

**1. DEFINITIONS.**

**1.1 Definitions.** In this Agreement:

- (a) **“Agreement”** means this Licence for Software Tools & Software Development Kits;
- (b) **“Platform”** means YOUR OEM device into which the Product is integrated;
- (c) **“Products”** means the SIERRA products with which the Software has been designed, and is intended, to work;
- (d) **“Purpose”** has the meaning set out in Section 3.1 below (Grant of Licence);
- (e) **“SIERRA”** means Sierra Wireless, Inc. and any legal entity or entities directly or indirectly controlling, controlled by, or under common control with Sierra Wireless, Inc. “Control” means the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares, partnership interests, membership shares or similar ownership interest of such controlled entity;
- (f) **“Software”** means SIERRA and third party:
  - (i) **“Software Tools”**, which comprise diagnostic and provisioning software used to integrate the Products into one or more Platforms; and
  - (ii) **“Software Development Kits”**, which comprise application programming interfaces (APIs), device drivers, utilities, sample code and documentation, that enable YOU to create applications for Products that are embedded in Platforms or in third party hardware or software;

“Software” includes all updates to it, and all SIERRA and third-party proprietary documentation, including installation materials, provided by SIERRA.

“Software” does not include **“Open-Source”**, which is software governed by an Open-Source Licence. An “Open-Source Licence” is one that requires, as a condition of use, modification, or distribution of the software that is subject to the Open Source License, that such software or other software combined or distributed with such software be:

- (i) disclosed or distributed in source code form;
  - (ii) licensed for the purpose of making derivative works; and
  - (iii) redistributable at no charge; and
- (g) **“YOU”** and **“YOUR”** means the individual or entity authorised by SIERRA in writing to download the Software.

**1.2 Headings.** Headings have been inserted in these provisions for convenience of reference only and will not affect their construction.

**2. TERM.**

- 2.1 **Term.** This Agreement shall be effective from the date on which YOU click “Agree” to these provisions, until the date on which this Agreement is terminated in accordance with Section 8.1 below (Termination).

**3. LICENCE.**

- 3.1 **Grant of Licence.** Subject to the provisions of this Agreement, SIERRA grants YOU a royalty-free, non-exclusive, non-transferable, worldwide:
- (a) **Internal Use.** right to use internally, and right to grant to those of YOUR sub-contractors who have agreed to be bound by provisions no less strict than those set out in this Agreement (**“Sub-Contractors”**) a right to use internally, the Software to integrate the Products into one or more of YOUR platforms (each a **“Platform”**);
  - (b) **Non-Commercial Distribution.** the right to distribute, on a non-commercial basis, the Software Development Kits with Platforms that incorporate the Products; and
  - (c) **Commercial Distribution.** if you pay SIERRA any applicable licence fee, the right to distribute, and have distributed, on a commercial basis (as determined by SIERRA acting reasonably), the Software Development Kits with Platforms that incorporate the Products, (collectively the **“Purpose”**).
- 3.2 **Copies.** YOU may make a reasonable number of copies of the Software as needed for the Purpose.
- 3.3 **Restrictions on Use.** YOU agree that YOU shall not, and shall ensure that the Sub-Contractors and YOUR authorised distributors do not:
- (a) use the Software other than for the Purpose;
  - (b) except as expressly permitted by Section 3.1 above (Grant of Licence), publish or distribute, either directly or indirectly, all or part of the Software, or sell, assign, transfer, rent, lease, sublicense or distribute rights to the Software, in whole or in part;
  - (c) translate, reverse engineer, decompile or disassemble the object code version of the Software for any purpose including, without limitation, to create a derivative product or to translate, reverse engineer, decompile or disassemble the Products;
  - (d) use the source code version of the Software to create a derivative product or to translate, reverse engineer, decompile or disassemble the Products;
  - (e) remove any proprietary notices or labels from the Software;
  - (f) use the Software to configure any product not purchased directly from either SIERRA or a SIERRA-authorized distributor;

- (g) use the Software to configure Products for use on any network where the network carrier requires that YOU secure activation authority and YOU have not secured such authority;
- (h) use the Software in a manner that would be construed as competitive to Sierra or which would inhibit Sierra from independently pursuing its intended business; or
- (i) publish or distribute non-Open Source Software with Open Source elements of either the Software or other software.

**4. CONFIDENTIALITY.**

- 4.1 **Confidentiality.** YOU acknowledge that the Software is confidential to SIERRA and third parties and shall be protected by the confidentiality agreement between YOU and SIERRA or, if none, then as follows:
- (a) YOU shall hold the Software in confidence and trust, and shall store the Software in the same manner that YOU store YOUR own confidential information, but with not less than a reasonable standard of care; and
  - (b) YOU shall not disclose the Software to any third party, other than to Sub-Contractor/s and YOUR authorised distributor/s for the Purpose, unless:
    - (i) the Software become public knowledge through no fault of YOU, a Sub-Contractor or YOUR authorised distributor/s;
    - (ii) YOU can show, by written records, that the employees of YOU or a Sub-Contractor have independently developed the Software without access to the Software;
    - (iii) YOU receive the Software from a third party who is not in breach of an obligation of confidentiality; or
    - (iv) YOU disclose the Software pursuant to the order of a court or administrative body of competent jurisdiction or a securities regulator, if YOU notify SIERRA of the order at the earliest reasonable opportunity so that SIERRA can contest the disclosure.

**5. INTELLECTUAL PROPERTY.**

- 5.1 **Intellectual Property.** The Software is protected by Canadian and international copyright and intellectual property laws.
- YOU acknowledge that the Software is the property of SIERRA and third parties and that, except for the limited rights granted under Section 3.1 above (Grant of Licence), YOU acquire no right, title or interest in or to the Software, including the source code, object code and related information other than to use it per the provisions of this Agreement.
- 5.2 **Improvements.** If YOU or any Sub-Contractor make any improvements to the Software (**“Improvements”**), YOU and the Sub-Contractor shall promptly provide the Improvements to SIERRA and shall grant SIERRA a non-exclusive, royalty-

free, irrevocable, transferrable, world-wide licence to make, use, license and sell, and to grant to third parties the right to make, use, license and sell, Products that incorporate the Improvements.

5.3 **Feedback.** SIERRA shall have all right, title and interest in and to all suggestions, ideas, concepts, comments and feedback that YOU provide to SIERRA regarding the Products and Software.

## 6. UPDATES & SUPPORT.

6.1 YOU acknowledge that, except as agreed elsewhere by SIERRA in writing:

- (a) SIERRA shall have no obligation to provide any support or engineering assistance for the Software; and
- (b) SIERRA may provide YOU with upgrades, modifications, enhancements or revisions that SIERRA may make to the Software.

## 7. WARRANTY EXCLUSIONS.

7.1 YOU acknowledge that:

- (a) SIERRA PROVIDES AND LICENSES THE SOFTWARE "AS IS" AND THE USE OF THE SOFTWARE IS ENTIRELY AT YOUR RISK;
- (b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, SIERRA EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED OR STATUTORY, WRITTEN OR ORAL, WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE;
- (c) SIERRA DOES NOT WARRANT NOR MAKE ANY CONDITION OR REPRESENTATIONS:
  - (i) THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS,
  - (ii) THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR VIRUS FREE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED; OR
  - (iii) REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE; AND
- (d) **CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL SIERRA, ITS DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS AND AGENTS, BE LIABLE FOR INJURY TO PERSONS OR PROPERTY, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF REVENUE OR PROFITS, LOST OR DAMAGED DATA, FAILURE TO REALIZE EXPECTED SAVINGS, CLAIMS AGAINST YOU BY THIRD PARTIES, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND, WHETHER BASED ON CONTRACT, TORT (INCLUDING THEORIES OF NEGLIGENCE, RECKLESSNESS, STRICT LIABILITY, OR DEFECTIVE PRODUCT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORSEEABLE, ARISING OUT OF YOUR USE OF OR INABILITY TO USE THE SOFTWARE.

7.2 Some jurisdictions do not allow the exclusion of implied warranties and conditions and do not permit the exclusion or limitation of certain damages. Therefore, the exclusions set out in this Agreement may not apply to YOU.

## 8. TERMINATION.

8.1 **Termination.** If YOU, a Sub-Contractor or a distributor retained by YOU, breach any of the material provisions of this Agreement, this Agreement shall terminate immediately and without the need for SIERRA to give notice, and YOU shall:

- (a) immediately cease use of the Software, and direct any third parties, including Sub-Contractors and YOUR distributors, to whom YOU have provided the Software to immediately cease use of the Software;
- (b) immediately cease all reproduction and distribution of applications or other software developed that references elements of the Software; and
- (c) promptly destroy or return the Software, as directed by SIERRA, and provide SIERRA with a certificate attesting that all of the Software has been returned or destroyed.

8.2 **Survival of Certain Obligations.** The following provisions shall survive termination of this Agreement:

- (a) Section 1.1 above (Definitions);
- (b) Section 3.3 above (Restrictions on Use);
- (c) Article 4 above (Confidentiality);
- (d) Article 5 above (Intellectual Property);
- (e) Article 6 above (Upgrades & Support);
- (f) Article 7 above (Warranty Exclusions);
- (g) this Article 8 (Termination); and
- (h) Article 9 below (General).

## 9. GENERAL.

9.1 **Export Control.** YOU warrant that YOU shall not, without the prior written consent of all of the appropriate governmental regulatory bodies, transmit directly or indirectly the Software or any immediate product (including processes and services) produced directly by the use of the Software, to any location to which the transmission is prohibited by the government of Canada or the government of the United States of America.

9.2 **Governing Law & Disputes.** All claims or disputes arising hereunder or in connection with this Agreement shall be submitted to arbitration before a single arbitrator under the rules of The American Arbitration Association. The laws of the State of California and the laws of the United States applicable therein shall govern all such claims or disputes (without giving effect to principles of conflicts of laws). The location of the arbitration shall be San Diego, California.

9.3 **Injunctive Relief.** YOU acknowledge that any use of the Materials in a manner not authorized by this Agreement would cause SIERRA irreparable harm that could not be fully remedied by monetary damages. So, YOU agree that SIERRA shall have the right to obtain injunctive or other equitable relief as may be necessary to prevent the

unauthorized or unlawful action, and YOU waive any right that a bond be posted in connection with the granting of the injunctive or other equitable relief.

9.4 **Severability.** Any provision of this Agreement which is, or is deemed to be, unenforceable in any jurisdiction shall be severable from this Agreement in that jurisdiction, without in any way invalidating the remaining provisions of this Agreement and any such unenforceability in that jurisdiction shall not make that provision unenforceable in any other jurisdiction.

9.5 **Modifications.** This Agreement shall not be modified except by a document signed and made part of this Agreement by an authorized signing officer of Sierra Wireless.

9.6 **Waiver.** A waiver of any right, obligation or default will shall only be effective if it is in writing and signed by the party against whom the waiver is sought to be enforced. Any particular waiver of any right, obligation or default will not be construed as a waiver of any subsequent or other right, obligation or default. The remedies of each party shall be cumulative and not exclusive.

9.7 **Notices.** All notices shall be in writing, shall be signed by the party giving notice, and shall be effective on receipt. If a notice duly signed by the party giving notice is transmitted to the other party by facsimile or as a pdf attachment to an e-mail, the facsimile transmission or pdf attachment will be deemed an executed original of the notice and of such signature.

9.8 **Assignment.** YOU may not assign this Agreement, in whole or in part, without the prior written consent of SIERRA.

9.9 **Entire Agreement.** Unless otherwise agreed in a written document executed by the parties, this Agreement constitutes the entire agreement between the YOU and SIERRA on the subject matter and supersedes any agreement or understanding, written or oral, made prior to the date on which YOU download the Software.