



701 Brooks Avenue South
Thief River Falls, MN 56701 USA
toll-free: 800.344.4539
local: 218.681.6674
fax: 218.681.3380

www.digikey.com

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement, effective as of the date set out below, between Sigma Designs, Inc. ('Sigma Designs'), a California Corporation, and Company as set out below, and only the Company, excluding its parents, subsidiaries, affiliates or other divisions, provides for the exchange of information between the parties some of which is considered proprietary; and may be exchanged between Sigma Designs and the Company solely for the purpose of evaluating opportunities for cooperation on business development and use of technology (the 'Purpose of Disclosure') Accordingly, the parties hereto agree as follows:

1.1. Non-Disclosure and Use: The parties agree that from the date of disclosure, the parties shall not disclose any Confidential Information received from the other party to any other person without the express prior written consent of the disclosing party. The parties shall not use the other's Confidential Information for any purpose other than the Purpose of Disclosure and shall use the same degree of care to avoid unauthorized disclosure and unauthorized use of such Confidential Information as it employs with respect to its own confidential and proprietary information, and at a minimum to exercise reasonable care and permit authorized disclosure only on a need to know basis to its agents, representatives and employees (the 'Representatives') who are informed of the confidential nature of the Confidential Information and agree to be bound by and act in accordance with the terms and conditions of this Agreement to the same extent as though they were parties hereto. Each party shall be responsible for any breach of this Agreement by its Representatives.

2.2. Confidential Information To Be Designated As Such: Any proprietary information which a party deems to be Confidential Information shall be designated as such on the written or machine readable data, and if the Confidential Information was orally or graphically communicated, it must be supplemented in writing delivered to the receiving party within 30 days after the oral or graphic disclosure describing such information and designating it as Confidential Information. Notwithstanding the foregoing provisions of this paragraph, Confidential Information shall also include information, which the receiving party has reason to know is considered or deemed by the disclosing party to be Confidential Information.

3.3. Excepted Confidential Information: The parties hereto agree that information shall not be deemed to be Confidential Information, and the parties shall have no obligation with respect to any such information which: (i) was in the public domain at the time it was disclosed or subsequently becomes in the public domain without breach by the receiving party of this Agreement or its Representatives; (ii) was known to the receiving party at the time of disclosure as substantiated by contemporaneous written or machine readable data, with the burden on the receiving party to show by clear and convincing evidence that it knew such information at the time of disclosure ; (iii) is disclosed on a non-confidential basis with the prior written approval of the other party hereto; (iv) was independently developed by the receiving party as substantiated by contemporaneous written or machine-readable data, with the burden on the receiving party to show by clear and convincing evidence that it independently developed such information, or; (v) becomes known to the receiving party, on a non-confidential basis, from a source other than the other party hereto that is not prohibited from disclosing same by a legal, contractual or fiduciary obligation.

4.4. Property Rights: All writings or machine readable data containing information provided pursuant to this Agreement, and all copies of such writings or data made by the receiving party shall be and remain the property of the disclosing party, and shall at the option of the disclosing party immediately upon request be (i) returned to the disclosing party, or (ii) destroyed, with written evidence certifying to such destruction delivered within ten (10) days thereof.

5.5. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Both parties agree not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

6.6. The obligations of the parties herein shall be effective without limitation in time. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the parties, nor by the rejection of any agreement between the parties, by a trustee of either party in bankruptcy, or by either party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

7.7. The parties understand that the continued confidentiality of the Confidential Information is critical to the disclosing party and essential to the continued good will and ultimate success and profitability of the disclosing party and that such confidentiality goes to the essence of this Agreement. Accordingly, both parties agree that use or disclosure of the Confidential Information in a manner inconsistent with the Agreement will cause the disclosing party irreparable damage and that the remedy at law of the disclosing party for any actual or threatened breach of this Agreement will be inadequate and that the disclosing party shall be entitled, as a matter of right, to specific performance hereof or injunctive relief, by temporary injunction or other appropriate judicial remedy, writ or order, in addition to any damages which the disclosing party may be legally entitled to recover, together with reasonable expenses of litigation, including attorneys fees incurred in connection therewith.

8.8. The parties undertake that they shall not for a period of two (2) years after the date hereof solicit or endeavour to entice away, offer employment to or contract for the services of any person who is or was an employee of the other party at the date hereof.

9.9. No Assignment: The parties may not assign this Agreement or any interest herein without the express prior written consent of the other party.

10.10. Severability: If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

11.11. No Implied Waiver: Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

12.12. Enforcement: In any lawsuit arising out of or to enforce this Agreement, the prevailing party shall be entitled to include in the judgment or in a supplemental judgment the reasonable legal fees and other legal expenses in such suit incurred by such prevailing party.

13.13. General:

- A. THE VALIDITY, PERFORMANCE, CONSTRUCTION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA (EXCLUDING ITS CONFLICT OF LAWS PROVISIONS) AND ANY DISPUTE ARISING OUT OF THIS AGREEMENT, SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COURTS, LOCATED IN THE STATE OF CALIFORNIA
- B. The terms and conditions of this Agreement may not be superseded, modified, waived, amended or rescinded except in a writing which states that it is such a modification, waiver or rescission, and is signed by an authorized representative of each party hereto.

Z-WAVE DEVELOPER'S KIT AGREEMENT

(Z-Wave is a trademark of Licensor.)

This Z-Wave Developer's Kit Agreement ('Agreement') is made as of the date set out below by and between the licensee set out below ('Licensee') and Sigma Designs Inc. ('Licensor' or 'Sigma Designs'), a Corporation having a principal place of business at 1778 McCarthy Blvd, Milpitas, CA 95035.

WHEREAS Licensee has certain in development, cost optimizing, procurement, production and distribution as described below; and

WHEREAS Sigma Designs has expertise in the design and manufacture of the Z-Wave Technology, Z-Wave ASICs, and design of Blue Prints for Z-Wave communication modules and is the owner of the Z-Wave Technology and associated designs, drawings, specifications and Blue Prints; and

WHEREAS Licensee wishes to acquire a developer's kit and license to the Z-Wave technology and Licensor wishes to grant such license and access; NOW, THEREFORE, the Parties have entered into this Z-Wave Developer's Kit Agreement on the terms and in consideration of the mutual covenants set forth below:

1. Definitions. The following capitalized terms, as used in this Agreement, shall have the meanings set forth below:

- a. 'ASIC' means an Application Specific Integrated Circuit containing the Z-Wave protocol.
- b. 'Bankruptcy Event' means the (i) filing of any voluntary or involuntary petition in bankruptcy, or the making of any general assignment for the benefit of creditors, or any petition for similar relief by or against a Party; (ii) appointment of a receiver for a Party or any material portion of the property of such Party by any court of competent jurisdiction; or (iii) written admission by a Party of its inability to meet its debts as they mature.
- c. 'Confidential Information' has the meaning set out in the Non Disclosure Agreement. The terms of this Agreement shall be deemed the Confidential Information of Sigma Designs.
- d. 'Intellectual Property Rights' includes, but is not limited to, any proprietary rights in any trademark, industrial design, trade name, service mark, patent, copyright, trade secret and/or other material, copyrighted or otherwise.
- e. 'Licensed Technology' means the technology and materials described in Schedule 1.
- f. 'Non Disclosure Agreement' means the Non Disclosure Agreement between the Parties of even date herewith, or any other agreement between the Parties imposing any confidentiality obligation upon them.
- g. 'Party' means a party to this Agreement; 'Parties' means all parties to this Agreement.
- h. 'Proprietary Materials' means products, materials tools and methodologies that are proprietary to Sigma Designs or to a third party.
- i. 'Z-Wave Technology' means the technology described in Schedule 1.

2. Grants of Licenses. Subject to the terms of this Agreement, including payment of any fees set out herein or otherwise required for delivery, Licensor hereby grants Licensee a non-exclusive, non-transferable and time and use limited license to use the Z-Wave Developer's Kit and the Z-Wave Technology solely as set forth in Schedule 1 hereto. The license shall be valid only for the development of up to five hundred (500) prototype units, which units shall not be sold, offered for sale, distributed in any way or otherwise provided to anyone other than employees of Licensee, whether for profit or otherwise.

3. Intellectual Property Rights.

- a. No Transfer of Proprietary Rights.** Nothing contained herein shall be construed as transferring or encumbering any Intellectual Property Rights or other proprietary rights of Sigma Designs in the Z-Wave Technology or the Proprietary Materials.
- b. Limited Use.** Licensee specifically agrees not to use the Z-Wave Technology or the Proprietary Materials in any manner or on any product, service or item except as set forth in this Agreement. Licensee shall not, directly or through a third party, reverse engineer, disassemble, decompile, modify or create any derivative works from the Licensed Technology except as provided for hereunder.
- c. Proprietary Materials.** Proprietary Materials shall be deemed Confidential Information of Sigma Designs. Included among the Proprietary Materials of Sigma Designs are the Developer's Kit and any other tools that Sigma Designs makes available to Licensee. Licensee shall not have or obtain any rights in such Proprietary Materials (or in any modifications or enhancements thereto) other than to use them (i) as authorized by Sigma Designs in writing for purpose of performing Licensee responsibilities, (ii) pursuant to Sigma Designs' standard license for such Proprietary Materials or, in the case of Proprietary Materials owned by a third party, pursuant to terms acceptable such third party.

4. Confidentiality. The Parties acknowledge that they have executed and are bound by the Non Disclosure Agreement, the terms, rights and obligations of which are hereby made a part hereof as if the Non Disclosure Agreement were set out herein in its entirety.

5. Limitation of Liability.

- a. Maximum Liability.** LICENSOR'S LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO, AND SHALL AT NO TIME IN THE AGGREGATE EXCEED, THE AMOUNTS PAID BY LICENSEE FOR THE PARTICULAR LICENSED MATERIALS AND DELIVERABLES INVOLVED IN ANY SPECIFIC CLAIM UNDER THIS AGREEMENT.
- b. No Indirect or Consequential Damages.** IN NO EVENT SHALL SIGMA DESIGNS BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS, DATA OR PROGRAMS, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY REGARDLESS OF WHETHER OR NOT SIGMA DESIGNS HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

6. Warranty.

- a.** Technology Delivered 'As Is'. All technology, including without limitation any technology blueprints, Developer's Kit, Proprietary Materials and/or software is being delivered 'as is' and Sigma Designs makes no warranty as to its condition, use or fitness for any particular purpose. Sigma Designs grants no warranties in relation to third party products but will pass through to Licensee warranties and obligations of developers of such third party products to the extent permitted by such warranties and by law.
- b.** Warranty of Rights. Notwithstanding the foregoing, Sigma Designs warrants that it is entitled to grant the licenses specified in this Agreement.
- c.** Other Warranties Disclaimed. THE WARRANTIES IN THIS AGREEMENT ARE SIGMA DESIGNS' SOLE WARRANTIES CONCERNING THE LICENSED MATERIALS, ANY SERVICES, AND ANY WORK PRODUCT HEREUNDER. THESE WARRANTIES ARE MADE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ADEQUACY OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

7. Term and termination.

- a.** Term. Unless earlier terminated, the grant of licenses specified in this Agreement shall continue for an initial period of two (2) years from the date hereof. Upon expiration of the initial period, the Agreement and the grant of licenses shall automatically be renewed for consecutive periods of one (1) year unless a Party terminates the Agreement by written notice no later than six (6) months' prior to the expiration of the Term.
- b.** Termination For Cause. Either Party may terminate this Agreement at any time upon written notice to the other Party upon the occurrence of any of the following: (i) any Bankruptcy Event; (ii) failure of a Party to substantially comply with any material term, condition or covenant contained herein which failure is not corrected within thirty (30) calendar days after receipt of written notice of such failure from the nondefaulting Party; or (iii) failure of a Party to promptly to pay any amount due under this Agreement within fifteen (15) calendar days following written notice by the other Party; or (iv) violation of any duty of confidentiality between the Parties.
- c.** No Liability at Termination. In the event of termination by Sigma Designs in accordance with any provisions of this Agreement, Sigma Designs shall not be liable to Licensee because of such termination for compensation, reimbursement or damages on account or under any theory for any other loss allegedly resulting from such termination.
- d.** Obligation after Termination. Licensee shall, within thirty (30) calendar days after expiration or termination of this Agreement, at Sigma Designs' option, either destroy or return to Sigma Designs all documentation on the Z-Wave Technology in Licensee's possession, together with written certification by an authorized representative of Licensee that the original and all copies of the documentation, including partial copies and modifications, in Licensee's possession are no longer in use and have been returned or destroyed.

8. Miscellaneous.

- a. Entire Agreement.** This Agreement (including its Schedule) contains the entire understanding and agreement of the Parties with respect to the subject matter hereof. Amendments to this Agreement must be in writing and signed by both Parties.
- b. No Implied Waivers.** The failure of either Party at any time to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the non-enforcement by either Party of a breach or any provision hereof be taken or held to be a waiver of any succeeding breach or of the provision itself.
- c. Injunctive Relief.** In the event of an actual or threatened breach of Sections 3 or 4 by Licensee, Licensee agrees that Sigma Designs shall be entitled to obtain interlocutory and final injunctive relief. Licensee acknowledges that these provisions are reasonable and equitable and that any such breach will cause Sigma Designs or its affiliate's immediate and irreparable harm.
- d. Notices.** Any notice or other communication required, authorized, permitted or contemplated to be given hereunder shall be given in writing and shall be deemed accepted immediately when hand delivered or sent by courier service or by telefax, or five (5) calendar days after having been mailed via registered mail or by telegram, fee prepaid, addressed to the parties at their addresses set forth herein, or to such other addresses or personnel as may be designated by such Party from time to time by notice.
- e. Assignment.** This Agreement shall not be assigned by either Party in whole or in part without the prior written consent of the other Party. Notwithstanding the foregoing a Party may assign its rights and obligations under this Agreement to any successor or assignee of all its business assets or to any direct or indirect affiliate, provided that the other Party does not have due reason to believe that the assignee is unable to fulfill its obligations under this Agreement.
- f. Publicity.** When appropriate, e.g., in connection with a development of a prototype, the parties may make the arrangements to promote each others' products. This could be, for instance, in the format of press releases, newsletters, web links or demonstrations at trade shows.
- g. Governing Laws, Jurisdiction and Venue:** This Agreement shall be governed and construed in all respects in accordance with the laws of the State of California, excluding conflicts of law rules and principles and excluding the application of the The Uniform Computer Information Transactions Act (UCITA) and The United Nations' Convention on Contracts for the International Sale of Goods (CISG). The California state courts located in Santa Clara County and the U.S. District Court of the Northern District of California, San Jose Division, shall have exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties hereto and Buyer hereby submits to the personal jurisdiction and venue of such courts."
- h. Severability.** In the event that any covenant, condition or other provision contained in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed separable from

the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained in this Agreement, and any such provision held to be invalid, void or illegal shall be deemed replaced by a provision which comes closest to such unenforceable provision in language and intent without being invalid, void or illegal.

- i.** Survival. The Parties' obligations of confidentiality and payment, and any other terms necessary to accomplish the intended purposes of this Agreement, shall survive the expiration or termination of this Agreement.

LICENSE AND SUPPLY AGREEMENT

This Agreement made by and between Sigma Designs Inc., a California corporation having a principal place of business at 1778 McCarthy Blvd, Milpitas, CA 95035 ('Sigma Designs'), and LICENSEE., Inc., a corporation having offices at the address as per below ('LICENSEE') shall have an effective date as per below, ('Effective Date'), (Sigma Designs and LICENSEE being sometimes hereinafter referred to individually as 'Party' and collectively as 'Parties'.)

WHEREAS, Sigma Designs is the owner of certain technology more particularly described in Schedule 1 hereto (the 'Technology'); and

WHEREAS, LICENSEE desires to license the Technology in connection with the design, development, manufacture, distribution and marketing of lighting and home automation products and to acquire from Sigma Designs certain components incorporating the Technology in connection therewith; and

WHEREAS, Sigma Designs is willing to grant such license and supply such components on the terms and

conditions hereinafter set forth, NOW, THEREFORE, it is agreed as follows:

1. Definitions

- a.** The term 'Product' shall mean a product designed, developed and manufactured by or for LICENSEE for the lighting and home automation market which incorporates or utilizes the Technology and/or the ASIC component (as defined in subparagraph 'd' below);
- b.** The term 'interoperability' means the ability of a product or device that utilizes the Technology to communicate, route and transfer information with other products or devices utilizing the Technology in range within the same network;
- c.** "NDA" shall mean the Non-Disclosure Agreement dated below between the Parties.
- d.** The term 'ASIC' means an Application Specific Integrated Circuit containing the Technology and all refinements, derivations and enhancements thereof, as more particularly described in Schedule 2 hereto.
- e.** The term 'Development Agreement' means the written agreement between the parties having an Effective Date of below.

2. License

Sigma Designs hereby grants to Licensee for the term of this Agreement the non-exclusive, non-transferable, right to use the unmodified Technology as embodied in the ASICs solely in connection with the design, development, manufacture, distribution and marketing of Products.

3. Supply of ASIC Components

- a.** All ASIC orders placed by Licensee shall be placed as per DigiKey's standard ordering policy
- b.** In the event of any inconsistency between the Purchase Documents and this agreement, the terms of this agreement shall govern.
- c.** Except as may be set forth in Schedule 3 hereto, nothing in this agreement shall obligate licensee to purchase any specified or minimum amount of ASIC

components. The parties hereto acknowledge that, except as set forth in schedule 3, licensee may elect not to place orders and may cancel orders as herein above provided

4. Certification Obligations

- a.** Prior to distributing and marketing any Product, Licensee shall obtain from Sigma Designs a written certification as to the interoperability of such Product in accordance with the procedure set forth in Schedule 4 hereto. After such certification, no Products may be distributed or marketed without displaying the interoperability statement as provided in Schedule 5 hereto. Sigma Designs shall cooperate respecting such certification so as not to unreasonably delay Licensee production of such Products.
- b.** In the event Sigma Designs upgrades the Technology, it shall so notify Licensee in writing and Licensee shall incorporate such upgrade in its Products.
- c.** Licensee is solely responsible for obtaining and complying with such governmental or other approvals respecting its Products as may be necessary.

5. Warranty

- a.** Sigma Designs represents and warrants to Licensee (i) that it is the owner of the Technology throughout the world and has the right to license same; (ii) that Products which have been certified by Sigma Designs as interoperable as set out in Paragraph 4(a) hereof shall not fail to be interoperable because of the failure of any ASIC component or Technology for a period of one year from the date of shipment of such ASIC's, provided that the network behavior of such Products has not been materially modified by LICENSEE after such certification; and (iii) for a period of one year from the date of shipment, each ASIC component sold by Sigma Designs to

LICENSEE shall perform substantially in accordance with the written specifications furnished by Sigma Designs to LICENSEE, and will be free from defects in material and workmanship. For purposes of subparagraph 5(a)(iii) above, the term 'specifications' shall mean the document attached as Schedules 1,2, and 4 hereto, together with such other specifications furnished to LICENSEE by Sigma Designs from time to time under this Agreement which, when signed by the parties, shall be deemed to be part of such Schedules 1, 2, and 4.

- b.** In the event of any breach of the warranty set out in subparagraph 5(a) above Sigma Designs's sole obligation shall be limited to either repairing or replacing at Sigma Designs' expense any ASIC and/or non-Interoperable component within such warranty period
- c.** THE WARRANTIES SET FORTH IN SUBPARAGRAPH 5(a) ABOVE ARE EXHAUSTIVE, SHALL CONSTITUTE SIGMA DESIGNS' SOLE BASIS FOR LIABILITY AS TO THE SUBJECT MATTER HEREOF AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY

QUALITY, ADEQUACY AND ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE. SIGMA DESIGNS SPECIFICALLY DISCLAIMS ANY LIABILITY WHATSOEVER ARISING AS A CONSEQUENCE OF THE COMBINATION OF THE TECHNOLOGY OR ANY FURTHER DEVELOPMENT OR IMPLEMENTATION THEREOF AND/OR DOCUMENTATION WITH ANY OTHER HARDWARE, SOFTWARE, TECHNOLOGY AND/OR SERVICE NOT PROVIDED EXHAUSTIVELY BY SIGMA DESIGNS. THE PARTIES HERETO ARE IN FULL AGREEMENT ON THAT THE WARRANTIES SET FORTH HEREIN ARE EXHAUSTIVE AND EXCLUSIVE AND THAT NO OTHER WARRANTIES, REGARDLESS OF THEIR NATURE OR SUBJECT MATTER ARE GIVEN NOR IMPLIED.

- d. IN NO EVENT SHALL SIGMA DESIGNS BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR OF DATA, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

6. Indemnity

- a. Sigma Designs shall defend, hold harmless, and indemnify Licensee, to a maximum of the value of ASIC's purchased and paid for by Licensee in the foregoing 3 months, from and against any and all liabilities (including without limitation reasonable attorneys' fees and expert fees), finally awarded by a court of competent jurisdiction ruling that (i) there exists a lack of interoperability of Products after Sigma Designs has certified Products as interoperable as set out in Paragraph 4(a) hereof, provided that the network behavior of such Products has not been materially altered by Licensee after such certification, or (ii) the Technology and/or the ASIC component described in Schedule 2 directly infringes any intellectual property right in the European Union or the United States. The obligations in this Paragraph 6(a) shall survive the termination or expiration of this Agreement.
- b. It is specifically agreed between the Parties that the above indemnity obligation represents Sigma Designs' sole and exclusive liability with respect to intellectual property rights infringement.
- c. Licensee shall not be entitled to indemnification under subparagraph 6(a) above unless and until (i) Licensee gives Sigma Designs written notice of any action or threatened action and the ground asserted therefore, if any; and (ii) a court of finds that Licensee is liable on the claims involved therein and determines that the Technology and/or the ASIC component is responsible for such claims.
- d. Licensee shall indemnify and continue to indemnify Sigma Designs against any liability, loss, damage, expense or costs (including reasonable attorneys' fees and expenses) which it incurs in relation to any claim made by a third party (i) arising out of any use of the Technology and/or ASIC that is not in full accordance with the terms of this Agreement; or (ii) that the Technology and/or ASIC, or any product containing the Technology and/or ASIC: (a) made in whole or in part in accordance to Licensee specifications or instructions infringes the intellectual property rights of a third party, to the extent that the alleged infringement relates to such specifications (b) when modified without Sigma Designs' specific written

- approval infringes the intellectual property rights of a third party, if the alleged infringement relates to such modification, (c) which are combined with other technologies, products, processes or materials infringes the intellectual property rights of a third party where the alleged infringement to any extent relates to such combination and where the alleged infringement could have been avoided absent any such combination, (d) to the extent that Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that could have avoided the alleged infringement.
- e. IN NO EVENT SHALL SIGMA DESIGNS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR OF DATA, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

7. Intellectual Property and Inventions

- a. Licensee agrees, during the term of this Agreement and subject to the NDA, not to use the Technology in any manner or on any product, service, or item except as explicitly set forth in this Agreement, and shall not directly or through a third party reverse engineer, disassemble, decompile, modify or create any derivative works from the Technology except as may be expressly permitted in this Agreement or as permitted under compulsory legislation.
- b. All inventions, copyrightable material, patents, patentable material, and other proprietary information made or developed solely by employees of one of the Parties during the term of this Agreement which are not derived from the Technology shall be the sole property of such developing Party and such Party shall retain the exclusive rights to all intellectual property therein including without limitation the right to file applications for and obtain patents and copyrights with respect thereto.
- c. All inventions, copyrightable material, patents, patentable material, and other proprietary information and intellectual property rights in the Products and/or applications of, or improvements and enhancements to, the Technology developed by Licensee under this Agreement shall be co-owned.
- d. All inventions, copyrightable material, and proprietary information in applications of the Technology made or developed jointly by the Parties shall be jointly owned by Sigma Designs and Licensee; each Party has the right to exploit and grant licenses in respect to such joint inventions, copyrightable material or proprietary information and any patents and copyrights arising there from, with the written consent of the other Party. In the event of such a joint invention, the Parties shall mutually agree which Party shall have the responsibility for preparing and filing any patent application(s) on the invention in the United States and foreign countries; and the Parties agree that each will bear one-half of the actual out-of-pocket expenses associated with obtaining and maintaining such patents. In the event one Party (a 'non-electing Party') elects not to file application for or maintain patent protection for any such joint invention in any particular country or not to share equally in the expenses thereof with the other Party, then the other Party (the 'electing Party') shall have the right to apply for and maintain such patent protection in such country at its own expense (the non-electing Party

undertaking to execute all such documents as may be necessary or requested by the electing party) and shall have full control over the prosecution and maintenance thereof, whereupon the non-electing Party shall assign its patent rights to the electing Party. An irrevocable royalty-free, non-exclusive, personal license to said patent rights (i.e., the right to use personally but not commercially exploit) shall then be granted by the electing Party to the nonelecting Party. Should neither Party elect to file application for letters patent or take other necessary legal steps to protect such joint invention, the invention shall remain jointly owned.

8. Term and Termination

This Agreement shall commence as of the Effective Date and continue for a period of five (5) years thereafter (the 'Term'). Notwithstanding the foregoing, either party may terminate this Agreement at any time prior to the expiration of the Term upon written notice to the other (to be effective as specified in such notice) in the event such other party breaches this Agreement and such breach continues for a period of thirty (30) days after written notice thereof, or if such other party files for bankruptcy, files a petition under insolvency laws, begins liquidation proceedings, or is subject to an assignment for the benefit of creditors.

9. Miscellaneous

- a.** This Agreement along with its schedules sets forth the entire agreement between the parties respecting the subject matter, merging and superseding all prior or contemporaneous understandings and agreements, except for the NDA, and may not be modified or amended in any manner except in a writing signed by both parties hereto. In the event that any covenant, condition or other provision contained in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed separable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained in this Agreement, and any such provision held to be invalid, void or illegal shall be deemed replaced by a provision which comes closest to such unenforceable provision in language and intent without being invalid, void or illegal.
- b.** This Agreement shall be governed and construed in all respects in accordance with the laws of the State of California, excluding conflicts of law rules and principles. The California state courts located in Santa Clara County and the U.S. District Court of the Northern District of California, San Jose Division, shall have exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties hereto and Buyer hereby submits to the personal jurisdiction and venue of the parties and service of process by a recognized commercial courier service and/or facsimile to the last known business address of LICENSEE or Sigma Designs shall be deemed sufficient to confer personal jurisdiction on any of said courts. The parties hereby waive any claims of forum non conveniens or rights to transfer to another judicial district outside of Santa Clara County and the U.S. District Court of the Northern District of California, San Jose Division .

- c. All notices required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given or rendered upon the date mailed when sent by registered mail, postage prepaid, or on the date following delivery to a recognized overnight courier service, or on the date delivered personally or by facsimile, and if given or rendered to Sigma Designs, addressed to:

Sigma Designs
1778 McCarthy Blvd
Milpitas, CA 95035

or, if given or rendered to Licensee, addressed to:

Licensee name
Address
Attention: person name

- d. No failure or delay by either party in exercising any right under this Agreement shall be deemed to be a waiver of such right.
- e. Nothing in this Agreement shall be deemed to constitute either party as an agent, representative or employee of the other for any purpose and neither party shall have any authority, and shall not represent in any way that it has any right or authority, to make any agreement for or to otherwise bind the other. The relationship between the parties under this Agreement is that of independent vendor and vendee and nothing in this Agreement creates any joint venture or partnership relationship between the parties. Sigma Designs and Licensee each represent to the other that, except as may be set forth in this Agreement, neither has made any representations of any kind to the other to induce or otherwise in connection with this Agreement.
- f. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any counterpart may be delivered by facsimile transmission, with the full force and effect of an originally signed agreement.
- g. Nothing in this Agreement shall be construed (i) as limiting or restricting in any way the right of either party to conduct its existing and future business independently of the other, or (ii) other than as expressly set forth herein, as granting any right or license to a party under or with respect to any patent, copyright, trademark, trade secret or other intellectual property of the other.
- h. Neither Party shall be held responsible for any delay or failure in performance of any part of this Agreement, except for obligations in respect of the payment of money or commercial hardship, to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, governmental action, the act of any civil or military authority, act of God, acts or omissions of carriers, component shortage, power cuts or any other causes beyond its reasonable control, whether or not similar to the foregoing.
- i. Except with respect to a transfer or sale of the entire business of a Party hereto with respect to which this Agreement pertains, neither Party may assign, pledge, hypothecate or in any manner transfer, convey, alienate or encumber any right or

- interest in this Agreement, without the written permission of the other Party, which permission shall not be unreasonably withheld.
- j.** Neither Party shall disclose to any third party the terms of this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld, unless compelled by appropriate judicial process. Any press release or other similar announcement relating to this Agreement requires written approval by both Parties.
 - k.** If any provision of this Agreement is declared invalid or unenforceable by a Court of competent jurisdiction, the remaining portions shall endure except for the part declared invalid or unenforceable by order of such Court. The provisions of Sections 5, 6, 7 and 9(f) of this Agreement shall survive the termination or expiration of this Agreement.
 - l.** The Parties hereto are sophisticated and have been represented by counsel of its' choice throughout the negotiations hereof. The Parties are therefore in agreement on that no principle of interpretation relative to the draftsmanship of the instrument concerned shall apply to the interpretation hereof.

IN WITNESS WHEREOF the Parties have executed this Agreement by their officers duly authorized as they so declare.

Licensee Accept and Agree to terms and condition listed in this document

Name _____

Title _____

Company Name _____

Company Address _____

Company Product Line _____

Signature _____

Date _____

SCHEDULE 1: The Z-Wave(TM) Technology

Description of the Z-Wave technology:

www.zen-sys.com/ContractAttachments/Z-WaveTechnology

SCHEDULE 2: Specification & Data sheets ZWave ASIC's and modules

Data sheet ZW0301 ASIC

<http://www.zen-sys.com/index.php?page=595>

Data sheet ZM3102 Module

<http://www.zen-sys.com/index.php?page=594>

SCHEDULE 3: Pricing, payment, billing, crediting, deliveries, and special terms and conditions

A. ASIC pricing

Pricing determined between Licensee and DigiKey

B. Payments, billing, crediting, delivery and forecast of ASIC

Determined between Licensee and DigiKey

SCHEDULE 4: Z-Wave(TM) Certification Program

Licensee is obliged to ensure that all Products have PASSED the Z-Wave(TM)

Certification Program prior to market launch as per the certification clause in the VPA.

Details about the certification program can be found at:

[http://www.sigmadesigns.com/ContractAttachments/CertificationForm/CertificationformINS10637-13\(2\).pdf](http://www.sigmadesigns.com/ContractAttachments/CertificationForm/CertificationformINS10637-13(2).pdf)

[http://www.sigmadesigns.com/ContractAttachments/CertificationOverview/CertificationOverviewINS10638-6\(3\).pdf](http://www.sigmadesigns.com/ContractAttachments/CertificationOverview/CertificationOverviewINS10638-6(3).pdf)

SCHEDULE 5: Certification Obligations

http://www.sigmadesigns.com/ContractAttachments/InteroperabilityStatementGuidelines/Interoperability_statement_guidelines.pdf