

Smart Battery System (S.B.S.) Specifications
Adopter's Agreement

This is a patent license agreement for parties wishing to adopt the SBS specifications.

As used in this Agreement:

- The "**Promoters**" are Benchmarq, Duracell, Energizer, Intel, Linear Technology, Maxim, Mitsubishi Electric, National Semiconductor, Toshiba Battery, Varta.
- "**Adopter**" is the entity named at the end of this Agreement.
- "**Fellow Adopters**" are any other entities which have executed an identical counterpart of this Agreement and delivered it to Promoters.
- "**Affiliate**" is an entity which directly or indirectly controls, is controlled by, or is under common control with another entity, so long as such control exists. "Control" means beneficial ownership of more than fifty percent of the voting stock or equity in an entity.
- "**Specifications**" is the set of specifications entitled Smart Battery System Specifications, revision 1.0, authored and published by the Promoters, and dated as of September 5 1996 or before, as well as any Updates identified as set out in the Licenses section below.
- "**Necessary Claims**" means claims of a patent or patent application owned or controlled by a party which must be infringed in order to make a product that fully complies with the then current Specifications, which would not be infringed but for the compliance with the Specifications, and without infringing which there is no feasible way to comply with the Specifications. "Necessary Claims" do not include any claims relating to semiconductor manufacturing technology, claims with regard to which it would be possible to build a product in compliance with the Interface in the Specification without infringing such claim (even if in the same patent as Necessary Claims), or claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

When Adopter's authorized representative signs this Agreement and delivers it to the Promoters at the address below, this Agreement will be legally binding.
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Licenses:

- Grants of Licenses. Upon the later of Adopter's execution of this Agreement or finalization of the Specification by the Promoters, Adopter hereby grants to the Promoters and to Fellow Adopters, and the Promoters hereby grant to Adopter, a nonexclusive, royalty-free, nontransferable, nonsublicenseable, worldwide license under its Necessary Claims to make, have made, use, import, offer to sell and sell products which comply with the Specification; provided that such license shall not extend to features of a product which are not required to comply with the Specification or for which there exists a feasible, noninfringing alternative.

- Acceptance of License. Adopter's license grant to Fellow Adopters and Promoters is subject to their granting of a reciprocal license to Adopter.
- Updates. The Promoters may issue an update, revision, or extension of some or all of the Specifications (an "Update") on or prior to December 15, 1998. Provided that the Promoters have made the Specification generally available with the notation "Implementation of this Specification is governed by the terms of the SBS Specifications Adopter's Agreement," the Grants of Licenses referenced in this Agreement shall extend to the Update except as specifically provided below. Issuing such an Update shall NOT terminate any right or obligation of Adopter under this Agreement, including the Licenses granted with respect to the earlier versions of the Specification.
- Objection and Withdrawal. Adopter (or a Fellow Adopter) may, within 60 days after publication of an Update, terminate this Agreement with respect to such Update and all further revisions of the Specification. Termination shall be made by giving written notice to the Promoters and to the Fellow Adopters at the addresses maintained by the Promoters. The effect of such termination will be that the Licenses granted by Adopter shall continue to apply to Specification as it existed prior to such Update, and the licenses received by the Adopter shall terminate.

General:

- Trademarks and Branding. Adopter hereby agrees not to assert against any Promoter or Fellow Adopters any trademark or trade name rights Adopter may have now or hereafter in the names Smart Battery System or S.B.S.
- Governing Law. This Agreement shall be construed and controlled by the laws of Delaware, without reference to conflict of laws principles.
- Jurisdiction. The parties agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in, the state and Federal courts of Delaware.
- No Other Licenses. Adopter neither grants nor receives any license to or right to use any trademark, tradename, copyright, or maskwork hereunder. Except for the rights expressly provided by this Agreement, Adopter neither grants nor receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.
- No Warranty. Adopter acknowledges that the Specification is provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.
- Not Partners. Adopter understands that the Promoters are independent companies and are not partners or joint venturers with each other. While the Promoters may select an entity to handle certain administrative tasks for

them, no party is authorized to make any commitment on behalf of all or any of them.

- Limitation of Liability. IN NO EVENT WILL PROMOTERS BE LIABLE TO EACH OTHER, OR TO ANY ADOPTER OR PARTICIPANT FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- Complete Agreement. This Agreement sets forth the entire understanding of the agreement between the Adopters and the Promoters and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by an authorized representative of all parties.

Adopter:

Company: _____

Address:

By: _____

Name: _____

Title: _____

Date:

Accepted and acknowledged on behalf of the Promoters:

By: _____

Name: _____

Title: _____

Date: _____

Please mail signed covenant to :

**Smart Battery System (SBS) Specifications
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