This agreement (“Agreement”) is a legal agreement between you, (“Licencee”) and IOTech Systems Limited (“Licensor”), for use of Licensor’s commercial distribution of its Edge Xpert Device Service and Application Functions SDK computer software products in Source Code format, any printed materials, online or electronic documentation and any upgrades or modifications thereto, collectively hereinafter referred to as the “Software”. The Software is based on the LinuxTM Foundation’s edgexfoundry/device-sdk-go, edgexfoundry/device-sdk-c and edgexfoundry/app-functions-sdk-go software products (“EdgeX SDK”). EdgeX SDK is open source software (“OS Software”). The Software contains certain proprietary software of Licensor and its third-party licensors, collectively. By installing, copying, or otherwise using the Software, Licencee agrees to be bound by the terms and conditions of this Agreement. The parties expressly agree that the terms and conditions of this Agreement shall prevail over any standard terms and conditions printed or referred to in any purchase contract, order or other written documentation issued by the Licencee concerning the subject matter hereof. **If Licencee does not agree to the terms and conditions of this Agreement then do not install copy or use the Software.**

1. **OS Software Licence**
2. EdgeX SDK software included in the Edge Xpert SDK Software is licenced under the Apache Licence, Version 2.0 (the "EdgeX Foundry Licence"); Licencee may not use EdgeX Foundry software except in compliance with the EdgeX Foundry Licence. Licencee may obtain a copy of the Licence at [http://www.apache.org/licences/LICENCE-2.0](http://www.apache.org/licenses/LICENSE-2.0)
3. **Licencee acknowledges that ANY os software is provided with no warranties of any kind including the warranties of design, merchantability and fitness for a particular purpose, non-infringement, or arising from a course of dealing, usage or trade practice. in no event whatsoever and under no legal theory, whether in tort (including negligence), contract, or otherwise, unless required by applicable law (such as deliberate and grossly negligent acts), shall licensor be liable to Licencee for any damages, including any direct, indirect, special, incidental, or consequential damages of any nature, arising as a result of using the os software or out of the use or inability to use the os software (including but not limited to damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses), even if licensor has been advised of the possibility of such damages.**

Now the parties hereby agree as follows:

1. **Grant of Licence**

2.1 The following terms and conditions of this Agreement apply to use of the Software by Licencee in consideration for the licence fees payable by Licencee. In the event such terms and conditions conflict with the OS Software Licence provisions provided in Clause 1 above, the terms of Clause 1 shall apply, but only in respect of the use of the OS Software.

2.2 The Software and all associated copyrights and other intellectual property rights are the property of the Licensor, its affiliated companies, or its licensors. Licencee acquires no title, right or interest in the Software other than the licence granted herein.

2.3 Licensor hereby grants to Licencee, subject to payment of the appropriate licence fees, the non-exclusive non-transferable (without the right to sub-licence) licence to use the Software in source code and to recompile and regenerate object code for development purposes, subject to the terms and conditions of this Agreement and to receive Support Services for the Software, from Licensor for an agreed licence and support period.

2.4 The particular Software licenced, licence and support period, type and number of licences and any additional restrictions, not contained herein, such as specified Licencee site(s), designated computer hardware, and/or operating system, use in conjunction with particular other software, or the number of authorized users shall be in accordance with the particular transaction between us, as confirmed in Licensor’s order acknowledgement.

2.5 Unless otherwise agreed in writing, the following licence restrictions apply to use of the Software:

**Developer Licence** – a licence for an agreed time period permitting a defined number of users to use the Software for development purposes only, to develop and/or test Licencee applications on physical devices within a network. The term "use" comprises designing, developing, testing, or maintaining software which invokes functionality of the Software. Developer licences are transferable between computer systems, subject to IOTech written consent;

* 1. Licencee shall use the Software solely for its own internal business purposes. Licencee shall not provide, disclose or otherwise make available the Software in whole or in part to any third party and Licencee shall not permit any third party to use the Software without the written consent of Licensor.
  2. Licencee may make a single copy of the computer software included in the Software for back-up or archival purposes. Any copy must include Licensor’s copyright notice and is fully subject to the terms of this Agreement.
  3. Licencee shall not other than as permitted by the Agreement or Licensor’s written authorisation or by law copy, reproduce, translate, adapt or modify the Software or any documentation supplied by Licensor relating to the Software.
  4. Licencee may make a reasonable number of copies of the Software for back-up, archival or disaster recovery purposes. Any copy must include Licensor’s copyright notice and is fully subject to the terms of this Agreement. Licencee shall not other than as permitted by the Agreement or Licensor’s written authorization or by law copy, reproduce, translate, adapt, de-compile, modify, reverse engineer, disassemble the Software or create derivative works of the Software. If Licencee requires information relating to the Software necessary to achieve interoperability with an independently created software program, Licencee shall make a written request to Licensor to make available such information. Licencee shall not be entitled to make any copies of any hard copy documentation supplied by Licensor relating to the Software.
  5. In the event that the Software contains or is accompanied by certain third-party software products such third-party software is subject to the respective third-party licence terms, as may be set forth within the third-party software.

1. **Licence Fees**

* 1. Licencee shall pay Licensor the licence fees due within 30 days of the date of Licensor’s invoice.
  2. Unless otherwise agreed, the licence fees are annual and are due and payable annually in advance.
  3. The licence fees are exclusive of all sales or value added taxes, customs duties or government levies (if any) which if applicable shall be reimbursed by Licencee at cost to Licensor.
  4. In the event payment is not made within 30 days of invoice, by the Licencee, Licensor shall be entitled to charge Licencee a late payment fee of 1% per month, of the overdue amount during the period of delayed payment (both before and after any judgment) without prejudice to Licensor’s right to receive payments on the due dates.
  5. In the event of non-payment by Licencee of any sum due hereunder by the due date, Licensor may serve notice of such default upon Licencee, and if Licencee fails to pay in full all amounts owed hereunder within a period of 30 days of receipt of such notice, then Licensor may immediately terminate this Agreement in addition to any other rights Licensor may have in respect of such non-payment. Licensor also reserves the right, without liability, to forthwith suspend the licences granted under this Agreement, in the event any payment is overdue from Licencee.
  6. Except where a transaction has been concluded based upon a multi-year fixed price agreement, Licensor reserves the right to adjust the annual licence fees for any year following the initial year of the Agreement upon at least three months’ notice in writing to Licencee effective on the first or any subsequent anniversary of the Effective Date.

###### 4 Delivery and Acceptance

Further to acceptance of Licencee’s order, Licensor shall deliver one copy of the Software. Licensor shall use reasonable endeavors to deliver within two (2) working days of order acceptance but shall be under no liability in the event of failure to deliver within this time-scale, which is an estimate only. Unless otherwise agreed in writing delivery terms are FCA (as defined in IncoTerms 2000) Licensor’s premises. In the event the Software has been evaluated by the Licencee under the terms of an evaluation licence, prior to subscription purchase, the Software shall be deemed accepted upon use of the Software under this Agreement. If the Software has not been subject to such prior evaluation, Licencee may reject the Software within thirty days of delivery if the Software does not materially comply with its user documentation and return it to Licensor in exchange for a full refund.

**5 Warranty and Liability**

**5.1 LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE OR THE RESULTS OF USE WILL MEET LICENCEE’S REQUIREMENTS.**

* 1. **LICENSOR WARRANTS THAT UPON DELIVERY AND FOR A PERIOD OF 90 DAYS THEREAFTER “WARRANTY PERIOD”, THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE USER DOCUMENTATION.**
  2. **IF, WITHIN THE WARRANTY PERIOD, THE LICENCEE NOTIFIES LICENSOR IN WRITING OF ANY DEFECT OR FAULT THAT IS A NON-COMPLIANCE WITH THE FOREGOING WARRANTY AND SUCH DEFECT OR FAULT DOES NOT ARISE OR RESULT FROM LICENCEE, OR ANY THIRD PARTY ACTING ON LICENCEE’S BEHALF, (A) MAINTAINING OR ALTERING, THE SOFTWARE; (B) USING THE SOFTWARE ON ANY COMPUTER SYSTEM(S) OTHER THAN THE SYSTEM FOR WHICH THE SOFTWARE IS LICENCED (“SYSTEM”) ; (C) THE SOFTWARE OR SYSTEM HAVING NOT BEEN USED IN A PROPER MANNER BY COMPETENT TRAINED EMPLOYEES ONLY, OR BY PERSONS UNDER THEIR SUPERVISION AND IN ACCORDANCE WITH LICENSOR’S REASONABLE INSTRUCTIONS CONCERNING THE USAGE, CONTROL AND TESTING OF THE SOFTWARE, LICENSOR SHALL, AT THE LICENSOR’S OPTION, EITHER (A) CORRECT SUCH DEFECT OR FAULT OR (B) TERMINATE THIS AGREEMENT IMMEDIATELY BY NOTICE IN WRITING TO THE LICENCEE AND REFUND THE APPLICABLE FEES PAID BY THE LICENCEE.**
  3. **IT IS A CONDITION OF THE WARRANTY PROVIDED HEREUNDER THAT THE LICENCEE PROVIDES ALL INFORMATION NECESSARY TO ASSIST LICENSOR IN RESOLVING THE DEFECT OR FAULT, INCLUDING A DOCUMENTED EXAMPLE OF ANY DEFECT OF FAULT, OR SUFFICIENT INFORMATION TO ENABLE LICENSOR TO RE-CREATE THE DEFECT OR FAULT.**
  4. **ANY CONDITION, REPRESENTATION OR WARRANTY WHICH MIGHT OTHERWISE BE IMPLIED OR INCORPORATED WITHIN THIS AGREEMENT BY REASON OF STATUTE OR COMMON LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABLE OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**
  5. **LICENSOR DOES NOT EXCLUDE OR LIMIT ITS LIABILITY IN NEGLIGENCE FOR DEATH OR PERSONAL INJURY, OR FOR FRAUD, OR OTHERWISE INSOFAR AS ANY EXCLUSION OR LIMITATION OF ITS LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY LAW.**
  6. **SAVE AS PROVIDED IN CLAUSE 5.6 ABOVE, LICENSOR SHALL NOT IN ANY CIRCUMSTANCES HAVE ANY LIABILITY FOR ANY LOSSES OR DAMAGES WHICH MAY BE SUFFERED BY THE LICENCEE (OR ANY PERSON CLAIMING UNDER OR THROUGH THE LICENCEE), WHETHER THE SAME ARE SUFFERED DIRECTLY OR INDIRECTLY OR ARE IMMEDIATE OR CONSEQUENTIAL, AND WHETHER THE SAME ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE HOWSOEVER, WHICH FALL WITHIN ANY OF THE FOLLOWING CATEGORIES: (I) SPECIAL DAMAGE, EVEN IF THE SUPPLIER WAS AWARE OF THE CIRCUMSTANCES IN WHICH SUCH DAMAGE COULD ARISE; (II) LOSS OF PROFITS; (III) LOSS OF ANTICIPATED SAVINGS; (IV) LOSS OF BUSINESS OR BUSINESS OPPORTUNITY; (V) LOSS OF GOODWILL; (VI) LOSS OF, OR DAMAGE TO (INCLUDING CORRUPTION OF) DATA.**
  7. **SUBJECT TO CLAUSES 5.6 AND 5.7 ABOVE, THE TOTAL LIABILITY OF LICENSOR, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND ALL OTHERS), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED A SUM EQUAL TO THE FEES PAYABLE BY THE LICENCEE IN THE CONTRACT YEAR IN WHICH THE LIABILITY ARISES.**
  8. **LICENCEE HEREBY WAIVES ANY RIGHT TO ANY OTHER REMEDIES OR RELIEFS NOT SET OUT IN THIS AGREEMENT AND SUCH WAIVER SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER SUCH TERMINATION ARISES.**
  9. **THE LICENCEE ACKNOWLEDGES THAT:**
     1. **THE LEVEL OF FEES HEREUNDER REFLECTS THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND**
     2. **IT IS IN A BETTER POSITION THAN LICENSOR TO ASSESS AND MANAGE ITS RISK IN RELATION TO USE OF THE SOFTWARE AND SERVICES.**
  10. **ALL REFERENCES TO LICENSOR IN THIS CLAUSE 5 SHALL, FOR THE PURPOSES OF THIS CLAUSE ONLY, BE TREATED AS INCLUDING ALL EMPLOYEES, DIRECTORS, SUBCONTRACTORS AND SUPPLIERS OF LICENSOR AND ITS AFFILIATES, ALL OF WHOM SHALL HAVE THE BENEFIT OF THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET OUT IN THIS CLAUSE.**

1. **Intellectual Property Rights**
   1. The Software and all associated copyrights and other intellectual property rights are the property of the Licensor, its affiliated companies, or its licensors. Licencee acquires no title, right or interest in the Software other than the licences granted herein.
   2. All title, trademarks and copyrights in and pertaining to the Software (including but not limited to any images, photographs, animation, video, audio, music, text, and applets incorporated into the Software), and any copies of the Software are owned by Licensor, its affiliated companies, or licensors. The Software is protected by copyright, other intellectual property rights, trademark laws and international treaty provisions. Licencee must treat the Software like any other copyrighted material for archival purposes, and Licencee may not copy the printed materials accompanying the Software.
   3. Licencee may not remove, modify or alter any Licensor copyright or trademark notice from any part or copies of the Software, including but not limited to any such notices contained in the physical and/or electronic media or documentation, in Licensor’s installation dialogue or 'about' boxes, in any of the run-time resources and/or in any web-presence or web-enabled notices, code or other embodiments originally contained in or dynamically or otherwise created by the Software.
   4. If the Software is, or in Licensor’s opinion may become, the subject of a claim for infringement of the intellectual property rights of a third party, Licensor may at its option and as Licencee’s sole remedy:

6.4.1 procure the right to continued use of the Software;

6.4.2 replace or modify the Software to make it non-infringing; or

6.4.3 repay to the Licencee the licence fee (less a fair value for prior use) and terminate this Agreement.

1. **Term and Termination** 
   1. The licence term commences upon delivery of the Software to Licencee or if a copy of the Software is already in possession of Licencee under the terms of a prior evaluation licence, upon issue of Licensor’s order acknowledgment (“Effective Date”) and shall continue for the term specified in the particular transaction between us, as confirmed in Licensor’s order acknowledgement, unless terminated sooner in accordance with this Agreement.
   2. Except where a transaction has been concluded based upon a multi-year fixed term agreement, either party may at any time by at least two months’ notice in writing to the other party expiring on the first or any subsequent anniversary of the Effective Date terminate the Agreement for any particular transaction with effect from the date of expiry of such notice.
   3. Either party may at any time by notice in writing to the other party terminate this Agreement with effect from the date of service of such notice if:

7.3.1 the other party commits a material breach of this Agreement which is not remedied, or does not otherwise cease to be material, within thirty days after the non-breaching party has given written notice to the breaching party identifying the breach and requiring it to be remedied; or

7.3.2 the other party has ceased business, been adjudged bankrupt or insolvent under the laws of any jurisdiction, made an assignment for the benefit of creditors, or filed a petition of bankruptcy, reorganisation or other insolvency proceeding.

1. **Consequences of Termination**
   1. Termination of this Agreement, for whatever cause, shall be without prejudice to the rights of either party accrued prior thereto, including without limitation any right to payment of any sum and any right to sue in respect of any antecedent breach of this Agreement, and termination shall not affect any provision of this Agreement which, in order to give full effect to its meaning, needs to survive such termination (and all such provisions shall survive such termination to the extent necessary to give full effect to their meanings). Within fourteen days following the date of termination of this Agreement, Licencee shall cease to use the Software and shall either destroy or return to Licensor all of the Software including copies together with Licencee's written certification by a duly authorized officer that this clause has been complied with in full.
   2. Termination of this Agreement shall be in addition to and not a waiver of any remedy available to Licensor arising from Licencee's breach of this Agreement.
2. **Force Majeure**

Licensor shall not be liable for failure to perform its obligations under the Agreement if such failure results from circumstances beyond its reasonable control, including but not limited to; act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any Government or Authority, fire, explosion, flood, fog or bad weather, power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles, default of suppliers or subcontractors, theft, malicious damage, strike, lockout or industrial action of any kind.

1. **Statutory and Other Obligations**

If the cost to Licensor of the performance of this Agreement shall be increased by reason of the making after the Effective Date of any law, order, regulation, or bye-law that shall be applicable to the Agreement, the amount of such increase shall be added to the licence fees.

1. **Assignment**
   1. Licencee shall not assign sub-licence or otherwise transfer any of the rights or obligations under this Agreement without the prior written consent of Licensor.
   2. Licensor shall be entitled without the prior written consent of Licencee to assign sub-contract or otherwise transfer its rights and obligations under this Agreement.
2. **Reference**

Licencee permits Licensor to reference Licencee as a user of the Software and display Licencee’s logo in Licensor’s marketing documentation and communications, and on its worldwide website.

1. **Export Regulations**

By downloading or using the Software, Licencee represents and warrants that it is not located in under the control of or a national or resident of any country which is subject to an applicable embargo or other trade restriction imposed by the U.S. or other government. Licencee shall not import, export, or re-export the Software to or from any country in contravention of any applicable import or export laws or regulations of the United States or other government.

1. **High Risk Activities**

The Software is not designed, produced or intended for fail-safe performance in applications used in hazardous environments in which the failure of the Software itself could lead directly to death, personal injury, or severe physical or environmental damage, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, ("High Risk Activities"). Licensor specifically disclaims any express or implied warranty of fitness for High Risk Activities and Licencee hereby indemnifies and holds harmless Licensor against claims of any nature arising from failure of the Software when used by it or its Licencees for High Risk Activities.

### Audit Rights

Licensor reserves the right, with reasonable notice and at reasonable times, not exceeding one time per year, to conduct an audit of Licencee’s records to the extent only that is reasonably necessary to confirm Licencee’s compliance with the terms of this Agreement. Without prejudice to any other rights of Licensor, in the event such audit reveals a breach of this Agreement, Licencee shall reimburse Licensor’s costs of conducting such audit.

##### US Government End Users

The Software and documentation included therein are “commercial items” as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 227.7202-1, 227.7202-3 and 227.7202-4 (June 1995). If the Licencee hereunder is the U.S. Government or any agency or department thereof, the Software is licenced hereunder (i) only as a commercial item, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

### General

* 1. This Agreement shall be governed by and construed in accordance with the laws of England and all disputes arising in connection with this Agreement shall be subject to the non-exclusive jurisdiction of the English courts and is enforceable by the original parties to it and by their successors in title and permitted assignees. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement. The original of this Agreement has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum or to have this Agreement written in any language other than English.
  2. Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement which is due to causes beyond its reasonable control provided that the party affected by such causes gives notice in writing to the other party at the commencement and cessation of these causes.
  3. Any notice or other communication required or permitted under this Agreement shall be given in writing to the address of the recipient as notified from time to time and will be deemed to have been given or made when delivered personally; if properly addressed and posted by prepaid certified or registered mail within three business days of posting; if sent by facsimile upon being sent, if confirmed by post; or electronically upon receipt if acknowledged to have been received.
  4. This Agreement contains the entire agreement between the Licensor and the Licencee relating to the Subscription and supersedes all prior oral or written understanding, arrangements, representations or agreements between them relating to the subject matter of this Agreement. No amendment, variation or discharge of this Agreement is valid unless accepted in writing by both parties. The parties expressly agree that the terms and conditions of this Agreement shall prevail over any standard terms and conditions printed or referred to in any purchase order or other written documentation issued by the Licencee.
  5. The failure of either party to exercise or enforce any rights under this Agreement shall not amount to a waiver of those rights.
  6. Licencee represents and warrants that it is and shall remain during the term of this agreement in compliance with all applicable laws, regulations and codes, including but not limited to all export, data protection, privacy and anti-bribery laws and regulations.
  7. Licencee agrees that Licensor’s contact information including Licensor’s contact(s) email address, name and phone number and may be shared by Licensor to Licensor’s distributors and other channel partners for its lawful business purposes.
  8. The illegality or invalidity of any part of this Agreement shall not affect the legality or validity of the remainder of it. Any provision of the Agreement held to be to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law shall be constructed by limiting or reducing it so as to be enforceable to the maximum extent compatible with the applicable law then prevailing.