

ubiquiOS OEM Licence Agreement

1 Parties

IMPORTANT – PLEASE CAREFULLY READ THE FOLLOWING LICENSE AGREEMENT, WHICH IS LEGALLY BINDING. BY USING THE SOFTWARE, OEM AGREES TO BOUND TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (the "Agreement") WHICH IS LEGALLY BINDING BETWEEN OEM AND UBIQUIOS TECHNOLOGY LIMITED ("Licensor").

2 Definitions

2.1 In this Agreement (including any Schedule or annexure to this Agreement):

“Approved Target Processor” means the microprocessor(s) on which OEM is authorised to use the Software pursuant to the terms and conditions of this Agreement, as specified in Schedule 1;

“Approved Target Transceiver” means the transceiver(s) with which OEM is authorised to use the Software pursuant to the terms and conditions of this Agreement, as specified in Schedule 1;

“Authorised Manufacturer” means an entity that is responsible for the manufacture of the Target Product under contract to OEM pursuant to the terms and conditions of this Agreement;

“Authorised Site” means OEM’s facility facilities where OEM will use the Software pursuant to the terms and conditions of this Agreement;

“OEM” means the person or entity that installs or uses the Software at the Authorised Site for the purpose of developing and, or distributing the Target Product;

“End User” means any person or entity to which OEM provides a Target Product for further distribution or such person or entity’s own use, pursuant to an End User Licence Agreement;

“End User Licence Agreement” means the written licence agreement attached in the form specified in Schedule 2, pursuant to which OEM may sublicense to End Users the UbiquiOS Library that is incorporated into a Target Product;

“Licence Key” means a software license key for the UbiquiOS Library that is issued by Licensor to OEM in order to enable the use of the UbiquiOS Library as part of the Run-Time Component incorporated into each instance of the Target Product;

“Object Code” means computer instructions and data definitions in a form that is output by an assembler or compiler, is not readily comprehensible to human beings, and is suitable for machine execution without the intervening steps of interpretation or compilation;

“Project” means a concerted undertaking by an OEM development team to design or produce a Target Product based on the Approved Target Processor and the Approved Target Transceiver and that has a scope of functionality as specified in Schedule 1;

“Reference Source Code” means any hardware abstraction layers or example application Source Code that may be provided by Licensor under this Agreement;

“Run-Time Component” means components of the UbiquiOS Library and Reference Source Code, in Object Code form, to be incorporated into a Target Product as inseparably embedded code;

“Software” means

- (i) the computer programming code and accompanying documentation, including updates (if any), provided by Licensor under this Agreement; and
- (ii) all modifications thereto and full or partial copies thereof, whether such modifications or copies are provided by Licensor or made by OEM as permitted under this Agreement.

The definition of Software includes, without limitation, the UbiquiOS Library, Tools, and Reference Source Code;

“Source Code” means computer programme code in human-readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation;

“Target Product” means an item, device, or system using the Approved Target Processor and the Approved Target Transceiver developed by OEM pursuant to the Project that contains the Run-Time Component or any portion thereof, as specified in Schedule 1;

“Tools” means the scripts and Object Code provided by Licensor under this Agreement that are intended for OEM’s internal use in developing applications and not for incorporation into Target Products or for distribution;

“UbiquiOS Library” means the Object Code that is part of Licensor’s ubiquiOS™ product family, or other related software and extensions thereto that may be provided by Licensor under this Agreement;

3 Grant of Licence

3.1 Subject to OEM’s compliance with the terms and conditions of this Agreement, Licensor hereby grants to OEM a non-transferable, non-exclusive, licence

- (i) to use the Software at the Authorised Site solely to develop the Target Product; and
- (ii) to reproduce the Software for archive purposes, consistent with OEM’s standard archive procedures; and
- (iii) to modify the Reference Source Code, solely to the extent necessary to support the development of the Target Product and to properly interface with the Run-Time Component; and
- (iv) to compile the Reference Source Code, including any modifications thereof, into Object Code that may form a part of the Run-Time Component; and
- (v) to reproduce the number of copies of the Run-Time Component for which Licence Keys have been pre-purchased from UbiquiOS for the Target Product, solely in Object Code at the Authorised Site or the site of the Authorised Manufacturer; and
- (vi) to distribute such copies of the Run-Time Component to End Users worldwide, solely as inseparably embedded content in the Target Product and each enabled with a unique Licence Key, subject to an End User Licence Agreement.

3.2 Licensor and/or its own licensors retain all right, title and interest in and to the Software, including, without limitation, all copyrights, trademarks, patents, trade secrets, proprietary and other

intellectual property rights contained in or associated with the Software, all copies thereof, and all enhancements or modifications thereto.

4 Conditions

- 4.1 Except as expressly permitted by this Agreement, OEM may not
- (i) modify the UbiquiOS Library or Tools; or
 - (ii) translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or attempt to derive the Source Code of Software provided to OEM in Object Code form, or create derivative works of the UbiquiOS Library or Tools or let any third party do any of the foregoing; or
 - (iii) reproduce the Software other than as specified above; or
 - (iv) sublicense, rent, lease, loan, timeshare, sell, distribute, disclose, publish, assign or transfer any rights, grant a security interest in, transfer possession of the Software, or electronically transfer the Software from one computer to another over a network other than OEM's internal network as permitted, if at all, under this Agreement; or
 - (v) alter or remove any of Licensors' or its licensors' copyright or proprietary rights notices or legends appearing on or in the Software and OEM shall reproduce such notices on any copies OEM is permitted to make; or
 - (vi) use the Software or allow its use for the purpose of developing, enhancing or marketing any product that is in any way competitive with the Software, or disclose to any third party the results of, or information pertaining to, any benchmark of the Software.
- 4.2 OEM shall not list or quote a Run-Time Component as a separately priced item or option.
- 4.3 OEM shall configure the Run-Time Component within OEM's Target Product so that the Run-Time Component will not operate apart from the operation of the Target Product.
- 4.4 OEM must ensure that License Key can be read from the Target Product storage and passed into ubiquiOS at runtime. The License Key storage should be protected from reading and/or accidental erasure by the End User.

5 End User Licence Agreement

- 5.1 OEM shall take all steps necessary to protect Licensor's and its licensors' proprietary rights in the Run-Time Component and to ensure that each Run-Time Component distributed by OEM will be accompanied by the End User Licence Agreement specified in Schedule 2.

6 Confidentiality

- 6.1 OEM acknowledges that the Software provided in accordance with this Agreement contains intellectual property which is proprietary and its confidentiality is of paramount importance and value to Licensor. OEM acknowledges that Licensor may be seriously harmed if such intellectual property is disclosed in violation of this Agreement. OEM undertakes to apply the same security measures, but no less than reasonable security measures, in relation to confidential information

supplied by Licensor as it takes in relation to its own confidential information in order to prevent unauthorised access to it.

- 6.2 OEM acknowledges that any Licence Key provided by Licensor to OEM is for OEM's sole use in accordance with this Agreement. OEM undertakes to apply the same security measures, but no less than reasonable security measures, in relation to any Licence Key supplied by Licensor as it takes in relation to its own confidential information in order to prevent unauthorised access to it.
- 6.3 OEM warrants it shall not make the Software or any Licence Key available in any form to any person other than OEM's employees, Authorised Manufacturer, or authorised contractors, whose job performance requires access and who are under obligations of confidentiality. OEM shall take appropriate action to protect the confidentiality of the Software and Licence Keys, and shall ensure that any person permitted access does not disclose or use the Software and Licence Keys except as permitted by this Agreement.
- 6.4 OEM shall give Licensor immediate written notice of any unauthorised disclosure or use of the Software or any Licence Key as soon as OEM learns or becomes aware of such unauthorised disclosure or use.
- 6.5 "Open Source Software" means any software which
- (i) contains or is derived in whole or in part from software that is distributed in such a way that any party can be a licensee without notice to the licensor; or
 - (ii) contains or is derived in whole or in part from software that is distributed under licensing models the same as or similar to the GNU General Public License (GPL) or Lesser/Library GPL (LGPL); the Artistic License (e.g., Perl); the Mozilla Public License; the Netscape Public License (SISL); the Sun Community Source License (SCSL); the Sun Industry Source License (SISL); or the Apache License; or
 - (iii) is licensed subject to any requirement for distribution of source code; or
 - (iv) is licensed subject to any requirement for disclosure of any modifications to the software.

OEM warrants that its use of the Software will not place source code disclosure, copyleft or similar obligations on Licensor. OEM further warrants that it will not, unless expressly permitted in writing by Licensor

- (i) incorporate any Open Source Software into or combine any Open Source Software with any part of the Software; or
 - (ii) use Open Source Software in whole or in part in the development of any product based on the Software in a manner that would place source code disclosure, copyleft or similar obligations on Licensor.
- 6.6 OEM agrees that Licensor may use OEM's name and may disclose that OEM is a licensee of Licensor products or services in advertising, press, promotion, and similar public disclosures, provided that such disclosures shall not indicate that OEM in any way endorses any of Licensor's products without prior written permission from OEM. OEM agrees that, upon OEM's public announcement of the Target Product designed with or containing Licensor's products or services, Licensor may publicly disclose the nature of Licensor's involvement in the Target Product.

7 Hazardous Applications

- 7.1 OEM acknowledges that the Software has not been designed for, and is therefore not suitable for use in safety-critical applications including but not limited to aircraft navigation or communications systems, air traffic control, life support systems, medical devices or other applications in which the failure of the Software could lead to death, personal injury, or severe physical or environmental damage ("Hazardous Applications"). OEM acknowledges that it is solely responsible for testing products used in Hazardous Applications and shall be solely liable for any damages resulting from such use. Neither Licensor nor its licensors shall be liable for any damages resulting from or in connection with the use of products in any hazardous applications.
- 7.2 OEM agrees to indemnify and hold harmless Licensor and its licensors from any claims, loss, cost, damage, expense, or liability including reasonable legal costs, arising out of or in connection with the use of the Software as described in Clause 7.1.

8 Limited Warranty

- 8.1 Licensor warrants that the Software will perform substantially in accordance with its accompanying written materials for a period of one-hundred and eighty (180) days from the delivery of the Software of any applicable purchase order. Licensor does not warrant that the Software will meet OEM's requirements or operate free from error.
- 8.2 Licensor will defend any suit brought against OEM and will pay all damages finally awarded in such suit insofar as such suit is based on a claim that the Software, as provided to OEM, infringes a U.S. copyright or patent, provided that Licensor is notified promptly of such claim and at its expense is given full and complete authority (including settlement authority), information and assistance by OEM for such defence. In the event that the Software is held in any such suit to infringe such a right and its use is enjoined, or if in the opinion of Licensor the Software is likely to become the subject of such a claim, Licensor at its own election and expense will either:
- (i) procure for OEM the right to continue using the Software; or
 - (ii) modify or replace the Software so that it becomes non-infringing while giving equivalent performance.

In the event that (i) or (ii) above are not, in Licensor's sole determination, reasonably practicable, then Licensor may terminate this Agreement and refund an equitable portion of monies paid by OEM in connection with the licences granted hereunder.

- 8.3 Licensor disclaims all other warranties, either express or implied, including the warranties of merchantability, fitness for a particular purpose, and non-infringement of third party rights. No oral or written information or advice given by Licensor, its dealers, distributors, agents, or employees, shall create a warranty or in any way increase the scope of this warranty and OEM shall not rely on any such information or advice.
- 8.4 Licensor's entire liability and OEM's exclusive remedy shall be, at Licensor's option, either:
- (i) refund the price paid; or

- (ii) repair or replacement of any part of the Software that does not meet Licensor's limited warranty as set forth in this Clause 8. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

8.5 To the fullest extent permitted by law, Licensor shall not be liable for loss of revenue, loss of profit or any indirect, consequential or special damages of any kind arising out of the use or inability to use the Software even if Licensor or its representatives have been advised of the possibility of such damages.

8.6 Any and all liabilities of Licensor under this Agreement which may be excluded or limited by law and which have not been excluded or limited by any other provision of this Agreement shall be limited, in aggregate, to the amount paid by OEM in respect of this Agreement in the prior twelve (12) months.

9 Support and Maintenance

9.1 During the one-hundred and eighty (180) day warranty period referred to above, Licensor will provide the following support services in accordance with Licensor's standard terms and conditions for maintenance services:

- (i) reasonable telephone and written consultation during Licensor's normal business hours concerning normal use of the Software; and
- (ii) analysis of suspected Software failures (where OEM has provided adequate documentation of such suspected failure) and corrections to the Software as needed; and
- (iii) one copy of new releases of corrections and upgrades to the Software and corresponding technical documentation (does not include new features announced as extra cost options).

9.2 Licensor shall have no obligation under this Agreement for corrections of errors or problems which are due to a breach by OEM of the terms of this Agreement, or which cannot be remedied due to the operational characteristics of the hardware or software environment in which the Software is used.

9.3 Except as may be provided above or in a separate maintenance agreement between Licensor and OEM, if any, Licensor is under no obligation to maintain or support the Software, and Licensor has no obligation to furnish OEM with any further assistance, documentation or information of any nature. In particular, Licensor has no responsibility for the support and maintenance of all portions of applications developed by OEM or OEM's agent using the Software.

10 Term and Termination

10.1 Unless earlier terminated for breach, this Agreement shall begin at the Commencement Date and shall continue until the earliest of the following:

- (i) the parties mutually agree in writing to terminate the Agreement; or
- (ii) OEM enters into composition with its creditors, is declared bankrupt, goes into liquidation, or a receiver or statutory receiver is appointed in respect of it; or
- (iii) OEM assigns its rights or obligations under this Agreement without Licensor's written consent; or

- (iv) OEM commits a breach of copyright or any other breach of intellectual property rights or a breach of confidentiality.

10.2 This Agreement may be terminated by Licensor for a breach by OEM which is not cured within thirty (30) days of OEM receiving written notice of the breach from Licensor.

10.3 Licensor may, by notice to OEM, immediately terminate this Agreement if

- (i) OEM has a receiver appointed for the whole or any part of its assets, or if an order is made or a resolution is passed for its winding up (unless as a part of a scheme for reconstruction or amalgamation); or
- (ii) OEM takes any action or causes or induces or supports any action to call into question the validity of the intellectual property in the Software.

10.4 If OEM defaults in the performance of its obligations under this Agreement and

- (i) the default is capable of being remedied and, within thirty (30) days of notice by Licensor specifying the default, is not remedied; or
- (ii) the default is not capable of being remedied;

then Licensor may immediately terminate, or temporarily suspend the operation of this Agreement until the default is remedied, at its sole discretion.

10.5 Termination of this Agreement shall not affect any already existing rights or liabilities of either party. Clauses 4, 6, 7, and 8 of this Agreement will survive such termination.

11 Payments, Taxes, and Audit

11.1 All payments and amounts due in association with this Agreement shall be paid without deduction or set-off or counter claim, free and clear of any restrictions or conditions, and without deduction for any taxes, levies, imposts, duties, fees, deductions, withholdings or other governmental charges. If any deduction is required to be made by law, OEM shall pay in the manner and at the same time such additional amounts as will result in receipt by Licensor of such amount as would have been received by Licensor had no such amount been required to be deducted. If OEM is claiming sales or use tax exemption, a certified Tax Exempt Certificate must be attached to this Agreement or applicable purchase order submitted by OEM. OEM shall promptly pay or reimburse all federal, state and local taxes (exclusive of taxes on Licensor's net income), duties and assessments, if any, due, arising from or measured by amounts payable to Licensor under this Agreement, or furnish Licensor with evidence acceptable to the taxing authority necessary to sustain any exemption therefrom.

11.2 OEM shall maintain complete, current, and accurate records documenting all copies of the Software or Run-Time Component made and distributed by or for OEM.

12 Disputes and Remedies

12.1 The parties agree to use their best efforts to resolve any dispute which may arise under the Agreement through good faith negotiations. No party shall commence any litigation in relation to this Agreement unless it has first invited the chief executive of the other party, or his or her representative, to meet with its own chief executive or his or her representative, for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

- 12.2 Any dispute arising under this Agreement which cannot be settled by negotiation between the parties or their respective representatives shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party.
- 12.3 If the parties cannot agree on a mediator within two (2) working days of the notice, the mediator shall be selected by the President for the time being of LEADR (Lawyers Engaged in Alternative Dispute Resolutions) or its successor.
- 12.4 The parties shall continue to perform their obligation under the Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to mediation.
- 12.5 Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before any competent court.

13 Infringement

- 13.1 OEM shall notify Licensor immediately if it becomes aware of any claim or suspected infringement of the intellectual property rights associated with the Software.
- 13.2 Licensor may take whatever action it considers appropriate in relation to any such claim or suspected infringement of the intellectual property rights associated with the Software. OEM may, at Licensor's request and expense, provide reasonable assistance to Licensor in the taking of that action.
- 13.3 If any claim is made or action brought against the OEM for the infringement of any intellectual property rights of any other party in relation to OEM's use of the Software, OEM shall keep Licensor advised of the progress of the action and must not make any admissions or enter into any settlement without the prior written consent of Licensor which consent must not be unreasonably withheld.

14 Miscellaneous

- 14.1 Each party to this Agreement shall give to the other party immediate notice of any suit or action filed and prompt notice of any claim made against the party arising out of the performance of this Agreement.
- 14.2 This Agreement sets out the entire agreement and understanding between the parties relating to the Software and no modifications or amendments shall be effective unless made in writing and signed by the parties of this Agreement.
- 14.3 Any waiver by either party of any rights arising from any breach of any term of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other terms of this Agreement by any other party.
- 14.4 Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of the Agreement shall remain binding on the parties.
- 14.5 Headings contained in this Agreement have been inserted merely to facilitate reference and shall have no bearing upon the interpretation of any of the provisions of this Agreement.

- 14.6 Nothing in this Agreement shall create a partnership or agency between any of the parties unless expressly provided.
- 14.7 Neither party shall be responsible to the other for delay or failure in performance of any of the obligations imposed by this Agreement provided that such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure of machinery or equipment or supply of materials, discontinuity in the supply of power, court order or governmental interference, civil commotion, riot, war, strikes, labour disturbances, transportation difficulties, labour shortage, natural genetic variations of any living matter or by any cause of like or unlike nature beyond the reasonable control and without the fault or negligence of such party.
- 14.8 OEM agrees and acknowledges that any breach or threatened breach of this Agreement may cause irreparable harm to Licensor, for which monetary damages would be inadequate compensation; entitling Licensor to obtain injunctive relief, in addition to all other remedies that may be available, in law, at equity or otherwise.
- 14.9 Licensor may sell, transfer, assign or delegate, in whole or in part, this Agreement, or any rights, duties, obligations or liabilities under this Agreement, without prior consent of OEM. OEM shall not sell, transfer, assign or delegate this Agreement, in whole or in part, or any rights, duties, obligations or liabilities under this Agreement, without the prior written consent of Licensor, with such consent not to be unreasonably withheld. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 14.10 The Software delivered under this Agreement is subject to New Zealand export control laws and may be subject to export or import regulations in other countries. OEM agrees to strictly comply with all such laws and regulations.
- 14.11 OEM agrees to accept and be bound by electronically generated (and conveyed) fully signed copies of this Agreement, to treat such copies as originals and to raise no objection to this Agreement being concluded through electronic means.
- 14.12 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

ubiquiOS OEM Licence Agreement: Schedule 1

This Schedule 1 forms a part of the ubiquiOS OEM Licence Agreement and defines various terms referenced therein.

Description of the Target Product

The Target Product is identified as follows:

[Enter a name for the Target Product in which ubiquiOS will be used. Please provide a name, model/version number, and/or codename that uniquely identifies this Target Product to the exclusion of other similar products that are or may in future be produced.]

The Target Product is more particularly described as follows:

[Enter a detailed description of the Target Product and its scope of functionality.]

The Approved Target Processor is:

[Specify the manufacturer and part number of the processor or microcontroller on which ubiquiOS will run in the Target Product (the Approved Target Processor).]

The Approved Target Transceiver(s) is(are):

[Specify the manufacturer and part number of the transceiver(s) that will be used with ubiquiOS in the Target Product (the Approved Target Transceiver).]

The UbiquiOS Library for the Target Product under this Agreement is composed of the following ubiquiOS modules:

- ☐ WLAN/Wi-Fi (IEEE 802.11)
- ☐ Bluetooth/Bluetooth Smart
- ☐ TCP/IP networking with TLS, MQTT, and HTTP
- ☐ 2G/3G/4G cellular
- ☐ Cloud connectivity agents
- ☐ Hardware secure element integration

ubiquiOS OEM Licence Agreement: Schedule 2

End User Licence Agreement

[attach End User Licence Agreement]