

# **SAMPLE SOURCE CODE & DRIVER LICENSE AGREEMENT**

This Sample Source Code & Driver License Agreement (the "Agreement") by and between **Advantech Co. Ltd.**, a Taiwanese corporation having its registered address at No.1, Alley 20, Lane 26, Rueiguang Road, Neihu District, Taipei City 114, Taiwan R.O.C. and its subsidiaries ("Advantech") and **you** ("Licensee") becomes effective as of the date you click the "Accept" button. If you are accepting on behalf of Licensee, you represent and warrant that: (a) you have full legal authority to bind your employer or such entity to these terms and conditions; (b) you have read and understood this Agreement; and (c) you agreed, on behalf of the entity that you represent, to this Agreement. If you do not have the foregoing legal authority, please do not click the "Accept" button.

## **1. DEFINITIONS**

- a. "Materials" are defined as the Sample Source Code, Driver, and Documentation, and other materials that are provided by Advantech to you after your acceptance of this Agreement.
- b. "Sample Source Code" is the source code file(s) that: (i) demonstrate(s) certain functions for particular purposes; (ii) are identified as sample source code by Advantech; and (iii) are provided hereunder by Advantech in source code form downloaded directly from the web pages ("Web Pages") available at the domain of Advantech, [advantech.com](http://advantech.com), after your acceptance of this Agreement.
- c. "Licensed Platform" means system(s) or hardware platform(s) described in Exhibit A manufactured by Advantech regardless of the brand of the Licensed Platform, that Licensed Software Product is licensed to be used on or with. "Documentation" means the specifications of Sample Source Code, Driver, and any other documentation provided by Advantech to Licensee relating to Sample Source Code, either in hard copy or electronic form.
- d. "Confidential Information" means any non-public information disclosed by Advantech to Licensee, which is: (a) marked or labeled with "Confidential" or similar legends if the information is in written or other tangible forms; (b) designated by Advantech as Confidential Information before disclosure and confirmed by written summary within 30 days after disclosure if the information is in oral, visual or other intangible forms; (c) obviously confidential by its nature or the circumstances surrounding the disclosure regardless of whether the information is marked or otherwise identified as confidential; or (d) any other information constituting trade secret under applicable laws. Confidential Information shall include, without limitation, the binary code and source code of Licensed Software Product, Documentation, and Advantech's reference designs. Any work products, analysis or report containing Confidential Information or generated by using Confidential Information, any modification to Confidential Information, or any derivative works of Confidential Information shall be considered as Confidential Information.
- e. "Open Source Software" means any software which
  - (i) contains or is derived in any manner (in whole or in part) from, any software which is distributed as free software, open source software or similar licensing or distribution models, including, without limitation, software licensed or distributed under any of the following license or distribution models, or licenses or distribution models similar to GNU's General Public License (GPL) or Lesser/Library GPL (LGPL), Artistic License (e.g., PERL), Netscape Public License, Mozilla Public License, Apache License, or BSD License.
  - (ii) is distributed pursuant to a license that requires, as a condition of use, modification and/or distribution of such software, that the software or other software combined and/or distributed with it be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- f. "Third Party Software" means any software provided by a third party to Advantech under license terms and conditions.

## **2. LICENSE**

- a. Advantech hereby grants Licensee a worldwide, revocable, non-exclusive, non-transferable license to use the Materials for Licensee's internal development purposes only and to reproduce the Sample Source Code, prepare derivative works of the Sample Source Code, and distribute the modified version or derivative works of such Sample Source Code.
- b. Licensee shall be responsible for its customers' compliance with provisions with regard to Licensee's obligations under this Agreement to the applicable extent.

## **3. RESTRICTIONS**

- a. The Sample Source Code is highly confidential and proprietary to Advantech. Except as expressly provided in Article 2, Licensee shall not cause or permit duplicating, disassembling, decompiling or reverse engineering decryption, or otherwise of or to Sample Source Code.
- b. Except as expressly provided in Article 2, Licensee shall not sell, license, rent, lend, distribute or otherwise transfer Sample Source Code or Documentation.
- c. Licensee shall not take any action that will create obligations conflicting with Licensee's obligations hereunder, including without limitation, creating derivative work of Sample Source Code that contains any code licensed under an Open Source Software license, or using Sample Source Code or derivative work thereof to merge with, link to, make function calls to, or share data structures with software available under an Open Source Software license.

#### **4. OPEN SOURCE SOFTWARE & THIRD PARTY SOFTWARE**

- a. Licensee acknowledges that Sample Source Code or Driver may incorporate certain Open Source Software or Third Party Software as further described in Exhibit B.
- b. Any portion of Sample Source Code or Driver which constitutes Open Source Software or Third Party Software is licensed to Licensee subject to the license terms and conditions of such Open Source Software or Third Party Software, whether in the form of a separate agreement, shrink wrap license or electronic license terms accepted at the time of download.
- c. Licensee's use of the Open Source Software or Third Party Software shall be governed entirely by the license terms and condition of such software.
- d. In no event shall the performance of this Agreement by Licensee violate any applicable license terms and condition of such software. In the event of any inconsistency between this Agreement and the license terms and conditions of Open Source Software or Third Party Software, this Agreement shall not apply to the Open Source Software or Third Party Software.

#### **5. LICENSE FEE AND PAYMENT TERM**

- a. Advantech provides the Sample Source Code and Driver to Licensee free of charge. Notwithstanding the foregoing, the parties may negotiate and define related license fees and payment terms in a separate agreement.
- b. Licensee shall be responsible for all taxes, levies and regulatory fees of any kind arising from the license fee payment or the use of the Materials, other than taxes based solely upon licensor's income.

#### **6. CONFIDENTIALITY**

- a. Licensee shall hold all Confidential Information in confidence for an indefinite period and use it only for the permitted purpose set forth in this Agreement.
- b. Licensee shall protect the Confidential Information with the same degree of care which Licensee protects its own information of secret nature, which shall not be less than the reasonable degree of care.
- c. If a confidentiality agreement with regard to the Confidential Information between Advantech and Licensee conflicts with this Article 7, such confidentiality agreement shall prevail, unless this Article 7 is stringent than the confidentiality agreement.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

- a. Advantech shall own the rights (including intellectual property rights), titles, interests in Sample Source Code and Documentation. For avoidance of doubt, the rights, titles and interests in the modified version or derivative works of Sample Source Code stated in Article 2 shall be owned by Advantech.
- b. Except as expressly provided for in this Agreement, Advantech does not grant any right to Licensee. Advantech reserves all rights in Sample Source Code not specifically granted hereunder.
- c. Licensee shall not remove or obscure any copyright, patent, trademark, confidentiality, restricted or limited rights, export restriction or similar notice affixed to Sample Source Code or Documentation.

#### **8. NO WARRANTY**

- a. THE MATERIALS ARE PROVIDED "AS IS". ADVANTECH DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THEM, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR ANY PARTICULAR PURPOSE.

- b. WITHOUT LIMITING THE FOREGOING AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ADVANTECH HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO SAMPLE SOURCE CODE OR DOCUMENTATION, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, ERROR FREE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IF ADVANTECH CANNOT DISCLAIM ANY WARRANTY AS A MATTER OF ANY APPLICABLE LAW, ADVANTECH'S WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH LAW.
- c. ALL USE OF AND RELIANCE ON SAMPLE SOURCE CODE OR DOCUMENTATION IS AT THE SOLE RISK AND RESPONSIBILITY OF LICENSEE.

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

- a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER ADVANTECH NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF USE, DESTRUCTION OF DATA OR INTERRUPTION OF BUSINESS ARISING FROM OR IN CONNECTION WITH SAMPLE SOURCE CODE, DRIVER, OR DOCUMENTATION; INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR MULTIPLE DAMAGES ARISING FROM OR IN CONNECTION WITH SAMPLE SOURCE CODE, DRIVER, OR DOCUMENTATION EVEN IF ADVANTECH HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY).

#### **10. PROHIBITED USE**

- a. The Materials should not be used for any life-saving, life-support, medical or other application where product failure may lead to loss of life or catastrophic property damage.
- b. Licensee shall warrant that the Materials provided by Advantech will not be transferred or used for any known end use relating to nuclear, chemical or biological weapons, or missile technology.
- c. Licensee shall indemnify, defend and hold Advantech and its licensor, if applicable, harmless from any loss, cost or damage resulting from Licensee's breach of this Agreement, including without limitation attorneys' fees and costs relating to any lawsuit or threatened lawsuit.

#### **11. TERMINATION**

- a. Each Party may terminate this Agreement if the other party (i) fails to cure its breach of this Agreement within fifteen (15) days after receipt of the non-breaching party's written notice, (ii) commits material breach of this Agreement, or (iii) is in a critical financial situation (such as in an insolvency, receivership or bankruptcy proceedings, making an assignment for the benefit of creditors) or dissolves or ceases to do business.
- b. Upon termination of this Agreement, Licensee shall immediately cease to use the Materials, return or destroy any copy of the Materials and Confidential Information, in its possession or control.
- c. Notwithstanding the foregoing, Articles 1, 2.b, 2.c, 5, 6.b, 7-11, 12.c, 13-16 shall survive any expiration or termination of this Agreement. Expiration or termination of this Agreement does not affect either party's rights accrued and obligations incurred before expiration or termination.

#### **12. ENTIRE AGREEMENT**

- a. This Agreement constitutes the entire agreement of the parties with respect to subject matter hereof, and supersedes any and all prior oral or written agreements, representations and understanding

#### **13. GOVERNING LAW AND JURISDICTION**

- a. This Agreement shall be governed by and construed in accordance with the laws of the Netherlands.
- b. All disputes arising in connection with the Agreement shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Rotterdam. The arbitral procedure shall be conducted in the English language. The arbitral tribunal will decide in accordance with the rules of law. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in art. 1046 of the Netherlands Code of Civil Procedure is excluded..

#### **14. EXPORT COMPLIANCE**

- a. Licensee shall not to export, import or transfer the Materials to any country or end user, or for any known end use, that is prohibited by any applicable laws or regulations (including those countries from time to time subject to embargo by U.S.A., European Union or Taiwan government authorities).
- b. Licensee shall assure that the Materials will not be exported, imported, transferred or used contrary to applicable laws or regulations of any other governmental authorities that has jurisdiction over such export, import, transfer or use.

#### **15. MISCELLANEOUS**

- a. Neither party shall be held liable for nonperformance of this Agreement when it is caused by events or circumstances beyond the control of that party, for so long as the events or circumstances are continuing.
- b. Amendment or modification of this Agreement shall be made in writing by the parties.
- c. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that Licensee shall have no right to assign this Agreement or delegate its obligations hereunder without obtaining Advantech's prior written consent.
- d. Failure by Advantech to enforce any provision of this Agreement shall not constitute waiver of or estoppel with respect to Advantech's any right or remedy hereunder.
- e. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- f. The heading of article herein is solely for convenience of reference only; in no event shall it control the meaning or interpretation of any provision of this Agreement.

## **EXHIBIT A: LICENSED SOFTWARE PLATFORM**

Licensed Software Product is licensed to be used on the following Licensed Platforms:

Any products manufactured by Advantech, either under Advantech or ODM brand name.

## EXHIBIT B: OPEN SOURCE SOFTWARE / THIRD PARTY SOFTWARE

Sample Source Code contains the following Open Source Software: NOT APPLICABLE

Sample Source Code contains the following Third Party Software: NOT APPLICABLE

**adv\_swbutton (driver) v0.02 and later version contains the following Open Source Software:**

Component	Version	License	Comment/Link
Linux kernel	3.10+	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>

**nct7904 (driver) v2.0.2 and later version contains the following Open Source Software:**

Component	Version	License	Comment/Link
Linux kernel	3.10+	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>
nct7904.c	5.2	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>

**amix955x (driver) v0.06 and later version contains the following Open Source Software:**

Component	Version	License	Comment/Link
Linux kernel	4.18+	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>
leds-pca955x.c	4.18	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>
gpio-pca953x.c	4.18	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>

GPLv2 Notice: This program is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License as published by the Free Software Foundation; either version 2 of the License, or (at your option) any later version.

This program is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the GNU General Public License for more details.

You should have received a copy of the GNU General Public License along with this program; if not, write to the Free Software Foundation, Inc., 51 Franklin Street, Fifth Floor, Boston, MA 02110-1301, USA.

**Driver contains the following Third Party Software: nct6106 (Nuvoton)**

Component	Version	License	Comment/Link
Linux kernel	3.8+	GPLv2	<a href="https://www.gnu.org/licenses/old-licenses/gpl-2.0.html">https://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>