

# **Zigbee Alliance Certification Transfer Program Agreement**

The Zigbee Alliance ("**Zigbee Alliance**") Certification Transfer Program (the "**Program**") permits authorized Program registrants ("**Registrant(s)**") to use certain Zigbee Alliance trademarks and logos ("**Zigbee Alliance Trademarks and Logos**") related to certain Zigbee Alliance member certified products which are then made available in the marketplace by the Registrants. To be eligible to participate in the Program, each Registrant must register with Zigbee Alliance and agree to the terms and conditions set forth in this Certification Transfer Program Agreement (the "**Agreement**"). Registrant must carefully read and agree to the terms of this Agreement prior to entering into this Agreement.

Registrant represents to Zigbee that the information provided to Zigbee in connection with Registrant's application and registration in the Program is accurate and correct.

**REGISTRANT MAY NOT PARTICIPATE IN THE ZIGBEE ALLIANCE CERTIFICATION TRANSFER PROGRAM OR USE ANY ZIGBEE ALLIANCE TRADEMARKS AND LOGOS UNLESS REGISTRANT HAS AGREED TO, AND IS IN COMPLIANCE WITH, THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE GUIDELINES AND TERMS (DEFINED BELOW).**

By clicking "Accept" or "Agree" and agreeing to terms and conditions of this Agreement, Registrant agrees to participate in the Program and create a binding agreement between Registrant and Zigbee Alliance on the terms and conditions set forth herein. The "**Effective Date**" is the date on which the Registrant clicks "Accept" or "Agree" to this Agreement or otherwise agrees to the terms and conditions of this Agreement or participates in the Program.

## **1. Defined Terms.**

"**Eligible Product**" means a product which either: (a) is manufactured by Registrant and includes the applicable Zigbee Certified Product as a component of Registrant's product; or (b) is a rebranded, relabeled and/or white labeled version a Zigbee Certified Product (without other modification of, addition to or removal of, any elements of the applicable Zigbee Certified Product).

"**Guidelines and Terms**" means the Zigbee Alliance Trademark and Logo Usage Guidelines and Terms set forth at <http://www.zigbee.org/download/trademark-and-logo-usage-guidelines-and-terms/>. The Guidelines and Terms are incorporated into this Agreement by reference and may be updated from time-to-time by Zigbee Alliance.

"**Zigbee Certified Product**" means a product: (a) that has been certified by Zigbee Alliance for a Zigbee Member; and (b) with respect to which such Zigbee Member has agreed or registered such product with Zigbee Alliance to be part of the Program.

"**Zigbee Alliance Member**" means a Zigbee Alliance Promoter Member or a Zigbee Alliance Participant Member in good standing that has agreed with Zigbee to participate in the Program and has registered the applicable Zigbee Certified Product in the Program. Zigbee Alliance Adopter Members are not eligible to register any Zigbee Certified Products in the Program.

**2. Eligibility and Criteria to Participate in the Program.** To be eligible to be a Registrant in the Program and to use the Zigbee Alliance Trademarks and Logos with respect to an Eligible Product, a Registrant must:

- (a) Not have been (prior to the Effective Date), or be (on or following the Effective Date) a Zigbee Alliance Promoter, Participant or Adopter member;
- (b) If the Registrant is manufacturing an Eligible Product that incorporates or bundles a Zigbee Certified Product as a component, Registrant must manufacture the Eligible Product without impacting the intended features, functionality or operation of the applicable Zigbee Certified Product component in the Eligible Product;

- (c) If the Registrant's Eligible Product is a rebranded, relabeled and/or white labeled version of a Zigbee Certified Product, Registrant must rebrand, relabel and/or white label such Eligible Product without impacting the intended features, functionality or operation of the applicable Zigbee Certified Product;
- (d) Not participate in the Program with respect to more than 10 different Eligible Products or variations of Eligible Products per calendar year;
- (e) Use the Zigbee Alliance Trademarks and Logos in strict compliance with the Guidelines and Terms; and
- (f) Agree to, and comply with, the Zigbee Alliance and/or third party terms applicable to the tools and services related to the Program (including terms related to the Zigbee Alliance website, and payment processing and certification tools and services).

Registrant represents and warrants to Zigbee that it meets, and will continue to meet, the criteria specified above. Upon written notice from Zigbee Alliance, Registrant shall provide a written certification of a corporate officer of Registrant certifying that Registrant meets each of the criteria specified above. If Registrant fails or refuses to provide the written certification within thirty (30) days from the date of Zigbee Alliance's request, Registrant will be deemed to be non-compliant with the terms of this Agreement, and at the election of Zigbee Alliance, this Agreement shall terminate without further notice to Registrant, and the terms set forth in **Section 6** shall apply. If at any time Registrant fails to meet the criteria specified above or breaches any term of this Agreement, Registrant shall immediately notify Zigbee Alliance and the Zigbee Member in writing.

**3. Limited Zigbee Alliance Trademark and Logo Use Grant; Restrictions.** Subject to Registrant's compliance with all the other terms and conditions of this Agreement, Zigbee Alliance grants Registrant a limited, non-exclusive, nontransferable, non-sublicensable, worldwide, revocable, temporary license to use the Zigbee Alliance Trademarks and Logos solely for the promotion and sale of Eligible Products, provided Registrant prominently displays the applicable Zigbee Certified Product trademark and logo on all versions of the Eligible Product in accordance with the then-current version of the Guidelines and Terms, and otherwise complies with all applicable laws and regulations relating to the import, export and sale of such products. Zigbee reserves all rights in Zigbee Alliance Trademarks and Logos not expressly granted to Registrant in this Agreement.

The scope of this limited license does not permit Registrant to, in whole or in part, and Registrant acknowledges and agrees that it shall not, directly or indirectly: (a) sublicense, resell, otherwise transfer, rent, lease or lend the Zigbee Alliance Trademarks and Logos; (b) alter or modify the Zigbee Alliance Trademarks and Logos in any way; (c) use the Zigbee Alliance Trademarks and Logos as part of Registrant's name or identity, use any name or mark confusingly similar to the Zigbee Alliance Trademarks and Logos or otherwise utilize the Zigbee Alliance Trademarks and Logos in a manner intended to link or associate Registrant or Registrant's products or services in any manner with Zigbee; (d) combine the Zigbee Alliance Trademarks and Logos with any other graphic or textual elements; (e) use the Zigbee Alliance Trademarks and Logos as a design element of any other logo or trademark; (f) use Zigbee Alliance Trademarks and Logos in any manner that might disparage or injure Zigbee's reputation; (g) use Zigbee Alliance Trademarks and Logos on any website or in any way that is in violation of any applicable laws or governmental regulations, in particular, all laws and regulations pertaining to proper protection, use and designation of trademarks in any countries in which the Zigbee Alliance Trademarks and Logos are used; (h) adopt, use, display, apply, advertise or register any corporate name, trade name, trademark, trade dress, domain name, universal resource locator (URL) or color scheme which is the same as or confusingly similar to any of the Zigbee Alliance Trademarks and Logos; (i) oppose or contest any trademark registration or application of Zigbee Alliance and/or any of its affiliates in relation to any of the Zigbee Alliance Trademarks and Logos, in the United States or elsewhere, or any application for extension of such rights; or (j) use or register in the United States or in any country any trademark: (k) substantially similar to or confusing with any of the Zigbee Alliance Trademarks and Logos; or (l) for purposes of, or with the result of, diluting any of the Zigbee Alliance Trademarks and Logos.

**4. Fees.** Registrant shall pay Zigbee Alliance a one-time fee of USD \$500 for each Eligible Product or type or variation of such Eligible Product manufactured or distributed by Registrant, using the payment

processing service designated by Zigbee Alliance. By way of example, if Registrant manufactures one (1) type of Eligible Product that includes a Zigbee Certified Product as a component of such Eligible Product, and sells 1,000 units of such Eligible Product, Registrant is only obligated to pay Zigbee a single, one-time fee of USD \$500. If Registrant modifies or changes the Eligible Product that includes the same Zigbee Certified Product or different Zigbee Certified Product as a component, Registrant must re-apply to the Program, agree to the Agreement separately with respect to such modified or changed Eligible Product, and pay an additional one-time fee of USD \$500. Additionally, if Registrant rebrands, relabels or white labels the Eligible Product and sells 2,000 units of such re-branded Eligible Product, Registrant is obligated to pay Zigbee another fee of USD \$500.

**5. Ownership of the Zigbee Alliance Trademarks and Logos.** All right, title and intellectual property rights in and to the Zigbee Alliance Trademarks and Logos and all copies thereof, and all goodwill associated therewith are owned by Zigbee Alliance and its licensor(s), if any. The rights to use the Zigbee Alliance Trademarks and Logos granted to Registrant hereunder are personal to Registrant and may not be transferred, shared or assigned to any third party other than through an assignment of this Agreement in accordance with the terms of **Section 11**.

**6. Termination.** This Agreement and any and all rights hereunder may be terminated by Zigbee Alliance without cause and at any time upon written notice to Registrant. Additionally, if the Zigbee Member related to which Registrant is manufacturing Eligible Products ceases to be a member of Zigbee Alliance, or is member of Zigbee Alliance but is not in good standing, or ceases to participate in the Program with respect to the applicable Zigbee Certified Product, Registrant's rights under this Agreement with respect the applicable Eligible Product(s) will automatically and immediately terminate without the need for further notice to Registrant. Upon termination of this Agreement, Registrant shall immediately cease any and all use of the Zigbee Alliance Trademarks and Logos, destroy all copies of the Zigbee Alliance Trademarks and Logos within its control (including removing all Zigbee Alliance Trademarks and Logos on Eligible Products available for sale including if those Eligible Products have been shipped for sale prior to the termination), and remove any reference to the Zigbee Alliance Trademarks and Logos, including but not limited to from all published or electronic materials and its websites.

**7. NO WARRANTIES. REGISTRANT ACKNOWLEDGES AND AGREES THAT ZIGBEE ALLIANCE TRADEMARKS AND LOGOS ARE PROVIDED "AS IS" AND WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS OF ANY PARTICULAR PURPOSE, THAT THE ZIGBEE ALLIANCE TRADEMARKS AND LOGOS ARE VALID, ENFORCEABLE, OR FREE FROM DEFECTS, OR ANY WARRANTY OTHERWISE ARISING OUT OF THE ZIGBEE ALLIANCE TRADEMARKS AND LOGOS AND/OR THIS AGREEMENT. REGISTRANT'S USE OF THE ZIGBEE ALLIANCE TRADEMARKS AND LOGOS IS SOLELY AT REGISTRANT'S OWN RISK.**

**8. LIMITATION OF LIABILITY. IN NO EVENT SHALL ZIGBEE ALLIANCE OR ANY ZIGBEE MEMBER BE LIABLE OR OBLIGATED TO REGISTRANT OR ANY THIRD PARTY IN ANY MANNER FOR ANY DIRECT, SPECIAL, NON-COMPENSATORY, CONSEQUENTIAL, INDIRECT, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOST REVENUE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ZIGBEE HAS BEEN INFORMED OF OR IS AWARE OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE.**

**THE LIMITATIONS SET FORTH ABOVE SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES AVAILABLE TO REGISTRANT. REGISTRANT ACKNOWLEDGES AND AGREES THAT REGISTRANT HAS FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FINDS IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF ZIGBEE ALLIANCE PERMITTING ACCESS TO THE ZIGBEE ALLIANCE TRADEMARKS AND LOGOS. REGISTRANT FURTHER ACKNOWLEDGES AND AGREES THAT ZIGBEE ALLIANCE WOULD NOT HAVE PROVIDED REGISTRANT WITH ACCESS TO THE**

**ZIGBEE ALLIANCE TRADEMARKS AND LOGOS UNLESS REGISTRANT FULLY AGREED TO THE LIMITATIONS SET FORTH ABOVE.**

**9. Third Party Rights.** Use of certain elements of the Zigbee Alliance Trademarks and Logos may be subject to third party intellectual property rights, including without limitation, trademark and copyright rights. Zigbee is not responsible and shall not be held responsible in any manner for identifying or failing to identify any or all such third party intellectual property rights.

**10. Use of Registrant's Name/Logo.** Registrant grants Zigbee Alliance the right to use Registrant's name, logos, trademarks and/or trade names on Zigbee Alliance's website, in press releases and in other materials related to the Program or Zigbee Alliance's business, including indicating that Registrant is a participant in the Program, is manufacturing and/or distributing Eligible Products or products based on or including Zigbee Alliance specifications or standards.

**11. General.** If any provision of this 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 Agreement, but this Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable. 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 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. Nothing set forth in this Agreement shall be deemed or construed to render the parties as joint venturers, partners or employer and employee. This Agreement, together with any documents referenced and/or incorporated herein, 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 Agreement shall not be assigned, delegated or transferred, including by operation of law, including a change of control with respect to Registrant, which shall be deemed to be a transfer, in whole or in part, by Registrant without the prior written consent of Zigbee Alliance. This Agreement may be modified only pursuant to a writing executed by authorized representatives of Zigbee Alliance and Registrant. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this 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). **REGISTRANT CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS AND VENUE LOCATED IN SACRAMENTO COUNTY, CALIFORNIA.**

**BY CLICKING "ACCEPT" OR "AGREE" BELOW, REGISTRANT AGREES TO ALL OF THE FOREGOING TERMS AND CONDITIONS. IF REGISTRANT DOES NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT CLICK ON "ACCEPT" OR "AGREE" BELOW AND REGISTRANT WILL NOT BE PERMITTED TO PARTICIPATE IN THE PROGRAM.**