



**SIGMA DESIGNS, INC.  
Z-WAVE DEVELOPMENT KIT LICENSE AGREEMENT**

This **Sigma Designs Z-Wave Development Kit Agreement License Agreement** (the "Agreement") is entered into effective as of the date last signed below (the "**Effective Date**"), by and between **Sigma Designs, Inc.**, a California corporation having its principal place of business at 1778 McCarthy Blvd., Milpitas, California, together with its subsidiaries (hereinafter, "Sigma"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_ (hereinafter, "Company"). Sigma and Company are each a "party" hereto; and collectively, the "parties" hereto. Sigma and Company hereby agree as follows:

**BACKGROUND**

- A. The purpose of this Agreement is to grant Company a limited license and access to a Z-Wave Development Kit and to the Z-Wave Technology to enable Company to develop software applications for products to the extent permitted by this Agreement. Access to a Z-Wave Development Kit and to the Z-Wave Technology (defined below as, "Licensed Materials") may be obtained from Sigma or Sigma's Distributor.
- B. Company understands that prior to the distribution of Licensed Materials in the Company Product to end users, Company must certify the Company Product pursuant to a separate Sigma Z-Wave Certification Agreement.
- C. Company understands that without first Certifying the Company Product containing the Z-Wave technology: (i) the Company Product may not be taken to market launch; (ii) the Company Product will not be interoperable within the Z-Wave network; (iii) the Company may not distribute the Company Product to end-users; (iv) Company will not be granted a license to display the Z-Wave trademark on any Company Products; (v) Company may not create more than 500 prototypes of the Company Product containing the Licensed Materials; (vi) the Company may not manufacture or distribute Company Products to end-users for any purpose or in any manner.

**AGREEMENT**

**1. Definitions.**

(a) "Application" means a software application that Company develops hereunder for Company Products which use Sigma's Z-Wave technology and that is either included in an ASIC or in another IC contained in a Company Product, and any Company updates and improvements to such software application.

(b) "ASIC" means a standard Sigma application specific integrated circuit which will contain the Z-Wave protocol and may also contain an Application, when same are loaded into the ASIC by Company.

(c) "Distributor" means a distributor of Sigma products that is authorized by Sigma to distribute Z-Wave DKs and ASICs to customers in the territory where Company is located.

(d) "Intellectual Property Rights" means all current and future patent rights, copyrights, moral rights, rights of priority, trade secrets, mask work rights, topography rights, know how, industrial design rights, trademarks (including service marks), trade dress and other similar intangible rights, whether registered or unregistered, which may exist anywhere in the world, and all applications and registrations with respect to any of the foregoing.

(e) "Company Product" means the device, system, subsystem or module identified in Exhibit A of this Agreement, for which Company develops an Application and that contains an ASIC containing the Z-Wave protocol and such Application (either contained in the ASIC or in another IC).



(f) "Licensed Materials" means the set of digital files including software, sample source code, application programming interface(s) (APIs), tools, libraries and data, hardware, documentation and other materials, whether tangible or intangible, and in whatever form or medium, identified by Sigma as the Z-Wave Development Kit (or Z-Wave DK) and any Sigma-issued updates and improvements thereto. The DK includes the Z-Wave Technology. Z-Wave Technology means the Z-Wave radio frequency based digital communications technology, including node transceiver hardware and the Z-Wave communications protocol software stack, data and API.

## 2. License Grant.

**2.1 Development License Grant.** Subject to the terms and conditions of this Agreement, including payment in full of the applicable fees, Sigma grants to Company a non-exclusive, non-transferable, limited license to internally install and use the software portion of the Licensed Materials on personal computers located on Company's premises, and use the Licensed Materials only to develop Applications for Company Products.

(a) Modify the sample source code included in the Licensed Materials and include all or part of such sample source code in an Application;

(b) Use and link the Z-Wave communication protocols ("Z-Wave Protocols") as needed for an Application; *provided*, however, that the Z-Wave Protocols may not be modified;

(c) Company may create up to five hundred (500) prototype Company Products (which include the Licensed Materials) to be manufactured, used and distributed only for evaluation and testing by Company and its customers. Company agrees that such prototype units may not be distributed commercially or for profit, but may be provided to customers for a nominal fee for evaluation and testing. ASICs may not be distributed separately but only as an integral part of a Company Product.

(d) No implied license is granted and all rights not expressly granted herein to Company are retained by Sigma and its licensors.

## 2.2 License Limitations.

**2.2.1** Except as expressly provided in this Agreement, Company shall have no right to, and shall not, (i) sublicense, transfer, distribute or otherwise disclose Licensed Materials, or any portion of it, or any Devices, to any third party; (ii) copy or use Licensed Materials for any purpose except only as strictly necessary for the normal operation and authorized use of the Licensed Materials; alter, modify, translate, decompile, disassemble or otherwise reverse engineer any portion of the Licensed Materials; (iii) attempt to derive the source code of any portion of the Licensed Materials that has not been otherwise provided in source code; (iv) prepare derivative works of the Licensed Materials except as authorized in this Agreement; or (v) shall not use, or permit any use of, the Licensed Materials to develop an Application that would commit, or facilitate the commission of, any crime or other illegal or tortious act.

## 2.3 Ownership of Licensed Materials.

**2.3.1 Sigma Intellectual Property.** As between the Parties, Sigma (and its licensors) retains all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Licensed Materials. Sigma shall own all software (including modifications and documentation) created, conceived, prepared, made, discovered or produced by Company that are derived from or based upon the Licensed Materials. Company agrees that it will promptly disclose to Sigma detailed information about all modifications and improvements it makes, whether alone or together with Sigma, to the Licensed Materials, and provide copies of such modifications and improvements to Sigma. Company agrees that all such modifications and improvements shall be owned by Sigma



and shall be deemed included in the Licensed Materials licensed to Company hereunder. To effectuate such ownership, Company hereby assigns, and agrees to assign, to Sigma all right, title and interest in such modifications and improvements to the Licensed Materials, including all Intellectual Property Rights therein and thereto. Except to the extent of any incorporated component of the DK and/or Z-Wave Technology, the Application and Company Product are owned by Company and constitute intellectual property of Company and constitute and contain Confidential Information of Company. This Agreement does not transfer or assign to Sigma any Intellectual Property Right of Company in or to the Application or Company Product or any part thereof.

**2.3.2 Reservation of Rights.** All rights of either Party not expressly granted in this Agreement are reserved, and no additional rights or licenses are granted under Intellectual Property Rights of either Party by implication or estoppels or otherwise.

**3. Delivery.** Subject to the terms and conditions of this Agreement, delivery of the Licensed Materials to Company will take place as follows: If Company purchases the license to Licensed Materials from Sigma, then Sigma will be responsible for delivering the tangible portions of the Licensed Materials to Company. If Company purchases the license to the Licensed Materials from a Distributor, then such Distributor will be responsible for delivering the tangible portions of the Licensed Materials to Company. In either case, the software portions of the DK will be licensed and delivered to Company only by Sigma, in electronic format, by making them available to Company for download from Sigma's ftp site.

**4. Sale of Licensed Materials by Distributor.** If the license to the Licensed Materials is purchased by Company from a Distributor, this Agreement shall be executed by and between Company and Distributor, and the following shall apply:

(a) The purchase and sale of the license to the Licensed Materials takes place between Distributor and Company, and Company shall pay the fee agreed upon between Distributor and Company directly to Distributor and the provisions of Exhibit A part 1 hereof shall not apply.

(b) Distributor has the overall responsibility to deliver the Licensed Materials to Company. However, the software portion of the Licensed Materials will be delivered and licensed to Company only by Sigma pursuant to the terms and conditions of this Agreement, which delivery and license is conditioned upon the due execution of this Agreement by Company.

**5. DISTRIBUTION LICENSE GRANT. CERTIFICATION PROCESS.** Subject to the terms of this Agreement, Sigma grants to Company, and Company hereby accepts, a world-wide, non-exclusive, non-transferable, royalty-free, revocable only as set forth in Section 13.1 and Section 13.2 (Term and Termination), license (without the right to assign, transfer or convey such rights, in whole or in part) for use of the Sigma ASIC and Licensed Materials as by Company for the following: (i) a license to use the Sigma ASIC and Licensed Materials for the purposes of incorporating the Sigma ASIC and Licensed Materials into the Company Product and designing, developing, and testing the Company Product; and (ii) a license to manufacture or have manufactured Company Product containing the Sigma ASIC and Licensed Materials, the design of which is based in whole or in part on the Sigma ASIC and Licensed Materials, by Manufacturer(s), provided that the Company Product is submitted and passes Certification as set forth in Section 5.1 through Section 5.3 in this Agreement prior to manufacturing the Company Product or distributing to the Company Product to end-users.

**5.1 Z-WAVE™ CERTIFICATION PROGRAM.** Sigma's Z-Wave Certification Program is required to ensure that the Company's Products are compliant with the Z-Wave standard. Prior to the Company marketing or distributing any Company Products to end users, Company shall submit all such Company Products to the Z-Wave Certification program. Details on the Z-Wave Certification program can be found on Sigma's website at [www.z-](http://www.z-)



wave.sigmadesigns.com or can be otherwise obtained from Sigma. After a Company Product has passed the Z-Wave Certification program, Sigma or the applicable Sigma-authorized third party certification laboratory will issue a Z-Wave compliant certificate. Only after a Company Product has passed the Certification process, may Company sell or distribute the Company Product to end users. Company understands that failure to Certify the Company Products through Sigma's Z-Wave Certification program will result in the failure of the Company Product to be interoperable with other Z-Wave devices. Sigma's Z-Wave Certification Program is a two-part process:

(a) **Z-WAVE™ TECHNICAL CERTIFICATION:** Company Product must pass the Technical Certification component in order to ensure that the Company Product will be interoperable within the Z-Wave network at market launch.

(b) **Z-WAVE™ MARKETING CERTIFICATION:** Company Product packaging and materials must pass the Marketing Certification component in order to ensure that the Company is following the Z-Wave guidelines related to proper logo use and placement.

**5.2 DUTY TO USE Z-WAVE LOGO.** After a Company Product has passed the Z-Wave Certification Program, Company may not market or distribute such Company Product without displaying the Z-Wave trademark and logo (the "Trademark"), specifications of which will be supplied by Sigma after Customer's Product has passed the Certification Program.

**5.3 TRADEMARK LICENSE.** Sigma hereby grants to Company a limited, non-exclusive, non-transferable, royalty-free right and license to use Sigma's "Z-Wave" trademark and logo (the "Trademark") solely for use by Company on the Z-Wave Certified Company Products and on promotional and marketing materials for such products. Sigma shall have the right to approve the form and manner of use of the Trademark. When using the Trademark, Company shall indicate Sigma's ownership of the Trademark. Sigma will provide to Company specifications and requirements for the exact use of the Trademark and Company agrees to meticulously follow all specifications and requirements of Sigma for the Trademark. All use by Company of the Trademark shall inure to the exclusive benefit of Sigma. Except as expressly authorized by this Section 5, Company will not make any use of Sigma's trademarks, service marks or trade names. Company agrees to affix its own trademark(s) to the products in such a manner and physical location that there is no confusion between the Trademark and Company's mark and the Trademark is not adversely affected.

**6. Updates.** Company understands and agrees that Sigma may amend, modify, change and cease distribution of Licensed Materials. Sigma may provide to Company any update to the Licensed Materials at Sigma's sole discretion.

**7. Good Faith Cooperation with Company.** Sigma will, at no further charge to Company may provide basic training and development support in connection with Company's use of the Licensed Materials, to such extent and in such manner (typically by phone and/or email) as Sigma, at its sole discretion, determines to be reasonable.

**8. Fees and Payment.** Company shall pay to Sigma the fees set forth on Exhibit A, without setoff. Invoices are due and payable net thirty (30) days from date of invoice, subject to credit approval. Sigma's obligation to ship the ASICs or deliver the Licensed Materials is subject to approval by Sigma's credit department and Company's continued credit compliance. Sigma reserves the right to change any credit and/or payment terms extended to Company at any time and from time to time if Sigma believes, in good faith, that there has been an adverse change in credit worthiness of Company. In such case Sigma may, at its option require partial or full payment in advance from Company. All overdue amounts shall bear interest at the rate of 1.5% per month, or the highest rate permitted by applicable law, whichever is more.



9. **Taxes.** The fees payable hereunder do not include, and Company will pay or reimburse Sigma for, any sales, use, value added or other taxes based on or measured by amounts payable to Sigma hereunder (excluding only taxes based on Sigma's net income) or any export, import or other governmental charges and any interest or penalties assessed on any of the foregoing.

10. **Confidentiality.** Company shall treat Sigma's Confidential Information with the same standard of care that Company uses to safeguard its own valuable confidential information of like nature from unauthorized access, use, disclosure or dissemination, but not with less than reasonable care. "Confidential Information" means any non-public information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, facilities, technical data, Licensed Materials, and equipment), which is designated as "Confidential," "Proprietary" or some similar designation or which the recipient has reason to know is treated as confidential by the discloser. Company shall use Confidential Information including its tangible embodiments only in accordance with the provisions of this Agreement. Company may provide the Confidential Information to its employees only on a need to know basis. All employees and contractors of Company who receive Confidential Information of Sigma must be bound by customary confidentiality obligations. Notwithstanding the foregoing, the Company may use or disclose Confidential Information if and only to the extent: (i) it is required to do so by law provided that the receiving party gives the disclosing party sufficient notice to enable it to seek an order limiting or precluding such disclosure; or (ii) the disclosing party gives its prior written authorization to do so which is signed by an officer of the disclosing party. Each party agrees to keep confidential and not to disclose the terms and conditions of this Agreement to any third party other than: (i) in confidence to its affiliates, actual or potential investors, banks, lawyers, accountants and other professional advisors, and (ii) in connection with the enforcement of its rights under this Agreement. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." SIGMA DOES NOT MAKE ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

11. **WARRANTY.**

11.1 LICENSED MATERIALS ARE PROVIDED TO COMPANY "AS IS" AND "WITH ALL FAULTS", WITHOUT WARRANTY OF ANY KIND FROM SIGMA. COMPANY ASSUMES ALL RISKS THAT LICENSED MATERIALS ARE SUITABLE OR ACCURATE FOR COMPANY'S NEEDS AND COMPANY'S USE OF THE LICENSED MATERIALS IS AT COMPANY'S OWN DISCRETION AND RISK. SIGMA DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES FOR LICENSED MATERIALS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT, TITLE, OR QUIET ENJOYMENT. NEITHER SIGMA NOR ITS SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), ARISING OUT OF THIS AGREEMENT WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF SIGMA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR OTHERWISE SHOULD KNOW ABOUT THE POSSIBILITY OF SUCH DAMAGES EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

11.2 The disclaimer of warranties, exclusive remedies, and limited liability set forth above are fundamental elements of the basis of the bargain between Sigma and Company. Company agrees that Sigma would not be able to provide Licensed Materials on an economic basis without such limitations. IN NO EVENT WILL SIGMA'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE GREATER OF THE NET AMOUNT THAT COMPANY ACTUALLY PAID FOR THIS SOFTWARE LICENSE OR ONE THOUSAND DOLLARS (\$1,000).

11.3 **High Risk Activities.** Licensed Materials are not fault-tolerant and are not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-





safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Licensed Materials could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Sigma and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

**12. Relationship Between Parties.** The parties are independent contractors with respect to each other, and not partners or agents of each other, and neither party has any authority to bind the other party in any manner whatsoever.

**13. Term and Termination.**

**13.1 Term.** This Agreement will remain in effect for two (2) year from the Effective Date, unless sooner terminated as provided below. At the end of such period, this Agreement shall automatically renew from year to year unless terminated by either party by giving written notice of termination to the other party not less than sixty (60) days prior to the date on which such termination is to take effect. This Agreement may also be terminated earlier as provided below.

**13.2 Termination.** Either party may terminate this Agreement at any time immediately upon written notice to the other party if the other party is in material breach of any provision of this Agreement (including but not limited to Section 2.1, 2.2, 5.0, 5.1, 5.2, 5.3, or 5.4, which breach remains uncured for at least 30 days (5 days for non-payment of money or breach of Section 10) following written notice of such breach demanding its cure.

**13.3 Effect of Termination.** Upon termination of this Agreement for whatever reason (including expiration), Company shall promptly cease using the Licensed Materials and return the original to Sigma and destroy all copies, partial or complete, of the Licensed Materials. Further, Company shall promptly cease manufacturing or distributing Company Products that incorporate the Licensed Materials. At Sigma's request, Company shall certify to Sigma in writing, signed by an officer of Company, that the Licensed Materials, and all copies thereof, including partial copies, have been either returned to Sigma or destroyed and that no copy of the Licensed Materials remains in Company's possession or under its control.

**14. Notices.** All notices of termination or breach must be in English, in writing and addressed to the other party's Legal Department. The address for notices to Sigma's Legal Department is 1778 McCarthy Blvd., Milpitas, CA 95035. All other notices must be in English, in writing and addressed to the other party's primary contact. Notice will be treated as given on receipt, as verified by written receipt.

**15. Survival.** Sections 2, 5, 10, 11, 12, 13, 14-23 will survive any expiration of this Agreement.

**16. Assignment.** This Agreement may not be assigned or transferred by Company without the prior written consent of Sigma. As used in this Agreement, the following shall be deemed an assignment or transfer: (i) any dissolution, merger, consolidation, or other reorganization of or affecting Company, whether or not Company is the surviving corporate entity; and (ii) the sale or transfer, by one or more transactions, of stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Company's capital stock issued, outstanding and entitled to vote for the election of its directors. All other assignment is void.

**17. No Third Party Beneficiaries.** This Agreement does not confer any benefits on any third party unless it expressly states that it does.

**18. Force Majeure.** Sigma shall not be liable for any loss or damage which may be incurred as a result of any failure or delay in performing its obligations under these terms and conditions due to causes beyond its reasonable control.



19. **Export Restrictions.** COMPANY ACKNOWLEDGES THAT THE LICENSED TECHNOLOGY INCLUDES ENCRYPTION SUBJECT TO UNITED STATES LAWS AND REGULATIONS FOR EXPORT AND REEXPORT PURPOSES. COMPANY MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO LICENSED MATERIALS. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS, AND END USE.

20. **Governing Law.** ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

21. **Counterparts; Drafting.** The Parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument, and will be construed as if both Parties jointly wrote it. If any provision of these terms is found unenforceable, the balance of the Agreement will remain in full force and effect. Headings used in this Agreement are for reference purposes only and in no way define, limit, or describe the scope or extent of such section or in any way affect this Agreement.

22. **Severability.** If any of the above provisions are held to be in violation of applicable law, void, or unenforceable, then such provisions are hereby waived or amended to the minimum extent necessary for this Agreement to be otherwise enforceable. However, if in Sigma's opinion, deletion or amendment of any provision of this Agreement by operation of this paragraph significantly compromises the rights or increases the liabilities of Sigma or its licensors/suppliers, Sigma reserves the right to terminate this Agreement without any liability to Company.

23. **Entire Agreement; Amendment.** This Agreement (including Exhibits) constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties relating to such subject matter. This Agreement may not be changed or amended except by a writing, stating that it is an amendment to this Agreement, executed by both parties hereto.

Sigma Designs, Inc.

Company Name:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

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

Date:

Date:



Exhibit A to SIGMA DESIGNS, INC.  
Z-WAVE DEVELOPMENT KIT LICENSE AGREEMENT

1. Fees: [this Section does NOT apply if the license to the DK is purchased from a Distributor]:

Product	Amount
Developer's Kit	USD \$2,000.00

Please obtain wire transfer instructions from Sigma.

2. Additional Company Products:

Company Product	Date Added