

## **DISTRIBUTION AGREEMENT FOR THE D52 AND G.FIT SERIES MODULES (v4.2)**

This Distribution Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_[MONTH], 20\_\_\_\_[YEAR] (“Effective Date”), by and between Garmin Canada Inc., a Canadian corporation having its principal place of business at 124 – 30 Bow Street Common, Cochrane, Alberta, Canada T4C 2N1 and its Affiliates (collectively, “Garmin”) and \_\_\_\_\_[LICENSEE NAME], having its principal place of business at \_\_\_\_\_[LICENSEE ADDRESS] (“LICENSEE”).

“Affiliates” shall mean (i) a parent company (if any) that owns, directly or indirectly, a majority of a party to this Distribution Agreement and (ii) any other company that is majority-owned, directly or indirectly, by a party or its parent company.

**WHEREAS**, LICENSEE desires to purchase one or more D52 series modules and/or G.FIT modules supplied by Garmin (collectively, the “Garmin Module”);

**WHEREAS**, the Garmin Module has been designed to operate in typical operating environments at a range of up to 30 meters;

**WHEREAS**, the Garmin Module includes an nRF52 series wireless connectivity integrated circuit (“nRF52 series IC”) manufactured by Nordic Semiconductor ASA (“Nordic”), and the nRF52 series IC is pre-loaded with Garmin Software;

**WHEREAS**, the Garmin Software compatible with the nRF52 series IC may be downloaded from [www.thisisant.com](http://www.thisisant.com);

**WHEREAS**, LICENSEE desires to use the Garmin Software solely with the Garmin Module on which the Garmin Software is pre-loaded at the time of delivery to LICENSEE;

**WHEREAS**, LICENSEE may desire to use Garmin Restricted Software solely with compatible Garmin Modules; and

**WHEREAS**, Garmin desires to grant to LICENSEE a license to use the Garmin Software in accordance with the terms and conditions of this Distribution Agreement.

**NOW, THEREFORE**, the parties hereby agree as follows.

### **DEFINITIONS**

“ANT SoftDevice” - the S212 ANT SoftDevice (“S212”), the S312 combined ANT/BLE SoftDevice (“S312”), the S332 combined ANT/BLE SoftDevice (“S332”) or the S340 combined ANT/BLE SoftDevice (“S340”).

“Garmin Applications” - a network processor application, fitness applications, bootloader, and other applications that may be executed on the nRF52 series IC.

“Garmin Software” - the ANT SoftDevice, the Garmin Applications, High Node Count Libraries and/or Fitness Equipment Libraries.

“High Node Count Libraries” - ANT Software Libraries enabling high node count wireless networks.

“Fitness Equipment Libraries” – ANT/BLE Software Libraries enabling wireless communication for Fitness Equipment.

“Garmin Restricted Software” – the High Node Count Libraries and Fitness Equipment Libraries.

## **1. Grant of License**

a. Subject to the terms in this Distribution Agreement including the use conditions set forth in Appendix 1 for Garmin Restricted Software, Garmin hereby grants to LICENSEE a limited, royalty-free, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term to use the Garmin Software included in the Garmin Module, solely in connection with the nRF52 series IC of the Garmin Module, for products developed by or for and/or manufactured by or for LICENSEE and its Affiliates (collectively, “Licensee Products”) that are sold or otherwise distributed by or for LICENSEE.

b. Restrictions. LICENSEE shall not use the Garmin Module or the Garmin Software for any purpose other than specifically authorized in this Distribution Agreement. It is a material breach of this Distribution Agreement to perform, directly or indirectly, any of the following acts prohibited and specifically excluded from the license granted under this Section 1:

- i. Any use or operation of the Garmin Software, such as the ANT SoftDevice, included in the Garmin Module in connection with any third-party modules, products, systems, applications or hardware. LICENSEE shall not, under the terms of this Distribution Agreement, install or use any portion of the Garmin Software, such as the ANT SoftDevice, on any modules, products, systems, applications or hardware, other than as permitted under Appendix 1. Thus, LICENSEE shall not use the Garmin Software, the ANT SoftDevice included in the Garmin Module, or any portion or derivative thereof, on any wireless connectivity integrated circuit other than the nRF52 Series IC of the Garmin Module provided pursuant to this Distribution Agreement.
- ii. Any modification of the Garmin Software, unless authorized in writing by Garmin. Any modification of the ANT SoftDevice is strictly prohibited.
- iii. Any extraction of the Garmin Software from the Garmin Module.
- iv. Providing to others, such as LICENSEE’S customers, any manual instructions or guidance relating to the removal or installation the Garmin Module or the Garmin Software from or into Licensee Products or any other product.
- v. Any distribution of any portion of the Garmin Software as part of a software development kit (SDK), evaluation kit, development kit, reference design or other development tool set.
- vi. Any modification of the Garmin Module for operation at a range greater than 30 meters.
- vii. Any use or operation of Garmin Restricted Software in connection with any third-party modules, products, systems, applications or hardware that has not been identified by Garmin as qualified or compatible in Appendix 1.

c. In no event shall the non-transferable, non-sublicensable license granted under this Section 1 pass to any third party, such as a customer of LICENSEE or a customer of a subcontractor used by LICENSEE.

d. LICENSEE shall not disclose, display, reproduce, transfer or distribute the Garmin Software to any third party. LICENSEE will provide access to the Garmin Software and the Garmin

Modules only to those LICENSEE employees and contractors with a strict need to have access to manufacture and/or produce the Licensee Products. LICENSEE shall be responsible for making such employees and contractors comply with the terms of this Distribution Agreement and LICENSEE shall remain responsible for the actions of such employees and contractors.

e. LICENSEE acknowledges and agrees to use the Garmin Software and the Garmin Module only for purposes that are legal, proper and in accordance with this Distribution Agreement and any applicable policies or guidelines set forth by Garmin. For instance, LICENSEE must provide any notices (including appropriate labels) and information required by a certifying body (e.g., FCC, IC, CE, TELEC, etc.). Thus, when incorporating the Garmin Module into a Licensee Product, LICENSEE agrees to comply with all laws, regulations and rules applicable to the Licensee Product. LICENSEE agrees to confirm the registration of a Bluetooth Qualified Design Identification number (QDID) at <https://launchstudio.bluetooth.com/> for the version of ANT SoftDevice that LICENSEE uses in the Licensee Products which LICENSEE sells or distributes.

f. If LICENSEE accepts and complies with all of Nordic's terms and conditions associated with using the Nordic S132 SoftDevice ("Authorized Nordic SoftDevice"), including all restrictions relating to the downloading, installing and/or using the Authorized Nordic SoftDevice, this Distribution Agreement does not prohibit use of a software application that makes use of the unmodified Authorized Nordic SoftDevice as the sole means to control all radio functionality on the Garmin Module.

g. LICENSEE acknowledges and agrees that, if LICENSEE wishes to make, use or sell a software application that incorporates one of the ANT SoftDevices, then LICENSEE must comply with the requirements set forth at [www.thisisant.com](http://www.thisisant.com). LICENSEE is not permitted to perform any development using the ANT SoftDevice included in the Garmin Software.

h. The Garmin Module shall only use software that incorporates an ANT SoftDevice or Authorized Nordic SoftDevice, without any modification thereof and only as provided by Garmin or Nordic, (collectively the "Authorized SoftDevices"), as the sole means to control radio functionality under this Distribution Agreement. No other configurations are permitted by this Distribution Agreement.

i. LICENSEE acknowledges and agrees to provide a copy of the End User License Agreement ("EULA"), provided in Appendix 3, to LICENSEE's customers.

## **2. Title**

a. Garmin, its licensors and authorized third parties (as applicable) retain full rights, title and ownership to any and all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the Garmin Software and the Garmin Modules. Garmin licenses portions of the ANT SoftDevice from third party licensors, and such licensors retain their respective full rights, title, and ownership in and of the ANT SoftDevice and any and all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the ANT SoftDevice. Nordic, its licensors and authorized third parties (as applicable), retain the full rights, title, and ownership in and of the Authorized Nordic SoftDevice and any and all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the Authorized Nordic SoftDevice. A license applicable to Garmin Software including source files having copyright notices of Nordic Semiconductor ASA is attached in Appendix 2.

b. LICENSEE shall not remove or alter any copyright notices, proprietary information notices, disclaimer or restricted rights notices contained in the Garmin Software. This Distribution Agreement does not transfer any ownership interest in or intellectual property rights to the Garmin Software.

### **3. No Modifications or Reverse Engineering**

a. LICENSEE shall not, nor facilitate with a third party to, modify, reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of any non-source code parts of the Garmin Software and the Garmin Modules including, but not limited to, pre-compiled hex files, binaries and object code.

b. LICENSEE assumes full responsibility for any changes made to the Garmin Module or any software provided for use on the module by Garmin, including the Garmin Software, that are not expressly approved in advance and in writing by Garmin that may cause it to no longer function or operate as provided by Garmin and any such changes shall immediately terminate the license granted under Section 1 above. For example, LICENSEE hereby acknowledges and agrees not to make any changes to or attempt to bypass the Authorized SoftDevices that may cause the Garmin Module to no longer function within applicable certification parameters (e.g., the certifying body could be the FCC, IC, CE, TELEC, etc.). Under no circumstance may any changes be made by LICENSEE or a third party to the Authorized SoftDevices or other software included in the Garmin Module that could affect the radio frequency emissions of the transmitter within the Garmin Module.

c. LICENSEE acknowledges and agrees that, pursuant to Section 11 below, any failure by LICENSEE to comply with Section 3.b above will require LICENSEE to indemnify, hold harmless and defend Garmin (including the directors, officers, employees and shareholders of Garmin) and its licensors for any changes made to the Garmin Module or any changes made to any software provided for use on the module by Garmin, including but not limited to, the ANT SoftDevice.

### **4. Updates; No Support or Maintenance**

Garmin may extend, enhance or otherwise modify the Garmin Software or the Garmin Modules at any time without notice and Garmin shall not be obligated to provide LICENSEE any notice or any updates to the Garmin Software or the Garmin Modules. If updates are made available to LICENSEE, the terms of this Distribution Agreement shall govern such updates, unless the update is accompanied by a separate agreement in which case the terms of that agreement shall govern. LICENSEE acknowledges and agrees that Garmin has no express or implied obligation to announce or make available any updates of the Garmin Software or the Garmin Modules to LICENSEE or others in the future and that Garmin is not obligated to provide any maintenance, technical or other support for the Garmin Software or the Garmin Modules.

### **5. End Use Restrictions**

LICENSEE agrees that any portion of the Garmin Software and/or the Garmin Modules may not be sold, resold, transferred, diverted, exported, re-exported or disposed of (i) for use in activities involving the development, production, handling, use, operation, maintenance, storage, detection, identification or dissemination of nuclear, chemical, or biological weapons (including missiles and weapons of mass destruction), nor for use in any facilities engaged in activities related to such weapons, including where there are reasonable grounds to suspect any such use; (ii) for a military end-use in China or in any other country subject to any applicable arms embargo or for an item designed, modified, configured, or adapted for a military application in China or any other country subject to an applicable arms embargo; (iii) to or for the benefit of individuals or entities listed on any applicable restricted

or prohibited party lists; or (iv) to the following countries: Cuba, Iran, North Korea, Sudan, and Syria. LICENSEE further agrees to abide by all other applicable export controls, trade sanctions and embargo laws, regulations, rules and licenses ("Export Controls and Sanctions Rules") in force from time to time as they relate to the Garmin Software and the Garmin Modules. LICENSEE acknowledges that its obligation to comply with applicable Export Controls and Sanctions Rules is independent of these terms and conditions and LICENSEE agrees to indemnify and hold Garmin (including the directors, officers, employees and shareholders of Garmin), its licensors and authorized third parties harmless from and against any third-party claim, including fines, losses, liabilities or legal fees that arise as a result of the breach by LICENSEE of these terms and conditions or any applicable export controls, trade sanctions and embargo laws, regulations, rules and licenses.

## **6. No Other Rights**

LICENSEE shall use all portions of the Garmin Software and the Garmin Modules only in compliance with this Distribution Agreement and shall refrain from using the Garmin Software and the Garmin Modules in any way that may be contrary to this Distribution Agreement. For instance, the ANT SoftDevice licensed in Section 1 above may only be used without modification on the Garmin Modules.

## **7. Confidentiality and Proprietary Information**

a. LICENSEE acknowledges that the Confidential Information (as defined below) comprises valuable trade secrets and is proprietary to Garmin. LICENSEE shall hold the Confidential Information in strict confidence and shall not disclose the same to any other person, firm or corporation, except as required to perform its obligations under this Distribution Agreement. The foregoing obligation shall not apply to any information that becomes public through no fault of LICENSEE. As used herein the term "Confidential Information" means all know-how, designs, drawings, pricing information, specifications and other information, whether or not reduced to writing, relating to the design, use and service of any products of Garmin as well as any other information relating to the business of Garmin that may be divulged to LICENSEE that is not generally known to the public. LICENSEE shall not use the Confidential Information for any purpose other than to perform its obligations under this Distribution Agreement.

b. LICENSEE acknowledges and agrees that this Distribution Agreement grants no rights in Garmin's trademarks except that Garmin grants LICENSEE a limited, non-exclusive license during the Term of this Distribution Agreement to reproduce Garmin's trademarks in advertisements and other promotional materials in accordance with such standards for use of its trademarks as may be established from time to time by Garmin. Such license shall expire immediately upon the expiration or termination of this Distribution Agreement. All goodwill arising from LICENSEE'S use of Garmin's trademarks shall inure solely to the benefit of Garmin and its Affiliates. All advertisements and other promotional materials using Garmin's trademarks which are prepared by LICENSEE shall include an appropriate notice indicating that such trademarks are the property of Garmin. LICENSEE shall not use Garmin's trademarks or name as part of its corporate or business name. LICENSEE shall not register any of Garmin's trademarks or any mark or name closely resembling them. LICENSEE shall not register in any Internet domain any domain name which incorporates as any part of such domain name the Garmin name or any other trademark used by Garmin.

c. LICENSEE agrees that damages may be an inadequate remedy to protect Garmin against any breach by LICENSEE of the provisions of Section 7 of this Distribution Agreement. Accordingly, Garmin shall be entitled to the granting of injunctive relief by a court of competent jurisdiction against any action by LICENSEE that constitutes a breach of this Section 7.

## **8. WARRANTY**

### **a. Garmin Module (Hardware-only)**

This Garmin Module is warranted to be free from defects in materials or workmanship for 1 year from the date of purchase by the end customer. Within this period, Garmin will, at its sole option, replace any Garmin Modules that fail in normal use. Replaced Garmin Modules have a 1 year warranty. Garmin retains the exclusive right to replace (with a new or newly-overhauled replacement product) the Garmin Module or offer a full refund of the purchase price at its sole discretion. **SUCH REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY.** Such replacement will be made at no charge to LICENSEE, provided LICENSEE shall be responsible for any transportation cost. This warranty does not apply to: (i) cosmetic damage, such as scratches, nicks and dents; (ii) damage caused by accident, abuse, misuse, water, flood, fire, or other acts of nature or external causes;

(iii) damage caused by service performed by anyone who is not an authorized service provider of Garmin; or (iv) damage to a Garmin Module that has been modified or altered without the written permission of Garmin. In addition, Garmin reserves the right to refuse warranty claims against Garmin Modules used in contravention of the laws of any country.

To obtain warranty service, LICENSEE shall contact Garmin for shipping instructions and obtain a return material authorization (RMA) tracking number. LICENSEE shall securely pack the Garmin Modules and enclose a copy of the original sales receipt, which is required as the proof of purchase for a warranty claim, and write the tracking number clearly on the outside of the package. LICENSEE agrees to send the Garmin Modules, freight charges prepaid, to the Garmin address provided in this Distribution Agreement.

### **b. Garmin Software (including ANT SoftDevice)**

THE GARMIN SOFTWARE AND RELATED SOFTWARE AND INFORMATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EXPRESS OR IMPLIED AND NEITHER GARMIN, ITS SUPPLIERS, LICENSORS AND AUTHORIZED THIRD PARTIES NOR THE COPYRIGHT HOLDERS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING BY LAW, STATUTE, USE OF TRADE, OR COURSE OF DEALING, OR THAT THE GARMIN SOFTWARE WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS.

LICENSEE ASSUMES ALL RESPONSIBILITY AND RISK FOR THE USE OF THE GARMIN SOFTWARE AND GARMIN DISCLAIMS ALL LIABILITY FOR ANY LOSS, INJURY, OR DAMAGE RESULTING FROM THE USE OF THE GARMIN SOFTWARE, WHETHER DIRECT OR INDIRECT, AND WHETHER OR NOT GARMIN HAS BEEN ADVISED OR HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH LOSS, INJURY OR DAMAGE. THERE IS NO WARRANTY BY GARMIN OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE GARMIN SOFTWARE WILL MEET THE REQUIREMENTS OF LICENSEE OR THAT THE OPERATION OF THE GARMIN SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. IT IS LICENSEE'S

## RESPONSIBILITY TO ENSURE THAT THE GARMIN SOFTWARE IS USED APPROPRIATELY FOR SAFE OPERATION.

### **9. LIMITATION OF LIABILITY**

In no event and under no circumstances shall Garmin (including the directors, officers, employees and shareholders of Garmin), its suppliers, authorized third parties and licensors be liable to LICENSEE or any other person or entity for any lost profits, revenue, sales, goodwill, data or costs of procurement of substitute goods or services, property damage, personal injury, interruption of business, loss of business information or for any special, direct, indirect, incidental, economic, punitive, special or consequential damages, however caused and whether arising under contract, tort, negligence, or other theory of liability arising out of the use of or inability to use the Garmin Software or the Garmin Modules, even if Garmin, its suppliers, authorized third parties or licensors are advised of the possibility of such damages or they are foreseeable. Garmin is also not responsible for claims by a third party relating to LICENSEE'S use of or inability to use the Garmin Software or the Garmin Modules. Because some countries/states/jurisdictions do not allow the exclusion or limitation of liability, but may allow liability to be limited, in such cases, LICENSEE'S sole remedy or right of recovery for any action or omission by Garmin or any breach by Garmin of the terms hereof from Garmin, its Affiliates, its employees, suppliers or licensors shall be limited to USD \$50.00.

### **10. Breach of Contract**

Upon a breach of contract by the LICENSEE, Garmin, and its licensors are entitled to damages in respect of any direct loss which can be reasonably attributed to the breach by the LICENSEE. If the LICENSEE has acted with gross negligence or willful misconduct, Garmin and its licensors shall recover both direct and indirect costs from LICENSEE.

### **11. Indemnity**

LICENSEE undertakes to indemnify, hold harmless and defend Garmin (including the directors, officers, employees and shareholders of Garmin), its suppliers, licensors and authorized third parties from and against any claims, losses (including reputation with wireless certification bodies), damages (actual and consequential) or lawsuits, including attorney's fees, that arise from or are in any way the result of (i) the LICENSEE making any changes to the nRF52 Series ICs, any portion of the Garmin Software, and/or the Garmin Modules not expressly approved in advance and in writing by Garmin, and (ii) any other acts or omissions of LICENSEE related to the Licensee Products and which is not due to causes for which Garmin is responsible, unless caused by Garmin's sole negligence or willful misconduct, but in no respect shall Garmin be liable for any special, incidental, consequential or punitive damages.

### **12. Governing Law**

This Distribution Agreement shall be construed according to the laws of state of New York, United States of America, excluding the body of laws known as conflict of laws and hereby submits to the exclusive jurisdiction of the courts of New York.

### **13. Assignment**

LICENSEE shall not assign this Distribution Agreement or any rights or obligations hereunder without the prior written consent of Garmin. Any attempted assignment or delegation without such written consent shall be null and void.

### **14. Term and Termination**

a. This Distribution Agreement will commence on the Effective Date and will remain in force and effect for a period of one (1) year, unless terminated sooner as set forth herein, with the understanding that this Distribution Agreement will be automatically extended for successive renewed terms of one (1) year, unless a party delivers written notice at least three (3) months prior to the expiration of the then current Term that it does not desire for the Term to be extended.

b. Without prejudice to any other rights or remedies either party has or may have hereunder and under the applicable law, this Distribution Agreement may be terminated if:

- i. LICENSEE does not abide by the terms and conditions of this Distribution Agreement;
- ii. The other party breaches or fails to perform any of the terms or conditions of this Distribution Agreement, and: (i) such breach or failure is not capable of remedy; or (ii) such breach or failure, if capable of remedy, is not remedied within thirty (30) days after written notice requiring such breach or failure to be remedied; or
- iii. A voluntary or involuntary petition in bankruptcy or winding up is filed against the other party, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against the other party, a trustee or receiver is appointed over the other party, or any assignment is made for the benefit of creditors of the other party.

c. Upon a breach of Distribution Agreement by the LICENSEE, Garmin, its suppliers, licensors and authorized third parties are entitled to damages in respect of any direct loss which can be reasonably attributed to the breach by the LICENSEE. If LICENSEE has acted with gross negligence or willful misconduct, Garmin, its suppliers, licensors and authorized third parties shall recover both direct and indirect costs from LICENSEE.

d. Upon termination or expiration of this Distribution Agreement: (i) all licenses granted under this Distribution Agreement will immediately end except as expressly set forth otherwise herein, (ii) LICENSEE shall cease all use of the Garmin Software, the Garmin Modules and related documentation, and (iii) LICENSEE will immediately return to Garmin, or destroy – at the sole discretion of Garmin – the Garmin Software, related documentation and other Garmin Confidential Information furnished hereunder, including any and all copies and derivative works thereof. Notwithstanding the foregoing, upon expiration or termination, LICENSEE may continue, for a period of six (6) months after the expiration or termination of this Distribution Agreement, to sell Licensee Products that incorporate a nRF52 series IC with the Garmin Module that were manufactured before the expiration or termination of this Distribution Agreement, subject to LICENSEE'S compliance with the terms and conditions of the Distribution Agreement.

e. Any expiration or termination of this Distribution Agreement for whatsoever reason will not prejudice the provisions which by their nature must be deemed to survive such expiration or termination.

## **15. Third party beneficiaries**

Garmin's suppliers, licensors and authorized third parties are intended third party beneficiaries under this Distribution Agreement.

## **16. Publicity**

LICENSEE shall not issue any press releases or make any other public statements regarding this Distribution Agreement, its terms and conditions, or the relationship of the parties without the express prior written approval of Garmin, which may be withheld at the discretion of Garmin.



## **17. Relationship**

The parties intend to establish a relationship of licensor and licensee and as such are independent contractors with neither party having authority to act as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

Nothing in this Distribution Agreement creates a joint venture, partnership or principal-agent relationship between the parties.

## **18. Waiver**

The failure by Garmin to enforce any provision of this Distribution Agreement will not constitute a waiver of future enforcement of that or any other provision.

## **19. Notices**

All notices required or permitted to be given under this Distribution Agreement shall be in writing, shall make reference to this Distribution Agreement, and shall be delivered by email, registered or certified mail, postage prepaid, and addressed to the parties at their addresses stated in the preamble to this Distribution Agreement or to such other address of which either party may advise the other by written notice. Notices shall be deemed given or served on the date of the email or delivery if delivered in person or, if sent by mail, seven business days after deposit in the mail, postage prepaid.

## **20. Severability**

In the event that any provision of this Distribution Agreement is held to be invalid, illegal or unenforceable, such provision will be deemed amended to achieve the economic effect of the intent of the parties in a valid, lawful and enforceable manner, or if not possible, the deleted and ineffective to the extent thereof, without affecting any other provision of the Distribution Agreement.

## **21. Amendments**

Garmin may from time to time make amendments to this Distribution Agreement. The proposed amendment will be supplied in writing to LICENSEE in advance of the proposed effective date and LICENSEE shall have the option of either accepting the amendment or terminating the Distribution Agreement.

## **22. Entire Agreement**

This Distribution Agreement constitutes the entire agreement and understanding between the LICENSEE and Garmin with respect to the distribution of the Garmin Modules and the use of the Garmin Software, including the ANT SoftDevice, Garmin Applications, Fitness Equipment Libraries and any High Node Count Libraries contained therein, on the Garmin Modules and supersedes all previous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof. If LICENSEE enters a separate agreement, such as an agreement available at [www.thisisant.com](http://www.thisisant.com), relating to any use of the ANT SoftDevice, Garmin Applications, Fitness Equipment Libraries and High Node Count Libraries, and its terms conflict with the terms of this Distribution Agreement, the terms of this Distribution Agreement shall govern the use of the ANT SoftDevice, Garmin Applications, Fitness Equipment Libraries and High Node Count Libraries on all Garmin Modules. Any waiver, modification or amendment of any provisions of this Distribution Agreement will be effective only if in writing and signed by the duly authorized representative of both LICENSEE and Garmin.

### 23. Counterparts

This Distribution Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the parties signed a single original. A facsimile or scan of any original signature transmitted by one party to the other party is effective as if the original was sent to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Distribution Agreement by their duly authorized officers effective as of the Effective Date.

GARMIN CANADA INC.

\_\_\_\_\_  
[LICENSEE NAME]

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

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

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

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

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

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

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

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

## APPENDIX 1

### Permitted Uses of Garmin Restricted Software by Garmin Module

Module variant:	'Standard' D52 / D524	Premium D52 / D524	G.FIT	Starter Kit (for development)
Garmin Part Number Prefix	D52QD2,D52MD2 or D524D2	D52QPM, D52MPM, or D524PM	D52QGF, D52MGF or D524GF	D52QSK or D524SK
Garmin Restricted Software (requires 16-byte license key)	Not applicable	High Node Count Libraries (obj)	Fitness Equipment Libraries (obj)	<ul style="list-style-type: none"><li>High Node Count Libraries (obj)</li><li>Fitness Equipment Libraries (obj)</li></ul>

## **APPENDIX 2**

**The following license applies to source files including Nordic Semiconductor ASA copyright notices (Copyright © Nordic Semiconductor ASA. All rights reserved.). All other contents of this archive are subject to the preceding Distribution Agreement for S212, S312, S332 or S340.**

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All rights reserved.

Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met:

1. Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer.
2. Redistributions in binary form, except as embedded into a Nordic Semiconductor ASA integrated circuit in a product or a software update for such product, must reproduce the above copyright notice, this list of conditions and the following disclaimer in the documentation and/or other materials provided with the distribution.
3. Neither the name of Nordic Semiconductor ASA nor the names of its contributors may be used to endorse or promote products derived from this software without specific prior written permission.
4. This software, with or without modification, must only be used with a Nordic Semiconductor ASA integrated circuit.

THIS SOFTWARE IS PROVIDED BY NORDIC SEMICONDUCTOR ASA "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL NORDIC SEMICONDUCTOR ASA OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## **APPENDIX 3**

### **END USER LICENCE AND TERMS OF USE AGREEMENT**

Certain of the device firmware, including a SoftDevice software package, embedded in and the software (the firmware and software collectively the “Software”) loaded on your device (the “Device”) is owned by or licensed to Garmin Ltd. or its subsidiaries (collectively, “Garmin”). The Software is protected under copyright laws and international copyright treaties. The Software is licensed, not sold. The Software is provided under this Agreement. Your use of the Software and the Device is subject to the following terms and conditions which are agreed to by you as the end user of the Software and the Device, on the one hand, and Garmin and its licensors and affiliated companies of Garmin and its licensors, on the other hand. Garmin’s licensors, including the licensors, service providers, channel partners, suppliers and affiliated companies of Garmin and its licensors, are each a direct and intended third party beneficiary of this Agreement and may enforce their rights directly against you in the event of your breach of this Agreement.

**IMPORTANT:** CAREFULLY READ THIS ENTIRE AGREEMENT BEFORE USING THE DEVICE. USING THE DEVICE INDICATES YOUR ACKNOWLEDGMENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE, RETURN THE COMPLETE PRODUCT WITHIN 7 DAYS OF THE DATE YOU ACQUIRED IT (IF PURCHASED NEW) FOR A FULL REFUND TO THE DEALER FROM WHICH YOU PURCHASED THIS PRODUCT.

**1. License:** Subject to the terms and conditions of this Agreement, Garmin hereby grants you during the Term a limited, non-exclusive, revocable, non-assignable, non-sublicensable and non-transferable license to execute the Software on the Device in machine-readable form only.

**2. Updates; Support or Maintenance:** Garmin may extend, enhance, or otherwise modify the Software at any time without notice, but Garmin shall not be obligated to provide you with any updates to the Software. If updates are made available by Garmin, the terms of this Agreement will govern such updates, unless the update is accompanied by a separate license in which case the terms of that license will govern. You further acknowledge that Garmin has no express or implied obligation to announce or make available any updates of the Software to anyone in the future. You acknowledge that the value-added reseller from whom you obtained the Device and not Garmin is responsible for providing support and maintenance for your Device.

**3. Compliance with Laws and Regulations:** You covenant that your use of the Software will comply with applicable laws and regulations. Garmin will not be responsible for your use of the Device in violation of any laws or regulations.

#### **4. Confidentiality; Prohibitions**

**4.1 Confidentiality:** You acknowledge the confidentiality of the Software. At all times during the Term and thereafter, you shall keep confidential and not disclose, directly or indirectly, and shall not use for your benefit or any other individual or entity, confidential information of Garmin.

**4.2 Prohibitions:** All intellectual property rights in the Software shall remain with Garmin. You shall not remove, obscure or alter any copyright, trademark, restrictive legend or other proprietary rights notices contained in the Software or the Device. You shall not reverse engineer, de-compile, disassemble or create derivative works of the Software or the Device.

**5. Indemnification:** You agree to indemnify, defend and hold harmless Garmin and its directors, officers, employees, independent contractors and agents (each a “Garmin Indemnified Party”) from any and all claims, losses, liabilities, damages, expenses and costs (including without limitation attorney’s fees and court costs) (collectively “Losses”) incurred by a Garmin Indemnified Party as a result of your breach of this Agreement, a breach of any certification, covenant, representation or warranty made by you in this Agreement, or claims otherwise related to or arising from your use of the Device.

## **6. Term and Termination**

**6.1 Term:** The term of this Agreement shall continue for as long as you use the Device. However, this Agreement and all rights granted by Garmin hereunder will terminate automatically without notice from Garmin if you fail to comply with any of its terms or conditions. Garmin also reserves the right to discontinue offering any data or services provided by a third party if such supplier ceases to supply such data or services to Garmin or Garmin’s contract with such supplier terminates for any reason.

**6.2 Effect of Termination:** Upon the termination of this Agreement for any reason, you shall immediately cease all use of the Device, and erase and destroy all copies of Garmin confidential information in your possession or control. The provisions of Sections 3, 4, 5, 6, 7 and 8 will survive any termination of this Agreement. Garmin will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Garmin may have, now or in the future.

## **7. NO WARRANTY; DISCLAIMER OF ACTUAL AND CONSEQUENTIAL DAMAGES**

**(a) EXCEPT FOR THE MANUFACTURER’S LIMITED WARRANTY APPLICABLE TO THE DEVICE AND EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, THE SOFTWARE IS PROVIDED ON AN "AS-IS", "WHERE IS" AND “WITH ALL FAULTS” BASIS. GARMIN AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AS TO THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, GARMIN DOES NOT WARRANT THAT THE SOFTWARE OR THE**

**OPERATION THEREOF WILL BE ACCURATE, RELIABLE, UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL AGENTS.** NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY GARMIN OR ITS SERVICE PROVIDERS, SUPPLIERS, CHANNEL PARTNERS AND LICENSORS, OR BY AGENTS AND EMPLOYEES OF GARMIN, ITS SERVICE PROVIDERS, SUPPLIERS, CHANNEL PARTNERS OR LICENSORS, SHALL CREATE A WARRANTY FOR THE SOFTWARE, AND YOU ARE NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION.

(b) GARMIN DISCLAIMS ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE RESULTING FROM USE OF THE SOFTWARE. IN NO EVENT WILL GARMIN BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, EXEMPLARY, AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE SOFTWARE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GARMIN IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU, IN WHICH CASE SUCH EXCLUSION OR LIMITATION APPLIES TO THE FULLEST EXTENT ALLOWABLE UNDER THE APPLICABLE LAW.

## **8. General Legal Terms**

**8.1 Assignment:** This Agreement may not be assigned, nor may any of your obligations under this Agreement be delegated, in whole or in part, by you by operation of law, merger, or any other means without Garmin's express prior written consent and any attempted assignment without such consent will be null and void.

**8.2 Severability:** If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

**8.3 Waiver and Construction:** Failure by Garmin to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement.

**8.4 Government End Users:** If you are an agency, department, or other entity of the United States Government, or funded in whole or in part by the U.S. Government, then use, duplication, reproduction, release, modification, disclosure or transfer of the Software is restricted in accordance with the LIMITED or RESTRICTED rights as described in any applicable DFARS or FAR. In case of conflict between any of the FAR and/or DFARS that may apply to the Software, the construction that provides greater limitations on the Government's rights shall control. The contractor/manufacture is Garmin International, Inc., 1200 East 151st Street, Olathe, Kansas 66062, USA. For purpose of any public disclosure

provision under any federal, state or local law, it is agreed that the Software constitutes trade secrets and/or a proprietary commercial product and not subject to disclosure.

**8.5 Export Control:** You agree not to export or re-export the Software to any country in violation of the export control laws of the United States of America.

**8.6 Dispute Resolution:** Any litigation or other dispute resolution between you and Garmin arising out of or relating to this Agreement or your use of the Software will take place in the State of Kansas. You and Garmin agree to submit to the personal and exclusive jurisdiction of the United States District Court for the District of Kansas and the Kansas state courts located in Johnson County, Kansas with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of Kansas, except that body of Kansas law concerning conflicts of law. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If either party takes legal action to enforce any right under this Agreement, the prevailing party shall be entitled to recover all reasonable costs, including attorney's fees.

**8.7 Entire Agreement:** This Agreement constitutes the entire agreement between you and Garmin with respect to the use of the Software and the Device, and supersedes all prior understandings regarding such subject matter. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. If you are located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.