of the Alliance breaches the obligation of confidentiality with respect to the Confidential information of Adopter Member, the Adopter Member may seek legal recourse against the breaching Promoter Member and/or Contributor Member and/or Adopter Member of the Alliance, or against any other

appropriate entity, except that the Alliance shall have no liability with respect to such breach. Third parties seeking access to Adopter Member Confidential information that has been provided to the Alliance must reach an agreement with the concerned Adopter Member as condition for being provided the Adopter Member's Confidential information, unless the Alliance is required to divulge the Adopter Member's Confidential information by a governmental body or by a judicial decree. Adopter Member Confidential information will not be included in Alliance Adopted Specifications unless the Adopter Member waives its confidentiality. The rights and obligations set forth in this **Section 6** shall expire three (3) years after the date the Adopter Member discloses or submits the Adopter Member Confidential information to the Alliance, or to any other Promoter Member or Contributor Member or Adopter Member of the Alliance in the course of the Adopter Member's Alliance-related activities.

## **7. Prohibited Activities**

Adopter Member agrees to the terms and conditions of the Antitrust Guidelines attached hereto as **Exhibit 3**.

## **8. Application to Affiliates**

### **a) Definition**

"*Affiliate*" shall mean, with respect to Adopter Member, any entity controlling, controlled by or under common control with Adopter Member, 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 Member or Contributor Member or Adopter Member of the Alliance.

### **b) Rights of Affiliate**

As of the effective date of this Adopter Member Agreement and subject to all the terms of this Adopter Member Agreement, including without limitation, this **subsection (b)** and **subsection (c)** below, Affiliates of Adopter Member shall have the right to exercise the rights and benefit from the licenses granted to Adopter Member 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 Member Agreement; and (ii) any policies and procedures applicable to Affiliates of Adopter Member as may be determined by the Board of Directors from time to time. For purposes of the foregoing Sections of this Adopter Member Agreement, all references to "Adopter Member" shall be deemed to also include such Affiliates of Adopter Member. Notwithstanding the foregoing, unless otherwise determined by the Board of Directors, Affiliates of Adopter Member will not have any right to vote in any matters presented for vote before the Board of Directors and/or the Promoter Members of the Alliance. 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 Promoter Member Agreement pursuant to **Section 9**.

c) **Right to Bind**

An Affiliate of a Adopter Member shall not have the right to exercise the rights granted to the Adopter Member hereunder until the Board of Directors, or an officer of the Alliance at the direction of the Board of Directors, reviews and approves of such Affiliate's participation in the Alliance through this Adopter Member 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 the Adopter Member and/or Adopter Member 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 the Adopter Member and such Affiliate and/or may impose additional conditions or terms governing such Affiliate's participation in the Alliance through this Adopter Member Agreement at any time, including, without limitation, prior to any access and/or use of any intellectual property or Confidential information by the Adopter Member and/or any Affiliate under the terms of this Promoter Member Agreement.

## **9. Term and Termination**

a) **Term**

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

b) **Voluntary Withdrawal as Adopter Member**

Upon written notice to the Alliance, Adopter Member shall have the right to withdraw as an Adopter Member of the Alliance. Upon such withdrawal, the Adopter Member 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, the Alliance shall have the right to terminate Adopter Member's status as a Adopter Member of the Alliance for cause. The term "for cause" shall mean Adopter Member's failure to materially comply with its obligations under this Adopter Member Agreement. Upon such termination, Adopter Member 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 Member acknowledges that Adopter Member status is conferred on an annual basis and that any renewal of membership, or in the case of a special assessment, continuation of membership, is contingent upon payment of the applicable dues. If the Adopter Member fails to pay the applicable annual or special assessment dues when required: (i) Adopter Member'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) the Adopter Member shall be entitled to continue participation only upon re-application of membership to the Alliance; (iii) Adopter Member 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 a Adopter Member's status as a Adopter Member of the Alliance: (i) the following terms shall survive: (A) this **Section 9(e)** and **Sections 6, 11 and 12** of this Adopter Member Agreement; and (B) Sections 2 and 3 the IPR Policy with respect to Necessary Claims of the Adopter Member and of other Promoter Members and/or Contributor Members and/or Adopter Members incorporated into or a part of any adopted specifications existing prior to the effective date of expiration or termination of such Adopter Member's status as a Adopter Member; and (ii) the terms 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 Member prior to the effective date of expiration or termination of such Adopter Member's status as a Adopter Member.

**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 MEMBER, THE ALLIANCE OR ANY OTHER PROMOTER MEMBERS AND CONTRIBUTOR MEMBERS AND ADOPTER MEMBERS OF THE ALLIANCE, OR WITH RESPECT TO ANY STANDARD OR INTERFACE OR SPECIFICATIONS APPROVED, PROMOTED OR ENDORSED BY THE ALLIANCE OR ANY OTHER PROMOTER MEMBERS AND CONTRIBUTOR MEMBERS AND ADOPTER MEMBERS 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, and 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 Member's participation in the Alliance, the Alliance shall not be liable to the Adopter Member for any direct, indirect, incidental, consequential, special or punitive damages including, without limitation, lost profits, sustained or incurred by the Adopter Member which are not attributable to the actions or inactions of the Alliance under this Adopter Member Agreement.

## **12. Indemnification**

The Adopter Member 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 Member's failure to materially comply with any of its obligations under this Adopter Member Agreement. The Indemnified Parties promptly shall notify Adopter Member of any such claims, suits or proceedings and, at Adopter Member's sole cost and expense, reasonably cooperate with the Adopter Member in the defense of such claims, suits or proceedings. Adopter Member'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 Member 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 regular mail, registered or certified mail; (c) upon transmission if sent via facsimile, with a confirmation copy sent via overnight mail, provided that such overnight delivery is received by the sender; or (d) one (1) business day after deposit with a national overnight courier, provided that such overnight delivery is received by the sender, in each case addressed to the following:

If to Adopter Member:

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

If to the Alliance:

Wi-SUN Alliance  
275 Tennant Avenue, Suite 202  
Morgan Hill, CA 95037 U.S.A.  
Attention: Membership  
Fax: +1 408 852 3496

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 Adopter Member Agreement shall be binding on the parties and their successors and assigns. Adopter Member shall not assign or otherwise transfer its membership interest or this Adopter Member 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 Member in violation of the terms of this Section shall be null and void and of no force or effect.

## **16. Media Releases and Use of Trademarks and Logos**

Alliance agrees that Adopter Member shall have the right to list the Alliance's name and logo on Adopter Member's web site and advertising and promotion materials in accordance with guidelines to be adopted by the Alliance. Except as provided above or as may be allowed pursuant to written instructions or guidelines issued by a party, neither party shall use the name or any trademark or logo of the other party without such other party's prior consent. By executing this Adopter Member Agreement, Adopter Member agrees that the Alliance shall have the right to list Adopter Member's name and logo on the Alliance web site and advertising and promotion materials, in accordance with written instructions and limitations provided to the Alliance by Adopter Member.

## **17. Counterparts**

This Adopter Member 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 Member 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 Member Agreement, but this Adopter Member 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 Member 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 Member Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Adopter Member Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the General Corporation Law of Delaware.

## **21. Relationship of Parties**

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

## **22. Entire Agreement; Modifications**

This Adopter Member 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 Member Agreement may be modified only pursuant to mutual agreement of authorized representatives of the Alliance and Adopter Member.