

ENOCEAN ALLIANCE
PARTICIPANT AGREEMENT

Parties:

EnOcean Alliance

("EnOcean" or "Alliance")

c/o Global Inventures

2400 Camino Ramon

Suite 375

San Ramon, CA 94583

Attn: Diana Roberson

Corporate Name ("*Participant*")

Address

City, State, Zip Code

Contact Name

E-Mail Address

Phone

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

EnOcean Alliance

Participant

_____, Chairperson/President

Date Accepted: _____

By: _____

Its: _____

Date: _____

PARTICIPATION 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 initial form of Corporate Bylaws of the Alliance are set forth in **Exhibit 1** ("*Corporate Documents*"). By executing this Participant Agreement, Participant consents to the form of the Corporate Documents. Participant 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 intends to or has filed for tax exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, and Participant 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 bring about the existence of a broad range of interoperable wireless monitoring and controlling consumer, commercial, industrial and professional products and devices for use in and around residential, commercial and industrial buildings, and to promote global trade in such products and devices by developing the specifications for an air interface standard for wireless products, devices, components and systems operating in unlicensed frequency bands, which air interface standard is to be ratified, approved and adopted by one or more established and recognized international or national agencies or bodies as an official national or international standard.

The purposes for which the Corporation is organized are to:

(a) Bring about the existence of a broad range of interoperable wireless monitoring and controlling consumer, commercial, industrial and professional products for use in and around residential, commercial and industrial buildings, and to promote global trade in such products, by developing the specifications for an air interface standard for wireless products, components and systems operating in unlicensed frequency bands;

(b) Make appropriate submission of the specifications developed by the Corporation for such air interface standard to one or more established and recognized international or national agencies or bodies, such as the International Electrotechnical Commission (IEC) or the International Organization for Standardization (ISO), and their national member bodies, for ratification, approval and adoption of such specifications as an official national or international standard by such agencies or bodies;

(c) Promote the ratification, approval and adoption of such specifications developed by the Corporation by such recognized national and international bodies, includ-

ing their national member bodies, as an official standard of such established and recognized national and international bodies,

(d) Seek the endorsement by such established and recognized national and international agencies and bodies of the Corporation as the source of such standard;

(e) Provide a forum and environment whereby the Corporation's Members may meet to approve suggested revisions and enhancements that evolve the relevant specifications; 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;

(f) Educate the business and consumer communities as to the value, benefits and applications for such interoperable wireless consumer and commercial 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 products and services;

(e) Maintain relationships and liaison with national and international standardization or standard-setting bodies and agencies, educational institutions, government research institutes, other technology consortia, and other organizations that support and contribute to the development of the specifications and standards; and

(f) 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 and Participants shall individually and collectively be committed to open competition in the development of products, technology and services, and Promoter Members and Participants shall not be restricted in any way from designing, developing, marketing and/or procuring equipment, devices, hardware, software, systems, technology, components, modules, or services. Implementation or use of specific Adopted Specifications (as defined in Exhibit 2) is voluntary. No Promoter Member and/or Participant shall be required or obliged to implement Adopted Specifications by virtue of being a Promoter Member and/or Participant, as applicable, of the Alliance.

3. Participation as a Participant; Dues

Subject to the terms of **Section 9**, upon acceptance of this Participation Agreement by the Alliance and payment of the appropriate dues, Participant shall hold the status of a Participant of the Alliance for a period of twelve (12) months commencing on the acceptance date. Subject to the terms of **Section 9**, Participant may renew its Participant status for subsequent twelve (12)

month periods by paying any then-current annual dues established by the Board of Directors. It is intended to apply a membership period reaching from January 1st – December 31st in the future. Failure to pay annual or specially assessed dues when due shall result in termination and/or non-renewal of Participant's status pursuant to **Section 9(d)**. Membership dues 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 required of Participants 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 Participant's status as a Participant of the Alliance, all rights and privileges provided and/or granted to Participant and/or any Affiliate of Participant pursuant to **Section 4** of this Participation Agreement and/or pursuant to any policies and procedures of the Alliance shall terminate.

4. Duties and Rights of Participants

The duties, rights, privileges and obligations of Participants shall be determined by the Board of Directors from time to time. Unless otherwise determined by the Board of Directors, Participant shall not be entitled to any voting rights with respect to the business or proceedings of the Alliance. For more details, Participant shall refer to the latest Alliance benefits table.

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

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

5. Intellectual Property Rights

Participant agrees to the terms and conditions of the Intellectual Property Rights ("**IPR**") Policy attached hereto as **Exhibit 2**. Participant 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 Participant, any information Participant 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 Participants and Promoter Members of the Alliance without restriction. Any information pertaining to the business of the Alliance which Participant submits or discloses to the Alliance, including any committee or working group thereof, and which is: (a) marked by Participant 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 Participant Confidential information shall be maintained by each Participant and Promoter 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 Participant and Promoter Member of the Alliance that receives such Participant Confidential information shall only use such Confidential information for the Alliance purpose for which it was submitted. In the event a Participant and/or Promoter Member of the Alliance breaches the obligation of confidentiality with respect to Confidential information of Participant, the sole and exclusive remedy of Participant shall be to seek recourse against the breaching Participant and/or Promoter Member of the Alliance and the Alliance shall have no liability with respect to such breach. Third parties seeking access to Participant's Confidential information that has been provided to the Alliance must reach an agreement with Participant as condition for being provided the Participant's Confidential information. Participant Confidential information will not be included in an Alliance Adopted Specifications unless Participant waives its confidentiality. The rights and obligations set forth in this **Section 6** shall expire three (3) years after the date the Participant discloses or submits the Participant Confidential information to the Alliance or to any other Participant or Promoter Member of the Alliance.

7. Prohibited Activities

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

(b) Rights of Affiliate

As of the effective date of this Participation Agreement and subject to all the terms of this Participation Agreement, including without limitation, this **subsection (b)** and **subsection (c)** below, Affiliates of Participant shall have the right to exercise the rights and benefit from the licenses granted to Participant hereunder, provided that such Affiliates acknowledge and agree to be bound by: (i) all terms and conditions set forth in

Sections 5 through **21** of this Participation Agreement; and (ii) any policies and procedures applicable to Participants and/or Affiliates of Participant as may be determined by the Board of Directors from time to time. For purposes of the foregoing Sections of this Participation Agreement, all references to "Participant" shall be deemed to also include such Affiliates of Participant. 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 Participation Agreement pursuant to **Section 9**.

(c) Right to Bind

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

9. Term and Termination

(a) Term

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

(b) Voluntary Withdrawal as Participant

Upon written notice to the Alliance, Participant shall have the right to withdraw as a Participant of the Alliance. Upon such withdrawal, Participant 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 three-quarters (3/4) of the Board of Directors, the Alliance shall have the right to terminate Participant's status as a Participant of the Alliance for cause. The term "for cause" shall mean Participant's failure to materially comply with its obligations under this Participation Agreement. Upon such termination, Participant 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

Participant acknowledges that Participant 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 Participant fails to pay the applicable annual or special assessment dues when required: (i) Participant'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) Participant shall be entitled to continue participation only upon re-application to the Alliance; (iii) Participant waives any notice or process requirements in connection with such non-renewal and/or termination of participation status; and (iv) the terms of **Section 9(e)** shall apply.

(e) Survival

Upon expiration or termination of a Participant's status as a Participant of the Alliance: (i) the following terms shall survive: (A) this **Section 9(e)** and **Sections 6 and 11** of this Participation Agreement; and (B) Sections 2 and 3 the IPR Policy with respect to Necessary Claims of the Participant and of other Promoter Members and/or Participants incorporated into or a part of any Adopted Specifications existing prior to the effective date of expiration or termination of such Participant's status as a Participant; 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 Participant prior to the effective date of expiration or termination of such Participant's status as a Participant.

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 PARTICIPANT, THE ALLIANCE OR ANY OTHER PARTICIPANTS AND PROMOTER MEMBERS OF THE ALLIANCE, OR WITH RESPECT TO ANY STANDARD OR INTERFACE OR SPECIFICATIONS APPROVED, PROMOTED OR ENDORSED BY THE ALLIANCE OR ANY OTHER PARTICIPANTS AND PROMOTER 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 MIS-

APPROPRIATION OF THE PROPRIETARY RIGHTS OF ANY THIRD PARTIES. EACH PARTY AGREES THAT ALL SUCH ITEMS ARE PROVIDED OR MADE AVAILABLE HEREUNDER "AS IS."

11. Indemnification; Limitation of Liability

Participant and Alliance shall each indemnify, defend and hold harmless each other and each other's respective 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 Participant 's or the Alliance's failure to materially comply with any of its obligations under this Participant Agreement. The Indemnified Parties promptly shall notify Participant or the Alliance of any such claims, suits or proceedings and, at Participant's or Alliance's sole cost and expense, reasonably cooperate with Participant or the Alliance in the defense of such claims, suits or proceedings. Participant's and the Alliance's cumulative liability pursuant to this **Section 11** shall not exceed One Hundred Thousand Dollars (\$100,000). Except for the foregoing indemnity obligations, neither party shall be liable to the other for any indirect, special, exemplary, consequential, special or punitive damages, including without limitation, loss of future or anticipated profits or goodwill, even if advised of the possibility of such damages in advance.

12. Insurance

The Alliance shall purchase and maintain insurance on behalf of any person who is or was a director, officer or agent of the Alliance covering the activities of such persons related to the business of the Alliance as well as general liability insurance.

13. Notices

Any written notice required or permitted to be delivered pursuant to this Participation 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; and/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 Participant:

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

If to the Alliance:

EnOcean Alliance
c/o Global Inventures
2400 Camino Ramon, Suite 375
San Ramon, CA 94583
Attention: Diana Roberson
Fax: (925) 275-6691

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

14. Binding Nature and Assignment; Transfer of Participation Interest

This Participation Agreement shall be binding on the parties and their successors and assigns. Participant shall not assign or otherwise transfer its participation interest nor this Participation 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 Participant in violation of the terms of this Section shall be null and void and of no force or effect.

15. Media Releases and Use of Trademarks and Logos

Alliance agrees that Participant shall have the right to list the Alliance's name and logo on Participant'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 Participation Agreement, Participant agrees that the Alliance shall have the right to list Participant'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 Participant.

16. Counterparts

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

17. Severability

If any provision of this Participation 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 Participation Agreement, but this Participation Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

18. 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 Participation 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.

19. Governing Law

This Participation Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Participation 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).

20. Relationship of Parties

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

21. Entire Agreement; Modifications

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

EXHIBIT 1

ARTICLES OF INCORPORATION
AND CORPORATE BYLAWS

(SEE ATTACHED)

EXHIBIT 2

ENOCEAN ALLIANCE

INTELLECTUAL PROPERTY RIGHTS POLICY

The IPR of the Alliance and its Members for Adopted Specifications shall be governed by the policy set forth herein ("*IPR Policy*"). This IPR Policy has been adopted by the Corporation in accordance with the Corporate Documents.

Recognizing that the Alliance is an open participation organization whose activities are focused on encouraging the rapid advancement of Air Interface Specifications (as defined below) for wireless monitoring and controlling consumer, commercial, industrial and professional products and devices for use in and around residential, commercial and industrial buildings, this IPR Policy is designed to maximize widespread adoption of such Air Interface Specifications.

In furtherance of the objective of widespread adoption, the Alliance and its Members agree that barriers to industry use of Adopted Specifications should be limited as much as possible. Capitalized terms used in this Exhibit are defined in **Section 6** of this Exhibit or, if not defined in **Section 6** of this Exhibit, in the applicable Agreement to which this Exhibit is attached.

1. General Rule. Except to the extent expressly set forth in this IPR Policy, (i) no Promoter Member or Participant, and none of their respective Affiliates, is granted any right, title or interest, express or implied, in or to any IPR held, controlled or owned any other Promoter Member or Participant, or any of their respective Affiliates, with respect to any inventions, copyrightable works or any other intellectual property, irrespective of whether such intellectual property was, is or will be conceived, developed, discovered, created, made, reduced to practice, improved or enhanced by such Promoter Member or Participant, or Affiliate, or their respective collaborators or customers prior to the date when such Promoter Member or Participant became a Promoter Member or Participant of the Alliance or during the period during which such Promoter Member or Participant belongs to the Alliance as a Promoter Member or a Participant, and (ii) no Promoter Member or Participant, and none of their respective Affiliates, shall be obligated under this IPR Policy, or otherwise by the Alliance, to license any such IPR held, controlled or owned by such Promoter Member or Participant, or any of their respective Affiliate, to any other Promoter Member, Participant or to the Alliance. Except to the extent expressly provided otherwise in this IPR Policy, ownership of any inventions shall be consistent with inventorship. Inventorship shall be determined in accordance with applicable law. Except to the extent expressly provided otherwise in this IPR Policy, ownership of any works shall be consistent with authorship. Authorship shall be determined in accordance with applicable law.

2. Optional Disclosure of Necessary Claims. Each Promoter Member and Participant may, but shall not be required to, disclose whether such Promoter Member or Participant holds any Necessary Claims (as defined below) (including without limitation, any Necessary Claims of an Affiliate of a and/or a Non-Member Participant) covering the applicable Proposed Specifications or Adopted Specifications. If a Promoter Member or Participant wishes to disclose any

Necessary Claims relating to the applicable Proposed Specifications or Adopted Specifications, the Alliance shall provide him with a declaration form to be used by such Participant in disclosing the above, which form shall be consistent with the terms of this **Section 2**.

3. RAND License for Necessary Claims in Air Interface Specifications. Each Promoter Member and each Participant agrees to grant to each Promoter Member and each Participant, any their respective Affiliates, and to cause its Affiliates holding any Necessary Claims, to grant to each Promoter Member and each Participant, and their respective Affiliates, a RAND License (as defined below) to the extent required by the licensee to fully utilize the license to any Necessary Claims covering any Air Interface Specifications upon such terms and conditions as may be agreed to between such licensor and licensees. If a Promoter Member or Participant ("**Licensor**") licenses to any other Promoter Member or Participant ("**Licensee**") any Necessary Claims on a fee-based or other royalty-based arrangement as part of such RAND License, the Licensor agrees that any existing and future licenses granted to such Licensor by such Licensee with respect to any Necessary Claims covering any existing or future Air Interface Specifications, including, without limitation, any Royalty Free Licenses or other non-fee based arrangements, may be converted to a fee-based or other royalty-based license arrangement on substantially the same terms as the RAND License granted by the Licensor to the Licensee as determined by such Licensee. Notwithstanding any other provisions of this IPR Policy, a Promoter Member's or Participant's licensing obligations under this Section 3 shall extent only to Necessary Claims covering any Air Interface Specifications, and any Promoter Member and any Participant, and any of their respective Affiliates, shall have no obligation hereunder to grant any license to any other Promoter Member or Participant, or any of their respective Affiliate, with respect to any IPR that does not involve Necessary Claims covering any Air Interface Specifications.

4. Alliance IPR and IPR Contributed to the Alliance. All right, title and interest in and to any and all IPR, software and documentation created or developed by any Alliance Employee (as defined below) or Alliance Contractor (as defined below) ("**Alliance IPR**") shall solely vest in the Alliance, and the Alliance shall be free to use and publish any research results, ideas, algorithms, techniques and other information developed for or by the Alliance as determined by the Board of Directors in its sole discretion. Participants and its Affiliates shall be granted a Royalty Free License to all Alliance IPR by the Alliance upon such terms as determined by the Board of Directors in its reasonable discretion, provided that the term of any such license to the Participant and its Affiliates shall end upon the resignation or removal of the Participant from the Alliance or the termination or expiration of the Participant's Participant Agreement with such Participant. If any IPR is developed using confidential information of a Promoter Member or Participant, then the Promoter Member or Participant contributing the confidential information must be the owner of the IPR

5. Joint IPR. Any IPR developed jointly by the Alliance pursuant to, and within the scope of, a separate written agreement between the Alliance and either a Promoter Member and/or Participant or a contractor acting on behalf and as agent of such Promoter Member and/or Participant, which agreement defines the scope of the work to be performed by Promoter Member and/or Participant, shall be jointly owned by the Alliance and such applicable Promoter Member and/or Participant ("**Joint IPR**") and title to such Joint IPR shall jointly vest in the Alliance and such applicable Promoter Member and/or Participant. Each joint owner shall be entitled to exer-

cise all rights of ownership as provided by applicable U.S. law without, however, an obligation of accounting from one to the other. Each such Promoter Member and/or Participant acknowledges and agrees that the Alliance may license the use of Joint IPR to other Promoter Members and Participants pursuant to terms and conditions determined by the Board of Directors in its reasonable discretion. For the purposes of the foregoing, the term "developed jointly" shall mean that at least one Promoter Member and/or Participant employee or contractor and one Alliance Employee or Alliance Contractor qualify as co-inventors as a matter of U.S. patent law, in the case of patentable subject matter, or qualify as co-authors as a matter of U.S. copyright law, in the case of copyrightable subject matter.

6. Definitions.

"*Adopted Specifications*" means Air Interface Specifications that have been approved or adopted by the Alliance pursuant to the procedures set forth in the Corporate Bylaws.

"*Alliance Contractor*" means an individual or entity that has been retained as an independent contractor to provide services to the Alliance pursuant to a written consulting or services agreement entered into by the Alliance and such individual or entity.

"*Alliance Employee*" means an individual who is employed by the Alliance pursuant to an employment agreement by Alliance with such individual and who receives a salary from the Alliance.

"*Alliance IPR*" is defined in **Section 4**.

"*Air Interface Specifications*" means a set of written Air Interface Specifications, including protocols, for radio transmissions over the air between two or more identified functional entities in a wireless network of information, instructions, messages, message sequences, or data, including the definition and specifications for such attributes as frequency, channel bandwidth, and modulation scheme, to effect the interoperability of products or devices that utilize such base stations or terminals by communicating via such wireless network in accordance with such air interface specifications.

"*IPR*" means any and all Patent Rights, Technology Rights, or other intellectual property or proprietary rights which may exist in any intellectual property under applicable state, federal or foreign laws. "*Patent Rights*" means any patent application or patent having claims covering any invention, including, but not limited to, all continuations, divisionals, substitutions, reexaminations, reissues, extensions, additions, registrations and all corresponding foreign patent applications and patents based on such applications or patents. "*Technology Rights*" means rights under state and federal or foreign laws, including the laws of copyright, trade secret, and unfair competition, in unpatented inventions, know-how, software and other technology.

"*Joint IPR*" is defined in **Section 5**.

"Necessary Claims" means one or more valid claims of all patents and patent applications throughout the world, existing now or hereafter issued or filed, that a Promoter Member and Participant, or any of their respective Affiliates, as applicable, owns, holds or has a right to, and that: (a) cover one or more of the Air Interface Specifications; and (b) would be necessarily infringed by an implementation of any Air Interface Specifications, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Air Interface Specifications, and such infringement is necessary to meet the implementation requirements of the Air Interface Specifications. If Promoter Member and/or Participant asserts that any claim is not a Necessary Claim on the basis that there is a commercially reasonable alternative to the infringing implementation of the Air Interface Specifications such Promoter Member or Participant shall provide the Board of Directors with documentation that in the reasonable opinion of the Board of Directors evidences the availability of such a commercially reasonable alternative.

"Non-Member" means any third party which is not a member of the Alliance.

"Participant" means any non-member participant in the Alliance in accordance with the Bylaws of the Alliance that has executed and entered into, and is bound by, the applicable EnOcean Alliance Participation Agreement with the Alliance.

"Promoter Member" means a member of the Alliance in accordance with the Bylaws of the Alliance that has executed and entered into, and is bound by, the applicable EnOcean Alliance Promoter Member Agreement with the Alliance.

"Proposed Specifications" means draft Air Interface Specifications and/or any draft additions and/or modifications to existing Adopted Specifications (but not the underlying Adopted Specifications) recommended for review and adoption to the Alliance by the Board of Directors.

"RAND License" means a worldwide, non-exclusive, non-transferable license to Necessary Claims solely in order to use, implement and/or comply with the Air Interface Specifications and to make, have made, use, import, sell, offer to sell, promote or otherwise distribute and dispose of the resulting product or technology, (i) that does not include any right to grant sublicenses, (ii) that may be conditioned on payment of reasonable, non-discriminatory royalties or fees by the licensee, (iii) that may be conditioned on a grant of a reciprocal RAND License to all Necessary Claims owned or controlled by the licensee and its Affiliates, and (iv) that may not impose any further conditions or restrictions on the use of any other intellectual property rights or other technologies, or other restrictions on behavior of the licensee, but (v) that may include reasonable and customary terms relating to operation or maintenance of the license relationship.

"Royalty Free License" means a no cost, worldwide, perpetual, non-exclusive, non-transferable, license fee and royalty free license to IPR that does not include any right to grant sublicenses, as applicable, and to make, have made, use, import, sell, offer to sell,

license, promote or otherwise distribute and dispose of the resulting product or technology.

EXHIBIT 3

ENOCEAN ALLIANCE

ANTITRUST GUIDELINES

Certain types of activities conducted by industry participants may be subject to scrutiny under antitrust laws as being anti-competitive. In order to minimize exposure of the Alliance and its Members to antitrust liability, the Alliance and each Member agrees to abide by the following guidelines when participating with, for or on behalf of the Alliance:

1. Neither the Alliance nor any of its committees shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among and between competitors with regard to prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms or marketing practices.
2. The Alliance and its Members shall not discuss, communicate or engage in any other exchange between Members with regard to prices, pricing methods, production quotas or other limitations on either the timing, costs or volumes of production or sale, or allocation of territories or customers.
3. The qualifications for membership or participation in the Alliance are set forth in the Corporate Documents. No applicant for membership or participation, who otherwise meets the qualifications set forth therein, shall be rejected for any anti-competitive purpose or for the purpose of denying such applicant the benefits of membership or participation.
4. The Alliance shall not compel or coerce any Member into accepting or complying with any Adopted Specification.
5. Adherence to Adopted Specifications or sample implementations shall be voluntary on the part of the Members of the Alliance and shall in no way be compelled, directed or coerced by the Alliance, it being solely a voluntary decision on the part of the particular Member of the Alliance as to whether to adhere to or comply with any such Adopted Specifications or sample implementations.
6. Subject to applicable confidentiality obligations, including without limitation as set forth in the applicable Promoter Member Agreement or Participation Agreement, if information, materials or reports of the Alliance for the use of the membership or participation is significant to third parties or others in the industry, then such information, material and reports will be

made available by the Alliance to all such persons, on such reasonable terms and conditions as it may prescribe, in order to carry out its purposes.

7. To the extent that the purposes of the Alliance, as set forth in its Corporate Documents require, for the Alliance's purposes and objectives, joint research and development by two or more of its Members, or representatives thereof, any such joint research and development for the Alliance shall exclude the following activities:

- the exchange of information among competitors relating to costs, sales, profitability, prices, marketing or distribution of any product, process, or service that is not reasonably required to conduct the research and development;
- any agreement or any other conduct restricting, requiring, or otherwise involving the production or marketing by any Member of the Alliance of any product, process or service, other than the production or marketing of proprietary information developed through such joint research and development, such as patents and trade secrets; and
- any agreement or any other conduct restricting or requiring the sale, licensing or sharing of inventions or developments not developed through such joint research and development, or restricting or requiring participation by any Member of the Alliance in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any Member of the Alliance, or representative thereof, or of the results of such joint research and development.