**ANALOG DEVICES WATCH AND SOFTWARE LICENSE AGREEMENT**

This Analog Devices watch software license agreement (“Agreement”) governs (i) any access, reproduction and use of any parts of the Analog Devices Internet of Things Watch Software listed on Exhibit 1 and any associated documentation, and any bug fixes, patches and maintenance releases (collectively “Software” and specific files “Software Files”) provided by Analog Devices, Inc., a Massachusetts corporation (“ADI” or “We”) and (ii) any access to and use of ADI’s wearable watch provided by ADI (the “Watch”),. “Software” shall also include any updates or upgrades, new releases or new versions that replace or supplement the Software and are not distributed under a separate license. The term “you” or “You” refers to the company identified in the signature blocks and is the party to whom the license is granted to.

**THE SOFTWARE AND WATCH ARE NOT FOR CONSUMER USE AND MAY NOT BE USED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR FOR ANY MEDICAL DIAGNOSIS OR TREATMENT.**

If you access or use the Watch, Exhibit 2 applies to you in addition to this main body of the Agreement and Exhibit 1.

**1. License Grant**. We grant you a non-exclusive, non-sublicensable, non-transferable, revocable, world-wide limited license to use, reproduce, distribute, and modify the Software, on the condition that you accept and comply with all terms of this Agreement, including Exhibits 1 and 2, if applicable, and any specifications and documentation that we may provide with or relating to the Software. If you or your agents or representatives fail to comply with any term of this Agreement, including payment of fees if applicable, you are in breach of contract, your license automatically and immediately terminates, any further use, reproduction, distribution and modification of the Software by you is outside the scope of this Agreement and you are acting without any license and you are liable for infringement of ADI’s and its suppliers and licensors’ intellectual property rights.

**2.** **Sublicensing**. Notwithstanding the general prohibition on sublicensing in Section 1, as a sole exception, you may sublicense the rights granted under this Agreement as follows: (i) only to the extent necessary in connection with your incorporation of the Software into products that you offer to third parties (“Customer Products”) and on the condition that your Customer Products are made and distributed in compliance with all terms and conditions of this Agreement and you comply with all requirements set forth in Exhibit 1, and (ii) only to the extent necessary to provide use rights to a third party contractor hired on Your behalf for the limited purpose of evaluation and testing of the Software, Software Files and Watch. Included in the requirements in Exhibit 1, there may be the requirement to pay fee or other consideration for use of certain Software Files or other items (“Paid Item”). Your customers have no further rights to sublicense the Software and you are liable for any breach of the Agreement by your customers.

**3. Third Party Materials.** Portions of our Software and the Applications utilize or include third party software and other copyrighted material, including but not limited to open source software. Certain acknowledgments, licensing terms and disclaimers for such material are contained in Exhibit 3 of this Agreement and your use of such material is governed by their respective terms. The current list of third-party software is contained in Exhibit 3.

**4. Reservation of Rights and Ownership**. The Software is licensed, and not sold to you, only under the terms of this Agreement. The Software is protected by copyright and other intellectual property laws and treaties. ADI and its affiliates and suppliers and licensors exclusively own and expressly reserve all right, title and interest in intellectual property in the Software and all enhancements, improvements and derivatives thereof, together with all copyright and other intellectual property rights therein. In the event You solely developed an application (1) without any contribution or ideas from any ADI employees, representatives or agents, (2) without any use of ADI confidential information and (3) without claiming any aspects of ADI’s Software or intellectual property, then it’s possible that such solely development application can be patented by You.

**5. Use Restrictions**. You will not without the express prior written authorization of ADI (a) remove or alter any titles, trademarks or trade names, copyright notices or other proprietary markings from the Software or Watch; (b) disable, circumvent or de-install any computer system license management routines, access codes or control programs; (c) rent, lease, lend or provide hosting services using the Software or Watch for third parties; or (d) if you are only receiving the object code for a Software File as specified in Exhibit 1 decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software File, in whole or in part, or modify the Software File in any way. For some Software Files listed in Exhibit 1, and as a condition to ADI granting you the rights under this Agreement, you will only exercise your rights hereunder on/with the hardware, software, other items, components, processes or services (collectively “ADI Products”) listed in Exhibit 1 for such Software Files.

**6. Support Services Not Included**. ADI will not provide any support services under this Agreement. This Agreement does not give you any rights to any updates, upgrades, new releases or new versions of the Software or to any extensions or enhancements to the Software developed by ADI at any time in the future. ADI may offer support services separately for Paid Items or in connection with ADI separately offering ADI Products. Any supplemental software code or related materials that ADI provides to you as part of any support services are deemed part of the Software and are subject to the terms and conditions of this Agreement.

**7. Compliance with Laws; Export Restrictions.** The Software is subject to United States export laws. You shall comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments. You shall indemnify ADI for all losses, costs, claims, damages and expenses (including attorneys’ fees and expenses) arising from your violation or alleged violation of any applicable federal, state or local law, including without limitation, any export control law.

**8. DISCLAIMER OF WARRANTIES.** WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SOFTWARE (OR THE WATCH, IF APPLICABLE) OR ANY INFORMATION, CONTENT, MATERIALS OR PRODUCTS INCLUDED OR REFERENCED THEREIN. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACKNOWLEDGE THAT YOUR USE OF THE SOFTWARE (AND THE WATCH, IF APPLICABLE) IS AT YOUR SOLE RISK. NO COMMUNICATION, INFORMATION OR ADVICE GIVEN BY US OR ANY REPRESENTATIVE OF OURS SHALL CREATE ANY WARRANTY OR CONDITION. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**9. Intellectual Property Infringement**.ADI shall indemnify you against all liabilities, claims and legal costs (including reasonable attorney fees) resulting in a final judgment in favor of a third party to the extent arising from any third party claim or suit alleging that Paid Items infringe: (i) any copyright; (ii) the trade secret or rights of any third party; or (iii) any U.S. patent existing on the date the Software in question is delivered to you. You must promptly notify ADI in writing of any such third party claim. ADI shall be entitled to have sole control over the defense and settlement of such claim; provided that (i) you shall be entitled to participate in the defense of such claim and to employ counsel at your own expense to assist in the handling of such claim, and (ii) ADI shall obtain your prior written approval before entering into any settlement of such claim if such settlement imposes a monetary obligation on you.

ADI shall have no liability for, and shall not indemnify you against, any infringement claim resulting from: (i) modification of any Software by anyone other than ADI; (ii) combination of any Software with hardware, software or other intellectual property provided by anyone other than ADI; (iii) use of a superseded or altered release of some or all of the Software or any modification thereof furnished under this Agreement including, but not limited to, your failure to use corrections, fixes, or enhancements made available by ADI; or (iv) use of any Software in any manner not expressly contemplated or permitted hereunder and in the documentation.

**10. Applicability to Third Party Products**. ADI MAKES NO REPRESENTATIONS OR WARRANTIES AND PROVIDES NO INDEMNIFICATION COVENANTS OF ANY KIND WITH RESPECT TO THIRD PARTY PRODUCTS. “Third Party Product” means application software products provided by third party vendors, including operating system and application software with which the Software or Watch interface.

**11. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES**. EXCEPT FOR SECTION 9 OR BREACH OF SECTION 15, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ADI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR DATA OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE WATCH, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, THE WATCH, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT.

**12. LIMITATION OF LIABILITY AND REMEDIES**. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of ADI and any of its suppliers or licensors under any provision (except for Section 9 or breach of Section 15) of this Agreement and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by ADI) shall be limited to actual, direct damages up to the amount actually paid by you for the Software and the Watch. The foregoing limitations, exclusions and disclaimers (including Sections 8, 9, 10, 11) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

**13. U.S. Government Rights**. For any Software licensed directly or indirectly on behalf of a unit or agency of the United States Government, this paragraph applies. ADI’s proprietary software embodied in the Software: (a) was developed at private expense and is in all respects ADI’s proprietary information; (b) was not developed with government funds; (c) is ADI’s trade secret for all purposes of the Freedom of Information Act; (d) is a commercial item and thus, Government’s use, duplication or disclosure of such Software is subject to the restrictions set forth by ADI.

**14. Payment Terms.**Paid Items are only licensed on the condition that you pay a fee or other consideration as agreed pursuant to a separate addendum to this Agreement.

**15. Confidential Information**. Each party acknowledges and agrees that any confidential information of the other party which disclosed in connection with this Agreement, including but not limited to the Software and Watch and all information emanating from the Software and Watch, are valuable trade secrets and “Confidential Information.” Each party agrees that it will not permit the duplication or use of any such Confidential Information by, or disclosure to, any person (other than its employees, agents or representatives who are bound by confidentiality obligations no less stringent than as under this Agreement), unless such duplication, use or disclosure is specifically authorized by ADI in writing prior to any disclosure.

Each party shall use reasonable diligence, and in no event less than that degree of care that it uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of any Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions and each party shall keep detailed records of the location of all Confidential Information.

**16. Termination**. This Agreement is effective until terminated. Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party. Your rights under this Agreement will terminate immediately and automatically if you fail to comply with any of the terms and conditions of this Agreement and in the event of such failure any further use, reproduction, distribution and modification of the Software is outside the scope of this Agreement and you are acting without any license. Promptly upon termination, you must cease all use of the Software, destroy all copies of the Software in your possession or control, and, upon ADI’s request, certify such destruction. If you have the right, under Section 2 and Exhibit 1, to sublicense the rights granted herein in connection with incorporating Software Files into Customer Products, termination of this Agreement will not terminate the rights granted herein with respect to Customer Products already launched and no longer in your possession or control. Notwithstanding termination, the rights granted herein are irrevocable with respect to use of the Software in such Customer Products sold prior to termination. Termination of this Agreement will not limit any of ADI’s rights or remedies at law or in equity.

**17. Choice of Law and Arbitration**. This Agreement (including validity and interpretation) will be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., without reference to any conflict of law principles. If a dispute, controversy or claim arises out of or relates to these terms and conditions, or the breach, termination or validity thereof, and if either party decides that the dispute cannot be settled through direct discussions, the parties hereby agree to settle the dispute through arbitration. The arbitration shall be conducted by one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. The seat of the arbitration shall be Boston, Massachusetts and the arbitration shall be conducted in the English language. The arbitrator shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of these terms and conditions. The arbitral award shall be in writing and shall be final and binding on the parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the parties or their assets. Subject to any arbitral award, costs of arbitration shall be borne equally by the parties. The arbitration requirement does not limit the right of either party to obtain provisional or ancillary remedies, such as injunctive relief, before, during or after any arbitration proceeding.

**18. Assignability; sublicensing.** ADI may not assign or transfer this Agreement without the prior written consent of you. Any attempt to assign or transfer without such consent is void. For purposes of this Section 17, any transfer by sale, merger or other working combination of ownership of or control of the voting securities or control of ADI shall not constitute an assignment. You may not assign or sublicense this Agreement or any rights or delegate any duties hereunder, except to the extent permitted under Section 2, and any purported assignment or delegation other than as permitted under Section 2 by you shall be null and void and constitute a material breach.

**19. Force Majeure**. Nonperformance by either party to this Agreement shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental action, failure of suppliers, earthquake, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

**20. Entire Agreement; Severability**. This Agreement supersedes the terms of any purchase orders, other communications or representations or agreements (whether written or oral), or advertising, with respect to the Software. You acknowledge that this Agreement is a complete statement of the agreement between you and ADI with respect to the Software and, if applicable, the Watch, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software or the Watch. No amendment to or modification of this Agreement will be binding unless made in writing and signed by the parties. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect and the invalid, unenforceable or illegal provision shall be amended to achieve as closely as possible the effect of the original term.

**21. Injunctive Relief**. A breach of this Agreement adversely affecting ADI’s proprietary rights in the Software or Watch may cause irreparable injury to ADI for which monetary damages would not be an adequate remedy and ADI shall be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law.

**22. Notices**. All notices to ADI under this Agreement shall be made in writing to Analog Devices, Inc. Attn: Legal Department, One Technology Way, Norwood, MA 02062, United States. Any notices to you under this Agreement shall be made to any published address that ADI selects.

**23. Survival**. The provisions of this Section 23 and Sections 4, 7, 8, 9, 11, 12, 14, 15, 16, 17, 21, and 22 shall survive termination or expiration of this Agreement, for any reason.

**\*\*\* signature page follows \*\*\***

**The undersigned hereby agree to the terms and conditions set forth herein and in any schedule or exhibit attached hereto as indicated by the signatures of their duly authorized representatives below. The “Effective Date” of this Agreement shall be the date of last signature below.**

Analog Devices, Inc. You: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit 1**

**Software Files Specific Terms**

This Exhibit 1 specifies for each Software File (i) if it will be made available, under the terms of the Agreement, in source code format, (ii) if the rights granted under the Agreement are conditioned on exercising those rights on/with an item that incorporates certain listed ADI Products, and (iii) if ADI charges you a fee or other consideration for exercising the rights under the Agreement. **If ADI charges a fee/consideration, such fee/consideration will be separately agreed and you do not have any license to the Software, under the Agreement or otherwise, until a fee/consideration has been agreed between you and ADI through a separate addendum to this Agreement.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Software File name** | **Will Software File be made available to you in source code format? Yes/No** | **The rights granted under the Agreement are conditioned on exercising those rights on/with an item that incorporates each of the following listed ADI Products. If no ADI Products are listed for a Software File, no conditions tied to ADI Products apply for such Software File.** | **Does ADI charge you a fee or other consideration for exercising the rights under the Agreement? Yes/No.** |
| **ADPD Device Driver\*** | **Yes** | **ADPDxxxx** | **No** |
| **ADXL Device Driver\*** | **Yes** | **ADXLxxxx** | **No** |
| **ADPD Clock Calibration\*** | **Yes** | **ADPDxxxx** | **No** |
| **ADPDLib (PPG library) \*** | **Yes** | **ADPDxxxx** | **No** |
| **AGC Library\*** | **No** | **ADPDxxxx** | **No** |
| **PPG HR Algorithm Library\*** | **No** | **ADPDxxxx and ADXLxxxx** | **No** |
| **Pedometer integration library\*** | **Yes** | **ADXLxxxx** | **No** |
| **Software Development Kit for Windows, iOS, Android and Python\*** | **No** | **EVAL-HCRWATCH**  **EVAL-HCRWATCH-188Z**  **EVAL-HCRWATCH5940Z** | **No** |
| **\* Sample integration codes are supplied for all package** | **Yes** | **N/A** | **No** |

**Exhibit 2**

**Terms of Use for the Watch**

ADI is making the Watch available to you at ADI’s sole discretion.

We offer the Watch only to ADI’s corporate customers and their employees and independent contractors acting individually as corporate representatives for their organization for evaluation of ADI Products - **not for consumer USE AND MAY NOT BE USED FOR personal, FAMILY or household purposes OR for any medical diagnosis or treatment**.

You acknowledge that you understand that the Watch is not medical devices and further acknowledge and agree that the purpose of the Watch is only to demonstrate ADI’s sensor offerings and you agree to only use the Watch to evaluate possibilities of designing and developing products and services that utilize ADI sensor technologies and services and not to use the Watch for personal use (the Watch is for ‘proof of concept use’ only).

**Do Not Rely on the Watches - Use them at your own Risk**

**THE WATCHE IS IN A BETA TESTING PHASE AND ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, INCLUDING AS DESCRIBED IN THE FOLLOWING: WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE WATCHE OR ANY INFORMATION, CONTENT, MATERIALS OR PRODUCTS INCLUDED OR REFERENCED THEREIN. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACKNOWLEDGE THAT YOUR USE OF THE WATCH IS AT YOUR SOLE RISK. NO COMMUNICATION, INFORMATION OR ADVICE GIVEN BY US OR ANY REPRESENTATIVE OF OURS SHALL CREATE ANY WARRANTY OR CONDITION. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.**

**Use at your own Cost**

We do not currently charge for the Watch, but reserve the right to do so in the future at ADI’s sole discretion and upon notice to you. You may be subject to charges from your mobile phone and Internet services providers or other third parties. You are responsible for any associated fees, charges or expenses.

**User’s Responsibilities**

You agree to comply with all user responsibilities and obligations as stated in this Exhibit 2.

If you submit any information, comments, text, photographs, data and other materials to us through or related to the Watch or send us any business information, idea, concept or invention to us by e-mail (collectively “User Content”), you represent and warrant to us that such User Content is not confidential and that you have all necessary permission to submit or otherwise make available such User Content. You irrevocably agree to grant us, and you hereby do grant us a royalty-free, perpetual, irrevocable, world-wide nonexclusive license to reproduce, create derivative works from, distribute, modify, publish, edit, translate, distribute, perform, display and otherwise use and commercialize User Content in any media or medium, or any form, format, or forum now known or hereafter developed.

You agree that:

* you will not reproduce, distribute, modify, sell, resell, or exploit the Watch, its content or any portion of any of the foregoing; and
* you will not use the Watch for any purpose in violation of local, state, national or international laws; and

**Ownership**

The Watch is protected by copyright and other intellectual property laws and treaties. ADI and its affiliates, suppliers and licensors exclusively own and expressly reserve all right, title and interest in intellectual property in the Watch and all enhancements, improvements and derivatives thereof, together with all copyright and other intellectual property rights therein.

**Compliance**

You must comply with all applicable laws and regulations relating to your use of our Watch. Without limiting the generality of the foregoing, you must comply with all U.S. export control and trade laws and refrain from exporting or re-exporting the Watch or any information related thereto in violation of U.S. law.

**Exhibit 3**

**Acknowledgements**

**Portions of the Software may utilize the following copyrighted material, the use of which is hereby acknowledged.**

**NETWONSOFT JSON V10.0.3**

The MIT License (MIT)

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The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

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