

ZHAGA LOGO LICENSE Terms and Conditions

This Zhaga Logo License Terms and Conditions shall apply to all Zhaga Logo License Agreements.

1 Definitions

The capitalized terms used but not herein defined shall have the meaning provided in the Consortium Agreement.

- 1.1 “**Agreement**” means the Zhaga Logo License Agreement signed by Licensee and LLA of which the Zhaga Logo License –Terms and Conditions is an inseparable part.
- 1.2 “**Annual License Fee**” means a yearly, non-refundable, non-recoupable fee to be paid by Licensee in consideration of the rights granted to Licensee and the undertakings given by LLA under this Agreement.
- 1.3 “**Arbitration Panel**” means a group of experts appointed by the Steering Committee, consists of the employees of Member companies, who judge the correctness of a Notice of Non-Compliance.
- 1.4 “**Authorized Testing Center**” means a testing center authorized by the Steering Committee in writing for conducting the Test.
- 1.5 “**Certification Fee**” means a non-refundable, non-recoupable fee to be paid by Licensee to the LLA in order gain the right to use the Zhaga trademarks in connection with a product for which a valid Test Report Summary has been submitted to LLA. For the avoidance of doubt, an Authorized Testing Center may charge an additional fee for conducting the Test.
- 1.6 “**Effective Date**” means the date on the Zhaga Logo License Agreement between licensee and LLA.
- 1.7 “**Fellow Licensees**” means other licensees who are party to a Zhaga Logo License Agreement with the LLA, and includes the Affiliated Companies of such Fellow Licensees.
- 1.8 “**Fully Compliant**” means an implementation of all portions of an Approved Zhaga Specification, required for a Product, such that the Product has passed the applicable compliance testing procedures set forth in section 4, and conforms to the Zhaga Logo Guidelines.

- 1.9** “**Inoperable Non-Compliance**” and “**Inoperable Non-Compliant**” A Product shall be classified as Inoperable Non-Compliant when the Product does not comply with the applicable Approved Zhaga Specifications such that the Non-Compliant Product cannot be used in combination with at least one Licensed Product which is compliant with the same Approved Zhaga Specifications.
- 1.10** “**LED Control Gear**” means an electronic device inserted between the mains power supply and one or more LEDs which serve mainly to limit the electrical current in the LEDs to the required value.
- 1.11** “**LED Light Engine**” means a combination of a LED Module and an associated LED Control Gear, irrespective of whether such LED Control Gear is in a separate housing from the LED Module or not.
- 1.12** “**LED Module**” means an LED light source that is supplied as a single unit. In addition to one or more LEDs it may contain components to improve its optical, thermal, mechanical and electrical properties, but it does not include the LED Control Gear.
- 1.13** “**Licensed Product**” means a Product for which the LLA has granted the right to use the Zhaga Logo.
- 1.14** “**Logo License Administrator**” or “**LLA**” means the entity, designated by the Steering Committee of the Consortium from time to time to conduct the logo licensing activities for the Consortium in accordance with the Consortium Agreement. The LLA is the party specified on the signature page of this Agreement.
- 1.15** “**Logo Non-Compliance**” and “**Logo Non-Compliant**” A Product shall be classified as Logo Non-Compliant when a Product carries the Zhaga Logo and the Product’s type number, brand name, and Test Report Summary have not been provided to the LLA in accordance with section 4.3.
- 1.16** “**Major Update**” means an Update to the Approved Zhaga Specification that is not backward compatible with previous edition of the Approved Zhaga Specification. Major Updates are indicated by a change in the edition number digits to the left of the decimal point (e.g., edition 2.0, 3.0
- 1.17** “**Minor Non-Compliance**” and “**Minor Non-Compliant**” A Product shall be classified as Minor Non-Compliant when
- (a) The Zhaga Logo is not applied correctly, in accordance with the Zhaga Logo Guidelines, or
 - (b) Any other violation of the Zhaga Logo Guidelines.
- 1.18** “**Minor Update**” means an Update to the Approved Zhaga Specification that corrects, clarifies, or enhances the Approved Zhaga Specification with the intent that products compliant with an earlier edition of the Approved Zhaga Specification are also compliant with the updated edition of the Approved Zhaga Specification. Minor Updates are indicated by a change in the edition number digits to the right of the decimal point (e.g.: Edition 1.1, 1.2...1.17 et cetera).
- 1.19** “**Non-Compliance Fee**” means a fee to be paid by Licensee and/or its Affiliated Companies to LLA in accordance with the classification of Non-Compliance.

- 1.20** “**Non-Compliance Notice**” means a written notice, either Logo Non-Compliance Notice, first Non-Compliance Notice, second Non-Compliance Notice or final Non-Compliance Notice as referred to in section 5 , sent by the LLA to Licensee and/or its Affiliated Companies claiming that one or more of Licensee’s and/or its Affiliated Companies’ Products carrying the Zhaga Logo is not Fully Compliant or otherwise not authorized to carry the Zhaga Logo. The Non-Compliance Notice shall contain whether the non-compliance by Licensee is classified as Logo Non-Compliance, Minor Non-Compliance, Serious Non-Compliance or Inoperable Non-Compliance.
- 1.21** “**Non-Compliance**” and “**Non-Compliant**” mean Licensee’s and/or its Affiliated Companies’ Products carrying the Zhaga Logo is not Fully Compliant and is classified in “Logo Non-Compliance”, “Minor Non-Compliance”, “Serious Non-Compliance” and “Inoperable Non-Compliance”.
- 1.22** “**Product Type**” means a series of identical Products, identified by a unique type number selected by Licensee.
- 1.23** “**Product**” means a component of an LED luminaire such as an LED luminaire, LED Control Gear, LED Module, LED lamp holder, LED Light Engine, connectivity module, sensor module, connectivity cap, connectivity holder, etc. that uses information disclosed in Approved Zhaga Specifications.
- 1.24** “**Serious Non-Compliance**” and “**Serious Non-Compliant**” A Product shall be classified as Serious Non-Compliant when
- (a) The Product’s documentation does not provide all information that must be provided to comply with the applicable Approved Zhaga Specifications; or
 - (b) The Product’s documentation states incorrect values for information that must be provided to comply with the applicable Approved Zhaga Specifications. For example and without limitation, the thermal power of an LED Light Engine is specified too low which would cause overheating of the LED Light Engine and reduced performance; or
 - (c) Non-Compliances of such Product is not classified as Logo Non-Compliance, Minor Non-Compliance, or Inoperable Non-Compliance.
- 1.25** “**Substantially Similar**” means, in connection with a Product Type, that such Product Type resembles another Product Type in all material functional aspects, allowing for differences only in aspects that do not influence the compliance of the Product Type with an Approved Zhaga Specification.
- 1.26** “**Test**” means a series of tests to verify that a Product submitted by Licensee and/or its Affiliated Companies is in compliance with an Approved Zhaga Specification. The specification of the Test is part of the Approved Zhaga Specification.
- 1.27** “**Test Certificate**” means a document issued by the LLA, identifying a Product that successfully passed the Test.
- 1.28** “**Test Report Summary**” means a document issued by an Authorized Testing Center, identifying a Product that successfully passed the applicable Test.
- 1.29** “**Test Report**” means a report on the Test, made by an Authorized Testing Center, that identifies the Product, the outcome of the Test, and the detailed measurements performed on the Product.

- 1.30** “**Third Party Manufacturer**” means any manufacturer that, pursuant to a written contract or other written agreement with Licensee and/or its Affiliated Companies, manufactures one or more Products on Licensee’s and/or its Affiliated Companies’ behalf.
- 1.31** “**Update**” means any update of the Zhaga Logo, the Zhaga Logo Guidelines or Approved Zhaga Specifications adopted by the Consortium.
- 1.32** “Zhaga Usage Guidelines” means the document specifying the technical requirements for any use of the Zhaga Trademarks on Licensed Products as set forth in in Annex B hereto, which may be amended from time to time.
- 1.33** “**Zhaga Logo Guidelines**” means the document specifying the rules for the correct application of the Zhaga Logo, attached to this Agreement as Annex A.

2 Logo License

- 2.1** The LLA undertakes not to assert its rights in the Zhaga Logo against the use of the Zhaga Logo by distributors and resellers of Fully Compliant Licensed Products produced by Licensee and its Affiliated Companies, solely for the purpose of promotion and sale of such Licensed Products, provided that such use complies with the Zhaga Logo Guidelines and Zhaga Usage Guidelines then in effect. In the event that Licensee and/or its Affiliated Companies arranges for the manufacture of one or more Products by a Third Party Manufacturer, the Licensee shall ensure that such Third Party Manufacturer’s compliance with the terms and conditions of this Agreement (including, but not limited to Test of such Products). Licensee further acknowledges and agrees that any breach of the terms and conditions of this Agreement by such Third Party Manufacturer shall constitute a breach of this License by Licensee and/or its Affiliated Companies.
- 2.2** The LLA undertakes not to assert its rights in the Zhaga Logo against the use of the Zhaga Logo on products that contain a Fully Compliant LED luminaire produced by Licensee or any of its Affiliated Companies, provided that such use complies with the Zhaga Logo Guidelines then in effect.
- 2.3** All goodwill associated with the use of the Zhaga Logo shall accrue to the Consortium. Licensee shall not acquire any right, title or interest in the Zhaga Logo by virtue of its use in accordance with the provisions of this Agreement, or otherwise. Licensee shall, and shall cause its Affiliated Companies not attempt to register the Zhaga Logo, or any mark similar to the Zhaga Logo, as a trademark, service mark, certification mark, trade name, or domain name in any jurisdiction and shall not give permission to any third party to do so either.
- 2.4** Licensee shall provide such reasonable assistance to LLA as it will require from time to time in protecting and defending the Zhaga Logo.
- 2.5** Licensee shall make reasonable effort to provide to LLA any evidence required from time to time for use in any proceedings either in respect of any alleged infringement of the Zhaga Logo or any challenge to or defence of the rights.

- 2.6** LLA shall have the sole right, but no obligation, to enforce and defend the Zhaga Logo at its own expense and shall be entitled to all the damages and profits arising in respect of such litigation. Licensee shall provide reasonable assistance to LLA as reasonably required in protecting and defending the Zhaga Logo, provided that the LLA shall reimburse Licensee for Licensee's reasonable costs and expenses of such assistance.
- 2.7** The LLA represents and warrants that it is entitled to grant the rights granted under the License Agreement for the Zhaga Logo to Licensee. Licensee acknowledges and agrees that LLA makes no warranty whatsoever that any use of the Zhaga Logo does not infringe or will not cause infringement of any third party intellectual property rights.
- 2.8** The LLA and the Consortium will perform their best efforts to maintain and defend the Zhaga logo and all intellectual property right protecting the Zhaga logo.

3 Fees

- 3.1** Unless changed by the Steering Committee in accordance with section 3.4, the Annual License Fee and the Certification Fee shall be:
- (a)** Annual License Fee for Regular Members: Zero (0) Euro (no charge)
 - (b)** Annual License Fee for Associate Members: Five thousand (5000) Euro
 - (c)** Certification Fee: Zero (0) Euro (no charge)
- 3.2** The first payment of the Annual License Fee shall be pro-rated, calculated as (13 minus the number of month of the Effective Date) / 12 and shall be due within sixty (60) days after the Effective Date of this Agreement and the subsequent Annual License Fee shall be due on January 1 each subsequent year after the year in which this Agreement has been entered into. Failure to pay the Annual License Fee within sixty (60) days after the due date shall constitute a Material Breach.
- 3.3** The LLA may invoice Licensee for the Certification Fee when Licensee submits a Test Report Summary to the LLA, pursuant to section 4.3 hereunder. Failure to pay the Certification Fee within sixty (60) days after the date of invoice shall constitute a Material Breach.
- 3.4** The Steering Committee of the Consortium may change the Annual License Fee and/or the Certification Fee. The LLA shall provide written notice to Licensees at least three (3) months before the start of the year in which such change becomes effective. Such change in Annual License Fee or Certification Fee shall be determined on a reasonable, non-discriminatory and operation-cost-recovery basis.

- 3.5** The Annual License Fee and the Certification Fee payable by Licensee hereunder shall be paid net of any present or future tax, assessment, or governmental charge. Licensee shall gross up the fees so that after deducting or withholding any applicable tax, assessment or charge, LLA shall receive a full amount of the Annual License Fee and the Certification Fee which would have been received by LLA had no deduction or withholding been required. Licensee shall indemnify LLA for any penalties and interest that may be payable as a result of Licensee's failure to timely pay all taxes or other assessments of LLA that Licensee is obligated to withhold. All other tax imposed on payments by Licensee to LLA, including but not limited to value added taxes, consumption taxes, and sales taxes, which may be imposed now or in the future or under the laws of any applicable jurisdiction shall be Licensee's sole responsibility and Licensee shall promptly transmit such taxes to the appropriate authorities as and when they become due. Such taxes shall not affect Licensee's obligation to make payments to LLA as required under this Agreement.

4 Test and Testing Procedure

- 4.1** The Test represents the minimum compliance testing required for Products. Use of the Test does not ensure that any product will conform to the Approved Zhaga Specifications, function correctly or interoperate with any other product. Licensee shall be solely responsible for all test results and acknowledges and agrees that the LLA shall not be liable in any manner for any test results or the sufficiency or appropriateness of the Test.
- 4.2** Licensee and/or its Affiliated Companies shall, for each Product Type that it intends to mark with the Zhaga Logo, submit a single representative sample to an Authorized Testing Center. The Authorized Testing Center shall perform the Test on the sample and sends to Licensee and/or its Affiliated Companies (i) Test Report and if the product passes the Test, (ii) the Test Report Summary. Licensee and/or its Affiliated Companies shall provide all such cooperation as the Authorized Testing Center may reasonably require in connection with such Test. A Product Type that is Substantially Similar to an earlier Licensed Product shall be exempt from the requirement to submit this product to an Authorized Testing Center unless a Non-Compliance Notice is subsequently issued by the LLA with respect to such Product Type, as provided in section 5.2.
- 4.3** Licensee and/or its Affiliated Companies shall provide to the LLA the type number, brand name, and Test Report Summary for each Product Type carrying the Zhaga Logo prior to any sale, or other disposal of such Product Type, by uploading said information to the Zhaga website. For the avoidance of doubt and without limitation, the Zhaga Logo shall not be used on, or in connection with, a Product for which the type number, brand name and Test Report Summary have not been provided to the LLA.
- 4.4** Licensee and/or its Affiliated Companies shall be solely responsible for its own expenses associated with the Test by Authorized Testing Center performed pursuant to section 4.2.
- 4.5** Licensee and/or its Affiliated Companies agrees and acknowledges that each Authorized Testing Center may, in case Authorized Testing Center issues a Test Report Summary for one of Licensee's and/or its Affiliated Companies' Products, provide the LLA with a copy of the Test Report with the detailed test results of such Product. The LLA shall not disclose such Test Report to other Members, nor to any other entity or individual other than those engaged in the LLA's logo licensing activities for the Consortium, unless such disclosure is necessary for the operation of the logo license program or the enforcement of its rights governed by this Agreement. For the avoidance of doubt, and without limitation, the LLA may, in the case of a dispute about a Non-Compliance Notice, disclose the Test Report to the Arbitration Panel.

- 4.6** The LLA shall have the right to disclose on the Consortium’s website the brand name and type numbers of such Licensee’s and its Affiliated Company’s Licensed Products that successfully passed the Test process described in section 4.2, with a copy of a Test Report Summary issued by the Authorized Testing Center to such Licensed Products. Further, the LLA shall have the right to disclose the same information about Substantially Similar Licensed Products of such Licensee’s and its Affiliated Company’s Licensed Products.

5 Market surveillance and Non-Compliance procedures

- 5.1** The LLA may, at its own expense, procure samples of Licensee’s and/or its Affiliated Companies’ Products in the market.
- 5.2** If for any such procured Product carrying the Zhaga Logo, the type number, brand name and Test Report Summary were not provided to the LLA in accordance with section 4.3, the LLA may issue a Non-Compliance Notice (“logo Non-Compliance Notice”) to Licensee and/or its Affiliated Companies, giving notice that such procured Product is logo Non-Compliant.
- 5.3** The LLA may, at its own expense, submit the procured samples for Test to an Authorized Testing Center. If the Authorized Testing Center determines that such sample does not pass the Test, the Authorized Testing Center will so notify the LLA and the LLA may issue a Non-Compliance Notice (“first Non-Compliance Notice”) to Licensee and/or its Affiliated Companies with respect to such Product Type.
- 5.4** Licensee and/or its Affiliated Companies may object to the first Non-Compliance Notice by written notice to the LLA, no later than forty-two (42) calendar days after receipt of such first Non-Compliance Notice (“first objection notice”). Licensee and/or its Affiliated Companies may, in this first objection notice, request the re-testing of the Product that is the subject of such first Non-Compliance Notice. After receiving a valid first objection notice, The LLA shall, at its own expense, procure another sample of the Product, from a different distribution channel, and submit that other sample for Test to an Authorized Testing Center. If the Authorized Testing Center determines that such other sample does not pass the Test, the Authorized Testing Center will so notify the LLA and the LLA may issue a second Non-Compliance Notice (“second Non-Compliance Notice”) to Licensee and/or its Affiliated Companies with respect to such Product Type.
- 5.5** Licensee and/or its Affiliated Companies may appeal against a logo Non-Compliance Notice, a first Non-Compliance Notice or a second Non-Compliance Notice by written notice (“appeal notice”) to the LLA, no later than (a) forty-two (42) calendar days after receipt of the logo Non-Compliance Notice (b) forty-two (42) calendar days after receipt of the first Non-Compliance Notice in case Licensee did not request a re-test, or (c) twenty-eight (28) calendar days after receipt of the second Non-Compliance Notice.

- 5.6** Promptly after receiving an appeal notice, LLA shall request the Steering Committee to appoint an Arbitration Panel by randomly selecting 5 (five) persons from a pool of experts consisting of the employees of Member companies, taking into consideration whether such Member has a potential business interest or conflicts in the subject matter of the evaluation and judgement. LLA agrees and acknowledges, and Licensee agrees and acknowledges that the appointed Arbitration Panel may (a) decide whether or not the Non-Compliance Notice was issued correctly, (b) change the classification of Non-Compliance, and (c) increase the cure periods specified in section 5.8.
- 5.7** If Licensee and/or its Affiliated Companies does not appeal within the time limit specified in section 5.5, or if the Arbitration Panel decides that the Product fails to comply with the applicable Test specifications, LLA may issue a final Non-Compliance Notice to Licensee and/or its Affiliated Companies (“final Non-Compliance Notice”). In the event Licensee and/or its Affiliated Companies still have any objection to the final Non-Compliance Notice, such dispute shall be solved in line with section 9.6 hereunder.
- 5.8** In the event that Licensee and/or its Affiliated Companies receive a final Non-Compliance Notice, Licensee and/or its Affiliated Companies shall take the following actions depending on the classification of Non-Compliance:
- (a) Logo Non-Compliance:** Licensee and its Affiliated Companies shall provide LLA with the information specified in section 4.3 within thirty (30) days after receipt of the final Non-Compliance Notice, or terminate the distribution and sales of the Non-Compliant Product within thirty (30) days after receipt of the final Non-Compliance Notice,
 - (b) Minor Non-Compliance:** Licensee and its Affiliated Companies shall terminate the distribution and sales of the Non-Compliant Product within ninety (90) days after receipt of the final Non-Compliance Notice.
 - (c) Serious Non-Compliance:** Licensee and its Affiliated Companies shall terminate the distribution and sales of the Non-Compliant Product within thirty (30) days after receipt of the final Non-Compliance Notice. Licensee and/or its Affiliated Companies may continue the distribution and/or sales of the Non-Compliant Product for an additional sixty (60) days, provided that a prominent warning is attached to each Non-Compliant Product or on the packaging of each Non-Compliant Product, stating explicitly that such Non-Compliant Product is not Fully Compliant and may not work correctly in combination with other Products carrying the Zhaga Logo.
 - (d) Inoperable Non-Compliance:** Licensee and its Affiliated Companies shall terminate the distribution and sales of the Non-Compliant Product within thirty (30) days after receipt of the final Non-Compliance Notice. Licensee and/or its Affiliated Companies shall undertake a commercially reasonable effort to inform everyone who may have a Non-Compliant Product in its possession that such Product is Non-Compliant and may not work correctly in combination with other Products carrying the Zhaga Logo.
- 5.9** Notwithstanding the requirements of section 5.8 above, in case a Product is Non-Compliant because the Product’s documentation does not provide all information necessary to comply with the applicable Approved Zhaga Specifications, or in case the Product’s documentation states incorrect values for information that must be provided to comply with the applicable Approved Zhaga Specifications, Licensee and/or its Affiliated Companies need not terminate the distribution of sales of a Product mentioned in a final Non-Compliance Notice, provided that Licensee can prove to the satisfaction of the LLA that the Product documentation provided to Licensee’s and/or its Associated Companies’ customers has been made fully compliant with the requirements of the applicable Approved Zhaga Specifications within thirty (30) days after receipt of the final Non-Compliance Notice.

5.10 Unless changed by the Steering Committee in accordance with section 6.5, the Non-Compliance Fees shall be:

- (a)** Logo Non-Compliance: One thousand (1000) Euro
- (b)** Minor Non-Compliance: One thousand (1000) Euro
- (c)** Serious Non-Compliance: Five thousand (5000) Euro
- (d)** Inoperable Non-Compliance: Five thousand (5000) Euro

The Non-Compliance Fees specified above shall be doubled in case Licensee requested a re-test.

Licensee shall pay the Non-Compliance Fee within forty-five (45) days after receipt of a final Non-Compliance Notice.

The maximum Non-Compliance Fees paid for multiple Non-Compliance Notices relating to a single Product Type and its Substantially Similar Products, shall not exceed the Non-Compliance Fee for the Inoperable Non-Compliance, provided that these multiple Non-Compliance Notices concern the same type of non-compliance in a period within the initial detection of the non-compliance and the final action taken as a consequence of this non-compliance.

5.11 Not earlier than five (5) calendar days after issuing a final Non-Compliance Notice, the LLA and/or the Consortium may publish, on its website and/or other publications, the brand name and type number of the Product that carries the Zhaga Logo but is classified as Non-Compliant Product. LLA shall notify the Licensee of such publication. Should any publication prove to be faulty, LLA shall publish a suitable retraction.

6 Changes

6.1 The Consortium shall be entitled to make Updates to the Zhaga Logo License – Terms and Conditions, the Zhaga Logo, the Zhaga Logo Guidelines, and the Approved Zhaga Specifications from time to time, in accordance with the Zhaga Consortium Agreement. LLA shall inform Licensee of any such Updates by written notice.

6.2 Licensee and its Affiliated Companies shall comply with all Updates to the Zhaga Logo, and the Zhaga Logo Guidelines, and all Minor Updates of the Approved Zhaga Specifications within one-hundred and eighty (180) days after written notice by the LLA specifying such Update or Minor Updates, or within such longer period as specified by the LLA in such notice (“date of withdrawal”), provided that

- (a)** Product Types certified before the date of withdrawal, and Product Types that are Substantially Similar, need not be re-tested and/or re-certified; and
- (b)** Licensee and its Affiliated Companies may continue to distribute and/or sell Product Types, and Substantially Similar products, certified before the date of withdrawal, unless such Product Type is the subject of a Non-Compliance Notice.

6.3 Upon a notice by the LLA as referred to in section 6.1, Licensee and its Affiliated Companies may continue to sell and distribute Licensed Products that were manufactured in the ordinary course of their business prior to receipt of such notice, during the one hundred and eighty (180) day period following receipt of such notice; provided however that, in case of a Major Update of an Approved Zhaga Specification, Licensee and its Affiliated Companies shall not be required to cease sale and distribution of Licensed Products that are compliant with a previous Major Update of such Approved Zhaga Specification.

- 6.4** The Steering Committee of the Consortium may change the criteria for classification of Non-Compliance, by written notice to Licensees.
- 6.5** The Steering Committee of the Consortium may change the Non-Compliance Fees specified in section 5.10. LLA shall provide written notice to Licensees at least three (3) months before the effective date of such change. Any change in Non-Compliance Fees shall be on a reasonable, non-discriminatory and operation-cost-recovery basis.

7 Ownership of the Zhaga Logo

- 7.1** This Agreement does not transfer or convey to Licensee ownership of, or any rights to the Zhaga Logo. Licensee's and its Affiliated Companies' use of the Zhaga Logo shall inure solely to the benefit of the Consortium. Licensee shall not acquire any right, title or good will to the Zhaga Logo by virtue of using the Zhaga Logo.
- 7.2** Any and all rights not expressly granted herein to Licensee and its Affiliated Companies are expressly reserved by the LLA and the Consortium.

8 Material Breach and Remedies

- 8.1** Licensee acknowledges and agrees that, due to the lasting effect and harm likely to result from a Material Breach of this Agreement, if Licensee or its Affiliated Companies commit a Material Breach of its obligations hereunder, monetary damages alone may not be a sufficient remedy. Accordingly, the LLA shall have the right to seek an injunction to prevent or restrain any Material Breach. The injunctive and termination rights granted hereby are cumulative and not exclusive of the other right available to the LLA under this Agreement or at law.
- 8.2** For cases where Licensee and/or its Affiliated Companies do not take action within the periods stated in section 5.8 and 5.9, Licensee acknowledges and agrees that the LLA may take action to stop the distribution or sale by Licensee's customers of Products carrying the Zhaga Logo that are not Fully Compliant or otherwise not licensed to carry the Zhaga Logo.

9 General

- 9.1** Except for the rights expressly provided under this Agreement in relation to the Zhaga Logo, no party hereto grants or receives, by implication, estoppel, or otherwise, any right under any patent, trademark, copyright or any other intellectual property right.
- 9.2** No failure or delay by either party to enforce any of its rights under this Agreement will operate as a waiver of such right.

- 9.3** The LLA, the Consortium, and the Steering Committee Members make no warranties express or implied. The Zhaga Logo, Approved Zhaga Specifications, and any contributions thereto provided by the LLA, the Consortium, or any Steering Committee Member, including without limitation the Test specification, and the licenses granted under this Agreement, are provided “AS IS” with no warranties whatsoever, whether express, implied or statutory, including, but not limited to any warranty of merchantability, non-infringement, fitness for any particular purpose, or any warranty otherwise arising out of any proposal, specification, guide, design or sample. Licensee acknowledges and agrees that the Test does not guarantee that any product will conform to the Approved Zhaga Specifications, function correctly or interoperate with any other product, and that it is Licensee’s sole responsibility to establish its own testing specifications, guides and reference designs to establish conformance with the Approved Zhaga Specifications, correct functionality and interoperability. The LLA, the Consortium and each Steering Committee Member expressly disclaim any and all warranties, responsibility and liability for (non-)conformance of any product to the Approved Zhaga Specifications, product functionality or product interoperability.
- 9.4** In no event will the LLA, the Authorized Testing Center, the Consortium, any Member of the Consortium, or Licensee be liable to each other for any incidental, consequential, indirect, or special damages (including, without limitation, damages for loss of business or personal profits, business interruption, or any other pecuniary loss) related to this Agreement, or arising out of Licensee’s and/or its Affiliated Companies’ manufacture, have manufactured, use, offering for sale, sale, import, export or disposal by other means of any products carrying Zhaga Logo, even when such party had advance notice of the possibility of such damages. The liability of LLA, the Authorized Testing Center, the Consortium, and any Member of the Consortium against Licensee and its Affiliated Companies for direct damages not excluded in the preceding sentence, arising out of issuing an incorrect Non-Compliance Notice, and/or the publication of the brand name and type number of products that are incorrectly classified as Non-Compliant pursuant to this Agreement, shall in no event exceed the aggregate amount of the Annual License Fee, Certification Fee and the Non-Compliance Fee received by LLA from such Licensee.
- 9.5** Licensee shall indemnify, hold harmless, and defend the LLA, the Authorized Testing Center, the Consortium as well as any Member of the Consortium from and against any third party claim arising out of Licensee’s and/or its Affiliated Companies’ manufacture, having manufactured, use, offering for sale, sale, import, export or other disposal of Licensed Products.
- 9.6** This Agreement shall be governed by and construed in accordance with the laws of Germany, as if this Agreement were wholly executed and wholly performed within said country, and without reference to the conflict of laws principles thereof. Any dispute arising out of this Agreement may be brought before the competent court in Hamburg, without prejudice to the right of the LLA to seek injunctive relief before any court in any place where any unauthorised use of the Zhaga Logo occurs or threatens to occur.
- 9.7** The Licensee, the LLA and the Steering Committee Members are and intend to remain independent companies and nothing in this Agreement shall be construed as a partnership or joint venture between the parties. While the Steering Committee may select an entity to handle certain administrative tasks for the Consortium, except as expressly set forth in this Agreement, neither party is authorized to make any commitment on behalf of all or any of the Steering Committee Members.
- 9.8** This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement, or waiver of any right hereunder, shall be binding unless accepted in writing by an authorized representative of each party.

- 9.9** This Agreement shall enter into force on the Effective Date and shall continue for an initial term of five (5) years. After the expiry of the initial term, or expiry of a future extension, the Agreement shall be automatically extended for an additional five (5) year term, unless Licensee gives written notice of termination no later than sixty (60) days prior to the expiry of the then current term.
- 9.10** Licensee reserves the right to terminate this Agreement without liability at any time, without cause, upon sixty (60) day prior written notice to the LLA.
- 9.11** Either party may terminate this Agreement at any time on thirty (30) days' written notice to the other party in the event of a Material Breach by the other party and such Material Breach is not remedied within thirty (30) days after notice is given specifying the nature of the Material Breach. Such right of termination shall not be exclusive of any other remedy or means of redress to which the non-defaulting party may be lawfully entitled, and all such remedies shall be cumulative. The LLA may terminate this Agreement in the event that Licensee or any of its Affiliated Companies challenges the validity or enforceability of the Zhaga Logo.
- 9.12** This Agreement shall terminate with immediate effect in the event Licensee ceases to be a Member of the Consortium.
- 9.13** Sections, 7, 8, 9.2, 9.3, 9.4, 9.5, 9.13, 9.14, 9.15, 9.16 and 9.17 shall survive expiration or termination of this Agreement.
- 9.14** The exercise by any party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or at law.
- 9.15** Licensee may not, but the LLA may freely assign its rights and obligations under this Agreement.
- 9.16** While only the LLA has executed this Agreement with Licensee, Licensee acknowledges and agrees that all Members of the Consortium are so-called third party beneficiaries of this Agreement and that any Member of the Consortium is entitled to enforce its terms against Licensee, notwithstanding any action or inaction by the LLA with regard to the enforcement thereof, and free from any claim, defence, set-off or other right of Licensee against the LLA. Nothing in this Agreement shall be construed to give rise to any obligation on any party hereto for the benefit of a third party other than the Members of the Consortium.
- 9.17** Section headings in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement. All references to section numbers in this Agreement shall refer to sections of this Agreement unless explicitly stated otherwise.
- 9.18** Nothing in this Agreement shall prohibit or restrict Licensee and its Affiliated Companies from independently developing competing technologies and standards or to license its patent rights to third parties, including without limitation, to enable competing technologies and standards.

Annex A Zhaga Logo Guidelines

1 Zhaga Logo

The Zhaga Logo is the following symbol:



:

Note that the Zhaga Logo License Agreement grants a conditional trademark license for the Zhaga Logo.

2 Shape

The Zhaga Logo must always be used as described in these Zhaga Logo Guidelines and as provided in the electronic files that are available as download from the website of the Consortium at <https://www.zhagastandard.org/downloads.html>.

Variations and additions are strictly forbidden. Any user-created additions, deletions or modifications to any part of the Zhaga Logo and its additions are strictly forbidden.

3 Colour

The Zhaga Logo is reproduced in either black (on a light background) or white (on a dark background). On products where only one colour printing is being used, or where the appearance of the Zhaga Logo is obtained by moulding or reflection, the Zhaga Logo may appear in the basic colour used. Texture or reflection levels must be uniform across the entire Zhaga Logo.

The colour of the Zhaga Logo, its background colour and intensity must be uniform across the entire Zhaga Logo. Shadows or graphic effects are not allowed.

4 Clear zone

The complete Zhaga Logo must be used, maintaining a clear zone. A clear zone is an area in which no other graphical or textual elements appear.

In the case of a stand-alone logo symbol the clear zone shall be 67% of the logo height.

The Zhaga Logo may not be enclosed in any kind of border, box or frame. The complete Zhaga Logo must be used on its own, in a free space, without any text, slogan or any other addition.

5 Size

The Zhaga Logo may be reduced or enlarged on the condition that the same relative positions and proportions between the respective elements (aspect ratio) are maintained and that the Zhaga Logo is always legible and easily readable with normal human vision. The indicated aspect ratio (+/- 5%) shall be maintained. The symbol shall not be smaller than 4 mm in width.

6 Use of the word “zhaga”

The Consortium and/or the LLA have filed trademark applications for the Zhaga Logo and the word “zhaga” in many jurisdictions. The Consortium and/or the LLA may not be able to allow these trademark applications to mature into a trademark registration in a particular jurisdiction or in all relevant trademark classes. The Consortium and the LLA advise Licensee to consult its trademark counsel on the risks that use the word “zhaga” in a particular jurisdiction may infringe 3rd party rights. Licensee may consider, in consultation with its trademark counsel, to reduce the risks, by limiting the use of the word “zhaga” to the following combinations: “Zhaga Consortium”, “Zhaga Specification”, “Zhaga Standard”.

Annex B Zhaga Usage Guidelines

- 1 The Zhaga trademark may not be used standalone on luminaires.**
- 2 The Zhaga trademark may be used standalone on certified components of LED luminaires unless the Zhaga-D4i Logo and Trademark Policy applies, and shall be used according the Zhaga Logo Guidelines defined in Clause 1.**