

# Sense IOT End User Licence Agreement ('EULA')

## 1. Introduction

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This EULA provides the terms upon which you license the software (**Software**) from us. When we say **Sense IOT, we, us** or **our** we mean Sense IoT Pty Ltd (ABN 35 627 251 352) including our related entities as you may be advised from time to time.

## 2. Background

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- (a) This EULA governs the supply and use of the Software owned or licensed by us and which we may make available to you.
- (b) By installing and/or using the Software by any means, you agree to this EULA and you enter into a legally binding agreement with us. It is important that you carefully read this EULA.
- (c) By installing and/or using the Software, you acknowledge that you have read and understood this EULA and that you have the authority to enter into a legal agreement with us on your own behalf and on behalf of any person you may authorise to use the Software.
- (d) If you do not accept this EULA, as amended from time to time, you must not access and/or use the Software.

## 3. Right to use the Software

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- (a) Subject to your compliance with the terms of this EULA and all laws, you are granted a revocable, non-transferable, non-sublicensable, non-assignable, non-exclusive licence to use and access the Software for the Term.
- (b) You are responsible for ensuring that any devices, including devices supplied by us, on which you use the Software are in good, up-to-date working order and operating condition.
- (c) You agree that we may, upon reasonable notice to you, audit your use of the Software for compliance with this EULA. In the event that such audit reveals any use of the Software by you otherwise than in compliance with this EULA then, in addition to any other rights or remedies available to us under this EULA or at law, you shall indemnify us for:
  - (i) all reasonable expenses related to such audit; and
  - (ii) other liability or loss of revenue that we incur as a result of such non-compliance.

## 4. Limitations

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- (a) You must not, in relation to the Software or any part thereof:
  - (i) make or distribute copies of the Software, or electronically transfer the Software from one device to another or over a network;
  - (ii) alter, digitise, merge, modify, adapt or translate the Software;

- (iii) reverse engineer, decompile disassemble or otherwise attempt to discover the source code of the Software or otherwise reduce the Software to a human-perceivable form;
  - (iv) sell, transfer, rent, lease, license or sub-license the Software;
  - (v) attempt to undermine the security or integrity of our computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
  - (vi) use or misuse the Software in any way which may impair the functionality of the Software, or other systems used to deliver the Software or impair the ability of any other user to use the Software or Services;
  - (vii) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software are hosted;
  - (viii) provide or make the Software available to any other person other than as contemplated by this EULA;
  - (ix) transmit, or input into the Software, any files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which you do not have the right to use);
  - (x) broadcast, transmit or otherwise display in a public forum the Software or screenshots of the Software;
  - (xi) post the Software or screenshots of the Software on any website;
  - (xii) assign and/or novate any rights or obligations created by this EULA;
  - (xiii) modify the Software or create derivative works based upon it;
  - (xiv) use the Software for commercial purposes other than the purpose for which it is supplied to you; or
  - (xv) use the Software to develop copycat or functionally equivalent software or derivative software.
- (b) You acknowledge and agree that:
- (i) the Software may include technical inaccuracies or errors; and
  - (ii) any person/entity permitted to make changes to the Software (including us or a third party authorised by us) may make improvements or other changes in and to the Software at any time without notice to you.
- (c) The provision of, access to, and use of the Software is on an "as is" basis and your access and use of the Software is at your own risk.
- (d) We do not warrant that the use of the Software will be uninterrupted or error free. The operation and availability of the systems used for accessing the Software, including computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Software. You agree that we

are not in any way responsible for any such interference or prevention of your access or use of the Software.

- (e) You are solely responsible for determining that the Software meets your needs and that it is suitable for the purposes for which it is used by you.
- (f) You are solely responsible for complying with all applicable laws as they pertain to you and your use of the Software. It is your responsibility to check that storage of, and access to Your Data via the Software will comply with laws applicable to you (including any laws requiring you to retain records).
- (g) We have no responsibility to any person other than you and nothing in this EULA confers, or purports to confer, a benefit on any person other than you. If you use the Software on behalf of or for the benefit of anyone other than you, you remain responsible for ensuring that you have the right to do so.

## **5. Your Data**

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- (a) Your Data remains your property.
- (b) You hereby grant to use a non-exclusive licence to use, copy, transmit, store and backup Your Data to the extent necessary for the purposes of providing you support and performing our obligations under this EULA.
- (c) You acknowledge and agree that we do not edit or control Your Data and we will not be responsible in any way for the content of Your Data.
- (d) We may but are not obliged to, make copies of Your Data and you therefore must maintain copies of Your Data.

## **6. Privacy**

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- (a) To the extent that Your Data comprises Personal Information, we may collect your Personal Information through your use of the Software for the strict purpose of providing support.
- (b) Each party must:
  - (i) comply with all Privacy Laws; and
  - (ii) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause the other party to breach or be taken to breach any Privacy Law.
- (c) We may disclose Your Data to:
  - (i) any duly authorised law enforcement officer;
  - (ii) any other person authorised by law; and
  - (iii) any third party to whom you have authorised us to disclose Your Data.
- (d) If we are required to disclose Your Data under clause 7(c)(i) or 7(c)(ii) to provide assistance in relation to any inquiry, complaint, hearing or other form of investigation or proceedings regarding you, you must reimburse us for any costs we directly or indirectly incurs in provided such disclosures.

- (e) If we disclose Your Data to third-party applications for use in connection with the Software, you acknowledge that we may, in accordance with clause 7(c), disclose Your Data to the providers of those third-party applications for the inter-operation of such third-party applications with the Software.
- (f) You may access Your Data you input into the Software, including without limitation, any of Your Data input into the Software by any person you have authorised to use the Software.
- (g) You are responsible for authorising any person who is given access to Your Data input to the Software, and you agree that we have no obligation to provide any person access to Your Data without your authorisation and may refer any such requests to you for your determination.
- (h) You indemnify us against any claims or loss relating to:
  - (i) our refusal to provide any person access to Your Data in accordance with this EULA; and
  - (ii) our making available Your Data to any person with your authorisation.

## **7. Links to third party sites**

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- (a) You acknowledge and agree that you may be linked to third party sites through your use of the Software. The third party sites are not under our control and we are not responsible for the content of any third party sites, any links contained therefrom, or any changes or updates to third party sites from time to time.
- (b) We are not responsible for any form of transmission received from any third party sites.
- (c) Any link to a third party site from within the Software is provided for convenience only and the inclusion of any such link does not imply an endorsement of the site, or its content, by us.

## **8. Open Source Software**

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- (a) You acknowledge and agree that the Software includes various Open Source Code open source software which are licensed under and governed by the terms of various published open source software license agreements or copyright notices accompanying such software components.
- (b) You must not modify or derive works from the Open Source Code, or take any other action, if doing so would infringe or violate the terms on which the Open Source Code is licensed.

## **9. Additional content, services and/or updates**

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The terms and conditions of this EULA apply to any updates, supplements, add-on components or internet-based service components of the Software that we may provide to you or make available to you after the date you obtain-use your initial copy of the Software, unless we provide other terms along with the update, supplement, add-on component or internet-based service component.

## **10. Intellectual property**

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- (a) Title to, and all IPR in the Software and any documentation relating to the Software remains the property of us (or our licensors) and nothing in this EULA operates to grant you any IPR in the Software or any party thereof.
- (b) You must not:
  - (i) remove or modify any copyright notice on the Software or register or attempt to register any IPR in the Software or any aspect of the Software or any derivation thereof; and
  - (ii) use any Marks without our prior written consent or register or attempt to register rights in relation to the Marks, any derivative of the Marks or anything similar to them.

## **11. Security**

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- (a) We will take reasonable steps to ensure access to the Software is secure, however we do not guarantee that access will be secure at all times.
- (b) You acknowledge and agree that you are solely responsible for:
  - (i) the security, confidentiality and integrity of all information or data uploaded, downloaded or otherwise communicated while accessing the Software;
  - (ii) keeping all passwords and usernames required to access the Software secure and confidential;
  - (iii) ensuring that you have adequate software protection in place for the Software under your control; and
  - (iv) protecting any device you use to access Software from all security breaches and viruses (or any similar damaging components).
- (c) You must immediately notify us of any unauthorised use of your passwords or any other breach of security, whereupon we may reset your password and you must take all other actions that we reasonably deem necessary to maintain or enhance the security of our computing systems and networks and your access to the Software.

## **12. Confidentiality**

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If you receive or become aware of any Confidential Information, you must not use or disclose that Confidential Information except to the extent required to:

- (a) fulfil your obligations and exercise your rights under this EULA;
- (b) disclose that Confidential Information to your employees, directors and officers, and legal and financial advisors, who have a need to know for the purposes of this EULA (and then only to the extent that each has a need to know), and provided the disclosure is made on a confidential basis; or
- (c) comply with the requirements of the law, but before making any disclosure you must:

- (i) notify us in writing as soon as reasonably practicable; and
- (ii) only disclose that part of the Confidential Information as is necessary to comply with relevant requirements.

### **13. Termination**

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- (a) You may terminate this EULA by notice in writing to us in which case the termination takes effect at the end of the month in which you terminate.
- (b) We may exercise any of our rights under clause 14(c) if:
  - (i) in relation to a breach of this EULA that is capable of remedy, you fail to remedy such breach within 14 days of notice of the breach; or
  - (ii) you commit a breach of this EULA that is not capable of remedy.
- (c) Upon the occurrence of any event in clause 14(b), we may:
  - (i) immediately terminate this EULA and use of the Software by you; and
  - (ii) suspend for any definite or indefinite period of time, your use of the Software.
- (d) For the avoidance of doubt, if this EULA are terminated or expire for any reason, your right to use the Software immediately ceases and the licences granted by us under this EULA terminate.
- (e) On termination or expiry of this EULA, it is your obligation and responsibility to ensure that:
  - (i) you immediately cease to use the Services; and
  - (ii) you delete all copies of the Software installed from any device used to access the Software.
- (f) Termination of this EULA is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this EULA, you will remain liable for any accrued charges and amounts which become due for payment before or after termination.

### **14. Warranties and liability**

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- (a) You acknowledge that you are solely responsible for navigating any equipment that utilises the Software and that you (or the person in charge of navigating that equipment) is solely responsible for any damage or injury caused by such equipment, whether or not that damage or injury was caused in whole or in part by the Software.
- (b) We hereby exclude all express and implied conditions and warranties in relation to the Software and this EULA, except those conditions or warranties that cannot be excluded by law.
- (c) To the absolute extent permitted by law, we will not be liable to you or your representatives for any liability, claim, loss or damage of any kind (including but not limited to any loss of actual or anticipated profits, revenue, savings, business, opportunity, access to markets, goodwill, reputation, publicity or use or loss or

data, collectively, **Consequential Loss**) arising from or in connection with your use of the Software, except to the extent that the liability, claim, loss or damage is directly attributable to our negligence or wrongful act or omission.

- (d) To the fullest extent permitted by law, our total aggregate liability for all claims relating to this EULA is limited to the total fees paid by you in respect of the Software in the 12 months before the liability accrued.
- (e) You hereby acknowledge and agree that we shall not be liable to you or any other person for any liability, loss or damage of any kind (including but not limited to Consequential Loss) arising directly or indirectly from or in connection with the acts or omissions of any Third Party Supplier.
- (f) You warrant to us that:
  - (i) you have the authority to grant the licence pursuant to clause 6(b) of this EULA;
  - (ii) you have attended to all backups, and have maintained copies of, Your Data and you acknowledge that we are not responsible for maintaining or storing Your Data;
  - (iii) the use by us of Your Data will not result in any unauthorised use of the rights of any person;
  - (iv) you have the authority to enter into, perform and observe your obligations and rights under this EULA; and
  - (v) you have the authority to agree to this EULA and you acknowledge and agree that, by using the Software, you bind anyone who accesses the Software with your authority to the performance of any and all obligations that you become subject to by virtue of this EULA without limiting any of your obligations under this EULA.
- (g) We provide no warranty:
  - (i) that any result or objective can or will be achieved or attained at all by expiry or termination of this EULA (whichever is the earlier) or by any other date; and
  - (ii) that the Software will be fit for purpose, continuous, uninterrupted, accurate, fault-free, virus-free, secure or accessible at all times.

## 15. Indemnity

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You are liable for and must indemnify us, our directors, employees, contractors and agents (together, the **Indemnified Party**) from and against all damages, losses, claims and expenses incurred or suffered by the Indemnified Party arising as a direct result of:

- (a) breach of this EULA;
- (b) any unlawful or negligent act or omission; or
- (c) use of the Software, including but not limited to any modification of the Software by you (whether done with our consent or otherwise) which causes the Software to infringe the IPR of a third party,

by you or by anyone directly or indirectly authorised or allowed to use the Software by you.

## **16. Technical problems**

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- (a) We may require you to install such upgrades and supplements to the Software as may be reasonably required from time to time.
- (b) We shall have no obligation to provide support for any version of the Software for which you have not complied with clause 17(a) or for which we have issued an end-of-life notification at least 3 months prior.

## **17. Updates and amendments**

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- (a) You acknowledge that from time to time as we determine it necessary or desirable to do so we may update any aspect of the Software.
- (b) You acknowledge that, in the event of an update of any aspect of the Software or for such other reasons as we may determine, we amend this EULA in whole or part in our sole discretion with notice to you.
- (c) Any amendments to this EULA will be effective immediately upon notifying the revised terms to you. By continuing to use the Software following any amendments, you will be deemed to have agreed to such amendments.

## **18. Dispute resolution**

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- (a) The parties must use their reasonable endeavours to resolve through negotiation all disputes, conflicts (including, without limitation, conflicts of interest) differences or questions between them arising out of or in connection with this EULA.
- (b) If, within 14 calendar days, the dispute cannot be resolved following negotiation between the parties, either party may refer the dispute for arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators and Mediators, Australia. Each party agrees to submit to such arbitration as a precondition to the commencement of litigation. During such arbitration, both parties may be represented by a duly qualified legal practitioner.

## **19. General**

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- (a) The failure, delay, relaxation or indulgence on the part of a party in exercising, in part or whole, any power, right or remedy conferred upon that party by this EULA shall not operate as a waiver of that power, right or remedy.
- (b) You must not assign or otherwise deal with all or any part of your rights or obligations under this EULA without Our prior written consent. We may assign our rights under, and for novate, this EULA at any time by notice in writing to you.
- (c) All rights not specifically granted in this EULA are reserved by us, for us and for our suppliers.
- (d) Any notice given under or pursuant to this EULA by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to us must be sent to [accounts@senseiot.com.au](mailto:accounts@senseiot.com.au) or by any other method

notified by email to you by us. Notices to you will be sent to the email address you have provided to us as part of your registering to use the Software or as otherwise advised and confirmed by us.

- (e) If any term of this EULA is invalid or not enforceable by a court of competent jurisdiction, it is to be read down and shall otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this EULA.
- (f) Any clause of this EULA that is by its nature intended to survive termination does so, including clauses 4(c), 11, 14(e), 15, 16, 20(e), 20(f) and 20(g).
- (g) This EULA are governed by and is to be construed in accordance with the laws in force in Queensland, Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and waives any right to object to proceedings being brought in those courts or courts of appeal therefrom.

## 20. Definitions and interpretation

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### 20.1 Definitions

In this EULA, the following definitions apply:

**Confidential Information** means any information in any form or media which is by its nature confidential or is identified by a party as being confidential, including any of the source code or other parts of the Software not in the public domain but does not include information which can be proved by written evidence:

- (a) to be rightfully known by the receiving party as a consequence of the information being disclosed from an independent source without any limitation on its use or disclosure;
- (b) at the time of its disclosure, or at the time the receiving party becomes aware of it, to be in the public domain, or which subsequently enters the public domain otherwise than as a result of a breach of this Agreement; or
- (c) to be independently developed by an employee or officer of the receiving party while having no knowledge of the disclosing party's Confidential Information.

**IPR** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

**Marks** means any name, logo or trade mark owned by, or licensed to, us.

**Open Source Code** means individual software components that are provided with the software or hardware, for which the source code is made generally available without charge for use, modification or distribution.

**Personal Information** has the meaning prescribed by section 6 of the *Privacy Act 1998* (Cth).

**Privacy Laws** means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

**Software** means the software made available to you by us. The Software may include Open Source Code and other software which is owned or licensed by us.

**Term** means from the date of your acceptance of this EULA until the first to occur of the following:

- (a) you cease to be provided with access to the Software for any reason; or
- (b) this EULA is terminated in accordance with clause 13.

**Third Party Supplier** means any third party supplier of data which is accessed and use in connection with the Software.

**You** or **your** means the person who installs and/or uses the Software and who, by so doing, accepts this EULA.

**Your Data** means:

- (a) any data concerning you or any user of the Software authorised by you; and
- (b) any data that you or any person with your authority inputs into the Software by any means; and
- (c) any outputs generated by the Software as a result of your use of the Software.

## **20.2 Interpretation**

In this EULA:

- (a) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits them all jointly;
- (b) no provision of this EULA will be construed to the disadvantage of a party merely because that party was responsible for preparing this EULA or including the provision in this EULA; and
- (c) parties must perform their obligations on the dates and times fixed by reference to Brisbane, Queensland.