

OpenADR ALLIANCE

MEMBER AGREEMENT

(Member Form)

Parties:

OpenADR® Alliance

("OpenADR" or "Alliance")

111 Deerwood Rd, Suite 200

San Ramon, CA 94583

Attn: accounts@openadr.org

Corporate Name ("Member")

Address

City, State, ZIP

Contact Name

E-Mail Address

Phone

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

OpenADR Alliance

Signed:

Title: _____

Date: _____

Member

Signed:

Title: _____

Date: _____

MEMBER AGREEMENT

TERMS AND CONDITIONS

1. Incorporation

The OpenADR 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 Member Agreement, Member consents to the form of the Corporate Documents. Member acknowledges that the Corporate Documents may be amended from time to time in accordance with the provisions of the Corporate Documents and as law may allow. The Alliance has filed for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, and Member 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 OpenADR Alliance is a non-profit mutual benefit corporation formed to foster the ongoing development, adoption and compliance of the Open Automated Demand Response (OpenADR) standards through collaboration, education, training, testing and certification.

The purposes for which the OpenADR Alliance is organized are to:

- a. Develop conformance, certification, and testing process for OpenADR and engage with entities such as standard development organizations (SDOs), user groups, and Smart Grid activities.
- b. Collaborate with SDOs for development of OpenADR standards.
- c. Collaborate with DOE, FERC, NARUC, NAESB and other government agencies to expand the adoption of OpenADR.
- d. Collaborate with other alliances and others on partnership opportunity.
- e. Development of an OpenADR marketing portal targeted toward customers that may be interested in participating in an automated DR program. Members can use this portal to promote their offerings and direct interested parties to their own web sites for information.
- f. Education and training sessions of system integrators, control vendors, etc. to enable them to install “OpenADR Ready” equipment within facilities to

- consume OpenADR signals; and facilities to develop load management strategies using best practices gleaned from prior work.
- g. Promoting the OpenADR brand globally to build market awareness.
 - h. Centralized documentation of information related to dynamic pricing, DR utility/ISO incentives, tariffs, and programs.
 - i. Centralized development and documentation of information related to OpenADR deployments, including lessons learned from previous deployments and the development of best practices.
 - j. Co-development of marketing strategies among service providers and vendors for DR programs.
 - k. Development programs to allow vendors to develop, test, and demonstrate their ability to integrate with OpenADR signals.

3. Participation as a Member; Dues

Subject to the terms of Section 9, upon acceptance of this Membership Agreement by the Alliance and payment of the appropriate dues, Member shall hold the status of the class of Sponsor Member, Contributor Member or Adopter Member in the Alliance indicated on the cover page of this Member Agreement for a period of twelve (12) months commencing on the acceptance date. Subject to the terms of Section 9, Member may renew its Member status for subsequent twelve (12) month periods by paying any then-current annual dues established by the Board of Directors. Failure to pay annual or specially assessed dues when due shall result in termination and/or non-renewal of Member's status pursuant to Section 9(d). Member 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 Members in accordance with the Corporate Bylaws; provided, any increase will be applied only prospectively. 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 Member's status as a Member in the Alliance, all rights and privileges provided and/or granted to Member and/or any Affiliate of Member pursuant to Section 4 of this Participation Agreement and/or pursuant to any policies and procedures of the Alliance shall terminate. Notwithstanding anything in this Agreement to the contrary, the sole and exclusive remedy of the Alliance for non-payment by Member of any dues or other fees, whether annual or specially assessed, will be termination of Member's participation in the Alliance.

4. Duties and Rights of Members

The duties, rights, privileges and obligations of Members shall be as set forth in the Corporate Bylaws, as same may be amended from time to time in accordance with their terms, and applicable law. Unless otherwise provided in the Corporate Bylaws or required by applicable law, Member shall not be entitled to any voting rights with respect to the business or proceedings of the Alliance.

Member identifies the designated contact and representative of Member on the first page of this Participation Agreement. Member may change the designated representative of Member from time to time upon prior written notice to the Alliance.

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

5. Intellectual Property Rights

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

7. Prohibited Activities

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

8. Application to Affiliates

(a) Definitions

"Affiliate" shall mean, with respect to Member, any entity controlling, controlled by or under common control with 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 Member.

(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 Member shall have the right to exercise the rights and benefit from the licenses granted to 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 Participation Agreement; and (ii) any policies and procedures applicable to Members and/or Affiliates of Member 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 “Member” shall be deemed to also include such Affiliates of Member. The rights granted under this Section 8 shall terminate immediately upon: (i) the Affiliate’s material breach of any of its obligations under this Section 8 or (ii) termination or expiration of this Member Agreement pursuant to Section 9.

(c) Right to Bind

An Affiliate of Member shall not have the right to exercise the rights granted to Member 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 Member and/or 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 Member 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 Member and/or any Affiliate under the terms of this Participation Agreement.

9. Term and Termination

(a) Term

Member 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 Member elects not to renew its Member status as provided in Section 3; (iii) such time as Member elects to voluntarily withdraw as a Member as

provided in Section 9(b); and (iv) termination of Member's status as a Member as provided in Section 9(c).

(b) Voluntary Withdrawal as Member

Upon written notice to the Alliance given at any time, Member shall have the right to withdraw as a Member. Upon such withdrawal, 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 Participation

Upon the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, the Alliance shall have the right to terminate Member's status as a Member for cause. The term "for cause" shall mean Member's failure to materially comply with its obligations under this Participation Agreement. Upon such termination, 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

Dues shall be as determined by the Board of Directors in accordance with the Corporate Bylaws. Member acknowledges that Member 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 Member fails to pay the applicable annual or special assessment dues when required, as the sole and exclusive remedy of the Alliance for such non-payment: (i) 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) Member shall be entitled to continue participation only upon re-application to the Alliance; (iii) Member 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 Member's status as a Member: (i) the following terms shall survive: (A) this Section 9(e) and Sections 6, 11 and 12 of this Participation Agreement; and (B) Sections 2 and 3 of the IPR Policy with re-

spect to Necessary Claims of the Member 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 Member's status as a Member; 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 Member prior to the effective date of expiration or termination of such Member's status as a 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 MEMBER, 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 Member's participation in the Alliance, the Alliance shall not be liable to Member for any direct, indirect, incidental, consequential, special or punitive damages including, without limitation, lost profits, sustained or incurred by Member that are not attributable to the actions or inactions of the Alliance under this Participation Agreement.

12. Indemnification

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 Member’s failure to materially comply with any of its obligations under this Participation Agreement. The Indemnified Parties promptly shall notify Member of any such claims, suits or proceedings and, at Member’s sole cost and expense, reasonably cooperate with Member in the defense of such claims, suits or proceedings. Member’s cumulative liability pursuant to this Section 12 shall not exceed One Hundred Thousand Dollars (\$100,000).

13. Insurance

The Alliance shall purchase and maintain insurance on behalf of each 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 with coverage limits determined by the Board of Directors.

14. 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 facsimile, 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 Member:

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

If to the Alliance:

OpenADR Alliance
111 Deerwood Rd., Suite 200
Attention: Managing Director
info@openadr.org

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 Participation Interest

This Membership Agreement shall be binding on the parties and their successors and assigns. Member may assign or otherwise transfer its participation interest of 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 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 Member shall have the right to list the Alliance's name and logo on 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 Participation Agreement, Member agrees that the Alliance shall have the right to list 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 Member.

17. 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.

18. 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.

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 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.

20. 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).

21. 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.

22. 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 supersedes 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 Member.

ARTICLES OF INCORPORATION

I

The name of the corporation is OpenADR Alliance.

II

- A. This corporation is a nonprofit **Mutual Benefit Corporation** organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.
- B. The specific purpose of this corporation is to foster the adoption and compliance of the Open Automated Demand Response (OpenADR) standards by facilitating and accelerating the development, adoption, and compliance through collaboration, education, training, testing and certification.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Name: Barry Haaser (original incorporator)

Address: 17431 Lakeview Drive

City: Morgan Hill State: California Zip Code: 95037

IV

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

V

This corporation shall indemnify any person or entity who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person, or such entity's designee, is or was a Director, Alternate Director, Officer or member of any committee or working group of this corporation, to the fullest extent allowed under the provisions of Section 7237 of the California Nonprofit Corporation Law relating to the power of a corporation to indemnify any such person or entity.

EXHIBIT 2

OPENADR ALLIANCE

INTELLECTUAL PROPERTY RIGHTS POLICY

From and after the date that this Intellectual Property Rights Policy (“IPR Policy”) is adopted, the IPR of the Alliance and its Members shall be governed prospectively by this IPR Policy, all in accordance with the terms of the OpenADR Alliance Bylaws. Recognizing that the Alliance is an open participation organization whose activities are focused to accelerate the growth of the renewable energy industry through standardization of monitoring and management interfaces for energy system components, this IPR Policy is designed to maximize widespread adoption of 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 7 of this Exhibit or the applicable Member Agreement.

1. **IPR Categories.** IPR shall be categorized as follows:

- (a) Adopted Specifications;
- (b) Alliance IPR; and
- (c) Joint IPR

with each category subject to the further terms set forth in this IPR Policy.

2. **Disclosure of Necessary Claims.** Each Member shall disclose whether such Member has any Necessary Claims (including without limitation, any Necessary Claims of an Affiliate of a Member and/or a Non-Member) relating to the applicable Proposed Specifications and/or Adopted Specifications. The Alliance shall develop a declaration form to be used by Members in disclosing the above, which form shall be consistent with the terms of this Section 2. Each Member shall disclose as soon as possible IPR information associated with any standardization proposal.

3. **RAND License for Necessary Claims.** Each Member agrees to negotiate in good faith for the grant to each other Member a RAND License to any Necessary Claims upon such terms and conditions as may be agreed to between such Members. If a Member (“Licensor Member”) licenses to another Member (“Licensee

Member”) any Necessary Claims on a fee-based or other royalty-based arrangement, Licensor Member agrees that any existing and future licenses granted to it in connection with any Necessary Claims in existing or future Adopted Specifications by Licensee Member, 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 as determined by the Licensee Member.

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 individuals employed or retained by the Alliance for creation or development of same shall vest in the Alliance (“Alliance IPR”), 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. Members shall have a Royalty Free License to Alliance IPR.

5. **Joint IPR.** IPR developed jointly by the Alliance and either: (a) a Member pursuant to a separate agreement with the Alliance defining the scope of the work to be performed by such Member; or (b) a contractor acting in their capacity as such, shall be jointly owned by the Alliance and the applicable Member (“Joint IPR”). Each joint owner shall be entitled to exercise all rights of ownership as provided by law without, however, an obligation of accounting from one to the other. The Member acknowledges and agrees that the Alliance will make Joint IPR available to all Members pursuant to terms and conditions determined by the Board of Directors. For the purposes of the foregoing, the term “jointly” shall mean that at least one Member employee and one Alliance employee or contractor assigned to the Alliance 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. **Amendments.** This IPR Policy may be amended by the vote of a majority of the Board of Directors. Each Member and Participant in the Alliance will be given a 30 day notice period of any such amendments, and in the event that such Member or Participant does not withdraw from the Alliance, will be bound to the terms and conditions of the IPR Policy as amended.

7. Definitions.

“Adopted Specifications” means the Specifications that have been approved or adopted by the Alliance pursuant to the procedures set forth in the Corporate By-laws.

“Alliance IPR” is defined in Section 4.

“Fully Comply” means products or technology that meet all mandatory portions of the applicable Adopted Specifications. If the Adopted Specifications contain optional components, and the product or technology incorporates the optional components, then the products or technology must also meet the optional specifications of such Adopted Specifications.

“Interfaces” means a set of message and message sequences on the information flowing across a reference point between two identified functional entities or the method by which information, including data and control information, is conveyed between cooperative systems or devices, such as radio frequency communications-related subsystems.

“IPR” means intellectual property rights, whether by patent, copyright, trade secret or other form of intellectual property.

“Joint IPR” is defined in Section 5.

“Licensee Member” is defined in Section 3.

“Licensor Member” is defined in Section 3.

“Member” means a Sponsor Member of the Alliance which has executed the OpenADR Member Agreement.

“Necessary Claims” means those claims of all issued patents throughout the world, that a Member or a Non-Member, as applicable, owns or has a right to, and that: (a) cover or directly relate to one or more of the Proposed Specifications and/or the Adopted Specifications, as applicable; and (b) reasonably might be necessarily infringed by an implementation of any Proposed Specifications, if approved as Adopted Specifications, and/or Adopted Specifications, as applicable, where such

infringement could not have been avoided by another commercially reasonable noninfringing implementation of such Proposed Specifications and/or Adopted Specifications, as applicable, and such infringement is necessary to meet the implementation requirements of the Proposed Specifications and/or Adopted Specifications, as applicable. Necessary Claims shall not include any claims of any patents or patent applications covering any enabling technologies that are used in the manufacture of products that comply with the Proposed Specifications and/or Adopted Specifications, but are not expressly designated in the Proposed Specifications and/or Adopted Specifications (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.). If a Member 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 Adopted Specification, such Member shall provide the Board of Directors with sufficient documentation evidencing the availability of such a commercially reasonable alternative.

“Proposed Specifications” means Specifications and/or any additions and/or modifications to existing Adopted Specifications (but not the underlying Adopted Specifications) recommended for review to the Alliance by the Board of Directors.

“RAND License” means a non-exclusive license on fair, reasonable and nondiscriminatory terms and conditions, without a right to sublicense, to make, have made, use, import sell, offer to sell, license, promote or otherwise distribute and dispose of the resulting product or technology that Fully Comply with the applicable Adopted Specifications. Such RAND License to Necessary Claims shall be transferable by the licensee only with the written consent of the licensor; such consent may not be unreasonably withheld or delayed.

“Related Patent Applications” means all pending patent applications throughout the world, existing now or hereafter filed, that a Member or a Non-Member, as applicable, owns or has a right to, and that disclose subject matter that relates to any Proposed Specifications and/or Adopted Specifications, where possible infringement of any eventually issued claim(s) could not be avoided by another commercially reasonable noninfringing implementation of such Proposed Specifications and/or Adopted Specifications, as applicable. Related Patent Applications shall not include any patent applications covering any enabling technologies that are used in the manufacture of products that comply with the Proposed Specifications and/or Adopted Specifications, but are not expressly designated in the Proposed

Specifications and/or Adopted Specifications (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.). If a Member asserts that any pending patent application is not a Related Patent Application on the basis that there is a commercially reasonable alternative to the infringing implementation of the Adopted Specification, such Member shall provide the Board of Directors with sufficient documentation evidencing the availability of such a commercially reasonable alternative.

“Royalty Free License” means a no cost, worldwide, perpetual, non-exclusive, nontransferable, unrestricted license to the Necessary Claims, as applicable, but does not include any right to grant sublicenses, solely to make, have made, use, import, sell, offer to sell, license, promote or otherwise distribute and dispose of the resulting product or technology.

“Specifications” means documents or specifications that define or specify one or more aspects of an Interface. Interfaces may be defined and/or specified by using either message oriented descriptions or a protocol specification.

EXHIBIT 3

OPENADR ALLIANCE

ANTITRUST GUIDELINES

Certain types of activities conducted by industry Members may be subject to scrutiny under antitrust laws as being anti-competitive. In order to minimize exposure of the Alliance and its Members (together, and collectively with any other class of Members of the Alliance, the “Members”) to antitrust liability, the Alliance and each Member agree 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 or among 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. Neither the Alliance nor its Members shall engage in any activity or communication that might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market.
4. 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.
5. The Alliance shall not compel or coerce any Members into accepting or complying with any Adopted Specification.

6. 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.

7. Any Adopted Specifications or sample implementations shall be based solely and exclusively upon technical considerations and upon the merits of objective judgments and thorough procedures and shall in no way be based upon any effort, intention or purpose of any of its Members to reduce or eliminate competition in the sale, supply and furnishing of products and services.

8. 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.

9. To the extent that the purposes of the Alliance, as set forth in its Corporate Documents, require collaboration by two or more Members or representatives of Members in furthering those purposes, the Members or their representatives shall undertake such collaboration only to the extent necessary to achieve such purposes, and shall report the results of any collaboration undertaken in behalf of the Alliance to the Alliance. Any such collaboration shall exclude:

- (a) The exchange of information between or among members relating to any aspect of competition among the Members, except to the extent that the exchange is reasonably required to accomplish the purposes of the Alliance and is unlikely to have any impact on competition between or among Members. In case of doubt, the collaborating Members should consult counsel for the Alliance with regard to the proposed exchange or the format in which the exchange should take place.
- (b) Any agreement or conduct restricting the production of any product by any Member, limiting the manner in which any Member markets or promotes any product, requiring the purchase or sale of any product by any Member, or limiting the sharing of intellectual property by, between, or among Members. The collaborating Members should consult counsel for

the Alliance with respect to any limitation the Alliance may desire lawfully to impose on behalf of the Alliance with respect to the results of the collaboration.