

Last updated: September 1, 2021

This Software License Agreement for Wireless Modules ("**Agreement**") sets forth the terms and conditions that apply to your ("**Customer**", "**your**" or "**you**") access and use of the Licensed Software (as defined below) made available by M2M Connectivity Australia Pty Ltd ("**M2M**") using certain websites (collectively, the "**Site**"), including but not limited to the internet website located at <https://m2mconnectivity.com.au/product/sierra-wireless-fx30-programmable-iot-gateway/>, each owned and operated by M2M.

BY ACCESSING, DOWNLOADING, OR USING THE LICENSED SOFTWARE YOU ARE INDICATING YOUR ACCEPTANCE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MUST NOT ACCESS, DOWNLOAD, OR USE THE LICENSED SOFTWARE. IF YOU ARE DISSATISFIED WITH THIS AGREEMENT OR ANY RULES, POLICIES, GUIDELINES OR PRACTICES APPLICABLE TO THE SITE OR THE LICENSED SOFTWARE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SITE AND THE LICENSED SOFTWARE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "CUSTOMER", "YOUR", OR "YOU" WILL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS, DOWNLOAD, OR USE THE LICENSED SOFTWARE.

By accepting this Agreement, you agree to be bound by the terms and conditions of this Agreement. Before you continue, you should print or save a local copy of this Agreement for your records.

In order to enter into this Agreement, you must have reached the legal age of majority in your jurisdiction of residence, and be fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in this Agreement, and to abide by and comply with this Agreement. It is your responsibility to ensure that you are legally eligible to enter into this Agreement under any laws applicable to you. If you accept this Agreement, you represent that you have the capacity to be bound by it.

## 1. DEFINITIONS

1.1 "**Authorized Purpose**" means the purpose of enabling and supporting the use of M2M Products.

1.2 "**Authorized Representative**" means one of the following individuals, provided that they require access to the Licensed Software for the Authorized Purpose: (a) an employee of Customer, (b) an employee of a wholly-owned subsidiary of Customer, or (c) an individual providing services to Customer (or to a wholly-owned subsidiary of Customer) who is engaged as an independent contractor but performs tasks similar to those performed by Customer's employees. Authorized Representative excludes Contract Developers and their employees.

1.3 "**Contract Developer**" means an original design manufacturer (ODM), contract manufacturer or other third party engaged by Customer to develop or assist in the development of Customer Products.

1.4 "**Customer Product**" means a product of the Customer that incorporates a M2M Product.

1.5 "**Licensed Software**" means any drivers, SDKs, applications, firmware or other software that is made available by M2M to Customer or its Authorized Representatives to support Customer's use of M2M Products, including any updates, upgrades and associated documentation.

1.6 "**M2M Product**" means a hardware device purchased by Customer from M2M.

1.7 "**Object Code**" means any Licensed Software that is made available as object code or executable binary code.

1.8 "**Source Code**" means any Licensed Software that is made available in source code.

## 2. LICENSE TERMS

2.1 License. Subject to the terms of this Agreement, M2M grants to Customer a limited, non-exclusive license to download, install and execute the Licensed Software and Authorized Derivatives (defined below) on M2M Products, on Customer Products and in test environments, in each case solely for the Authorized Purpose.

2.2 Modifications. Customer shall not modify or create derivative works of any Object Code. M2M grants to Customer a limited, non-exclusive license to modify and make derivative works of the Source Code, and to combine the Source Code with other software, solely for the Authorized Purpose (an “**Authorized Derivative**”). Authorized Derivatives may only be used pursuant to the license in Section 2.1 above.

2.3 Open Source. If the Source Code includes any libraries or other components that are made available under open source licenses, then Customer’s use of such libraries or components will be governed by the applicable open source licenses and not by this Agreement.

2.4 Customers. Customer may (a) sell Customer Products to its customers with the Object Code pre-installed, (b) provide the Object Code or binaries of the Authorized Derivatives to its customer for the customer to install on Customer Products, and (c) permit customers to install and execute the Object Code and Authorized Derivatives in support of their use of Customer Products. Customer may not grant any customers the right to modify the Licensed Software or provide any Source Code to its customers.

2.5 Authorized Representatives. Customer may permit its Authorized Representatives to exercise the license rights granted in sections 2.1 (License) and 2.2 (Modifications) above on Customer’s behalf, provided that (a) Customer will ensure its Authorized Representatives comply with this Agreement, (b) Customer will be responsible for any breach of this Agreement by its Authorized Representatives, and (c) Customer will ensure that a binding non-disclosure agreement is in effect with the Authorized Representative at all times.

2.6 Contract Developers. Customer may not make the Licensed Software available to any Contract Developer or permit any Contract Developer to exercise Customer’s rights under this Agreement. If Customer wishes to engage a Contract Developer, the Contract Developer will be required to sign a separate license agreement.

2.7 License Fees. Unless otherwise agreed in writing, no license fees or royalties are payable by Customer for the licenses granted pursuant to this Agreement.

2.8 Restrictions. Customer shall, and shall be responsible for ensuring that its Authorized Representatives and customers: (a) only use the Licensed Software as expressly permitted by this Agreement and only for the Authorized Purpose; (b) use measures to protect the confidentiality of the Licensed Software that are at least as robust as the measures used to protect its own software and confidential information, but no less than a reasonable standard of care, (c) reproduce, and do not remove or obscure, any proprietary markings placed on the Licensed Software; (d) comply with all applicable laws in connection with their use of the Licensed Software; (e) do not reverse-assemble, reverse-compile, or reverse-engineer the Object Code; and (f) do not grant any sublicenses to the Licensed Software, or otherwise transfer or make it available to any third parties except as expressly permitted by this Agreement. If Customer exercises its rights under section 2.2, Customer will ensure that the Source Code is not combined or linked to any open source software in a manner that would require the Source Code or any derivatives thereof to be made available under open source license terms.

2.9 Transfers; Sublicensing. Customer may not transfer any licenses granted under this Agreement, except pursuant to section 5.7 (Assignment), and may not grant any third party any rights to use the Licensed Software, except pursuant to sections 2.4 (Customers) and 2.5 (Authorized Representatives).

### **3. INTELLECTUAL PROPERTY**

3.1 Ownership of Licensed Software. Customer acknowledges that as between the parties, M2M has all right, title and interest in the Licensed Software, and except for the limited licenses granted under this Agreement, Customer shall acquire no right, title or interest in the Licensed Software.

3.2 Ownership of Authorized Derivatives. Subject to its rights with respect to the Licensed Software and its rights under section 3.3 below (Feedback), M2M claims no right, title or interest in Authorized Derivatives authored by Customer or its Authorized Representatives. Customer is solely responsible for any warranty, indemnity or support obligations relating to the Authorized Derivatives.

3.3 Feedback. If Customer provides any feedback or suggestions to M2M relating to the Licensed Software, or makes any bug fixes or Authorized Derivatives available to M2M, then M2M may use and incorporate such feedback, suggestions, bug fixes and Authorized Derivatives into its software with no obligation to Customer, and Customer grants M2M a non-exclusive, perpetual, irrevocable, fully-paid up license to the feedback, suggestions, bug fixes and Authorized Derivatives for such purposes.

### **4. TERM AND TERMINATION**

4.1 Term and Termination. This Agreement will remain in effect until it is terminated. Either party may terminate this Agreement (a) for convenience on 90 days’ notice to the other party, or (b) for cause, if the other party breaches any term of this Agreement and fails to cure the breach within 30 days of receipt of written notice of breach.

4.2 Effect of Termination. Except as set forth in section 4.3 (Ongoing Use), upon any termination of this Agreement, the licenses and rights granted to Customer will cease, and Customer will cease to use and cause each of its Authorized Representatives to cease to use the Licensed Software. Section 2.6 (Contract Developers), section 2.8 (Restrictions), Article 3 (Intellectual Property), section 4.2 (Effect of Termination), section 4.3 (Ongoing Use) and Article 5 (Miscellaneous) will survive any termination of this Agreement.

4.3 Ongoing Use. Unless this Agreement is terminated by M2M for cause, the termination will not affect (a) the rights of any customer of Customer to use any Customer Product that was delivered prior to the date of termination, or (b) the right of Customer to exercise its rights under section 2.1 (License), but solely to enable and support the use of M2M Products using Licensed Software that was made available prior to the effective date of termination.

## 5. MISCELLANEOUS

5.1 Warranties. THE LICENSED SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Notwithstanding the foregoing, this Agreement will not extinguish or modify any representations or warranties with respect to software that are expressly provided to Customer in a signed supply agreement relating to the supply of the M2M Products, or in M2M's general terms and conditions of sale with respect to the M2M Products.

5.2 Disclaimer. IN NO EVENT SHALL M2M BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF M2M HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3 No Obligation to Provide. Nothing in this Agreement obligates M2M to make any software available to Customer and it is in M2M's sole discretion to decide which software (if any) to make available.

5.4 Injunctive Relief. Customer acknowledges that any breach of this Agreement may cause immediate and irreparable injury to M2M and that, in the event of such breach, M2M will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief.

5.5 Notice. All notices required or permitted under this Agreement may be personally delivered, delivered by a reputable courier to the applicable address specified below, or by electronic mail (receipt confirmed). Notices to Customer may be sent to the email address provided by Customer at the time Customer accesses or downloads the Licensed Software. Notices to M2M may be sent to M2M Connectivity Australia Pty Ltd, 1 Barrett Street, Kensington Victoria, 3031, Australia, marked to the attention of General Manager and with a copy to [legal@sierrawireless.com](mailto:legal@sierrawireless.com) and [support@m2mconnectivity.com.au](mailto:support@m2mconnectivity.com.au).

5.6 Entire Agreement. This Agreement states the entire understanding between the parties with respect to the licensing of the Licensed Software and supersedes all other agreements between the parties insofar as they relate to the licensing or use of the Licensed Software.

5.7 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which will not be unreasonably withheld, and any assignment in contravention will be void *ab initio*. Notwithstanding the foregoing, either party may assign this Agreement in connection with the sale of all or substantially all of its business to which this Agreement relates. Subject to the foregoing, this Agreement will inure to the benefit of the parties' permitted successors and assigns.

5.8 Governing Law. All disputes arising out of or in connection this Agreement, including the formation, interpretation, breach or termination thereof, or arising in connection with the Licensed Software, shall be governed by the laws of the State of New South Wales, Australia, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, except as follows: (i) for any Customer incorporated or located within the regions of Europe, Middle East or Africa, the laws of France shall govern and arbitration shall be conducted in Paris, France by the International Court of Arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce; and (ii) for any Customer incorporated or located within the Asia region, the laws of Singapore shall govern and arbitration shall be conducted in Singapore by the Singapore International Arbitration Centre (SIAC) in accordance with the Arbitration Rules of the SIAC; in each case without regard to the conflict of law provisions of such jurisdiction. The foregoing arbitrations shall be binding and conducted in English before a single arbitrator appointed in accordance with the applicable rules. Judgment on the award may be entered in any court having jurisdiction. THE PARTIES EXPRESSLY WAIVE THEIR RIGHTS TO TRIAL BY JURY.

5.9 Waiver. No waiver of any breach of this Agreement, will be effective unless in writing and signed by both parties. No waiver of any breach of this Agreement, and no course of dealing between the parties, will be construed as a waiver of any subsequent breach of this Agreement.

5.10 Severability. A determination that any provision of this Agreement is invalid or unenforceable will not affect the other provisions of this Agreement.

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