

# OBSERVER MEMBERSHIP AGREEMENT

## CLEMSON UNIVERSITY CENTER FOR RESEARCH IN WIRELESS COMMUNICATIONS

This Membership Agreement (hereinafter called AGREEMENT) is made on this \_\_\_\_\_ day of \_\_\_\_\_, by and between Clemson University (hereinafter called CU) and \_\_\_\_\_, Inc. (hereinafter called OBSERVER MEMBER).

Nothing in this AGREEMENT limits the rights of the OBSERVER MEMBER from negotiating an independent agreement with any unit of Clemson University with all terms and conditions to be established by good faith negotiations between the parties.

WHEREAS, the parties to this AGREEMENT intend to join together in a cooperative effort to support the Center for Research in Wireless Communications (hereinafter called CRWC) at Clemson University to establish a mechanism whereby the educational and research environment can be used to advance knowledge and practice of wireless telecommunications systems and to stimulate industrial innovation.

NOW, THEREFORE, for the mutual promises and covenants contained herein, the parties hereto agree as follows:

### 1 DEFINITIONS

1.1 "Affiliate" means any company, corporation, or business in which OBSERVER MEMBER owns or controls at least fifty percent (50%) of the voting stock or other ownership.

1.2 "Confidential Information" means information that is confidential and in which the parties may have vested valuable proprietary interests. Confidential Information shall be marked "Confidential" in writing. If confidential information is communicated orally, the delivering Party shall clearly advise representatives of the other Party as to which portions of the oral communication are considered confidential and shall document the communication in a written summary within ten business days.

1.3 "Intellectual Property" means data, technical know-how, and Registered Copyrights and Patents.

1.4 "Parent entity" means any company, corporation, or business which owns or controls at least fifty percent (50%) of the voting stock or other ownership of the OBSERVER MEMBER.

1.5 "Technical Information" means any information developed in the course of performance of this AGREEMENT including, but not limited to, research and development information, ideas, unpatented inventions, unregistered copyrights, know-how, and technical data.

### 2 MEMBERSHIP

2.1 *Eligibility* – Any corporation, company, partnership, or any other legally recognized business entity, or any agency, or government organization duly authorized by the United States Government or the government of any State may become a OBSERVER MEMBER of CRWC. CRWC and CU acknowledge has disclosed that its authorization to participate in any activities that develop or transfer proprietary technology, including without limitation inventions, creations of copyrightable works, and contributions, receipt or licensing of Intellectual Property, may require separate, prior internal approval. For the avoidance of doubt, by entering into this AGREEMENT and paying fees, OBSERVER MEMBER is not agreeing to membership responsibilities or benefits that require such



3.1 *Ownership of Intellectual Property* - CU shall own all information, including, but not limited to, all Intellectual Property, developed by its faculty and/or students in the course of performance of this AGREEMENT. The Observer Member has no rights to participate in Intellectual Property through this agreement. If an Observer Member has an interest in Intellectual Property which might be generated by CAUS faculty, Staff, Limited Members, Regular Members, or Supporting Members, then it is recommended that the Observer Member consider signing the standard Membership agreement for CRWC.

**4 NONDISCLOSURE OF CONFIDENTIAL INFORMATION** – CU and OBSERVER MEMBER recognize that the success of this AGREEMENT may require them to exchange Confidential Information. The exchange of such information will be controlled by the terms of the Clemson University Non-Disclosure Form, which is attached. Such forms will be prepared as needed by either party and signed by mutual agreement.

**5 ADVERTISING AND PROMOTIONAL MATERIAL** - OBSERVER MEMBER shall not use the name of Clemson University, College of Engineering and Science, or Center for Research in Wireless Communications in any advertising or promotional material without the specific written consent of CU. CU shall not use the name of OBSERVER MEMBER in any advertising or promotional material without the specific written consent of OBSERVER MEMBER. A general exception is hereby granted to OBSERVER MEMBER to use the name of CRWC and to cite the fact that CRWC is operated by CU in written advertising and other promotional materials provided that:

- (i) the use is limited to describing the OBSERVER MEMBER relationship to CRWC as defined by this AGREEMENT;
- (ii) no endorsements by CRWC, CU, or the College of Engineering and Science of OBSERVER MEMBER products or other commercial activities may be reasonably inferred from such use; and
- (iii) the use does not represent that a partnership or other legal entity has been formed between and among the parties of this AGREEMENT.

**6 LIABILITY** – The relationship between OBSERVER MEMBER and CU shall be that of independent contractors. As an independent contractor, OBSERVER MEMBER assumes all risk and liability for injury to person or damage to property caused by acts of its employees during the period of this AGREEMENT while they are using facilities or equipment owned and/or controlled by CU. CU assumes all risks and liabilities for injury to persons or damage to property occurring during the period of this AGREEMENT and caused by acts of its employees and students while performing work at OBSERVER MEMBER'S facility under the terms of this AGREEMENT. This AGREEMENT shall not constitute either CU or CRWC as agents or legal representatives of OBSERVER MEMBER. The obligations of CU and OBSERVER MEMBER hereunder shall not apply to liability arising from use of information furnished pursuant to this AGREEMENT.

**7 DISPUTE RESOLUTION** – In the event of any dispute concerning the terms, conditions, or interpretation of this AGREEMENT, prior to the initiation of litigation, the parties agree to engage in good faith mediation to resolve such differences. In the event of litigation, disputes will be resolved under the laws of the State of South Carolina.

**8 RENEWAL** – This AGREEMENT will be renewable annually. Either party to this AGREEMENT may terminate annual continuation of the AGREEMENT by providing the other party with written notice at least three months prior to the anniversary date of this AGREEMENT. Upon

termination, each party retains the right to use information received prior to termination subject to the conditions of this AGREEMENT, but is no longer entitled to future information or rights to use future information from the other party. All notices shall be in writing, sent first class, registered or certified mail, postage prepaid, and addressed as follows or at such other address as may be designated by a party in writing:

For CU:                      Director  
                                    Center for Research in Wireless Communications  
                                    301 Fluor Daniel Building  
                                    Clemson University  
                                    Clemson, SC 29634-0915

For MEMBER:              Name  
                                    Title  
                                    Address

**9     PRIMACY OF THIS AGREEMENT** – The provisions contained herein constitute the entire AGREEMENT between the parties and supersede all previous communications or representations, either verbal or written, between the parties hereto with respect to the subject material hereof. This AGREEMENT may not be changed, altered, or supplemented except by written amendment hereto, signed by both parties. It is further agreed that nothing contained in the AGREEMENT shall modify, amend, or supersede any prior or subsequent arrangement between OBSERVER MEMBER and CU with respect to activities outside the scope of this AGREEMENT.

**10   TRANSFER OF INTEREST** – Unless otherwise agreed to in writing by both parties, OBSERVER MEMBER only may assign its rights under this AGREEMENT and/or delegate its duties under this AGREEMENT to affiliates, wholly owned subsidiaries, or a parent entity.

**IN WITNESS WHEREOF, this AGREEMENT** is effective as of the last date of signing set forth herein below, which day and month in subsequent years in which OBSERVER MEMBER adheres to the terms of this AGREEMENT shall be called the anniversary date of this AGREEMENT.

**CLEMSON UNIVERSITY**  
**Acknowledged:**

**MEMBER**  
**Authorized Signature**

\_\_\_\_\_  
James H. Jones

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
L. Wilson Pearson  
Director, CRWC

\_\_\_\_\_  
Date

**Authorized Signature:**

\_\_\_\_\_  
C.E.G. Przirembel  
Vice President for Research  
and Chief Research Officer, CU

\_\_\_\_\_  
Date