



# SYMBIAN FOUNDATION LICENSE

Version 1.0

THE ACCOMPANYING SOFTWARE COMPONENT IS PROVIDED SOLELY UNDER THE TERMS AND CONDITIONS OF THIS FOUNDATION SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). ANY USE, REPRODUCTION OR DISTRIBUTION OF THE SOFTWARE COMPONENT IS DEEMED TO CONSTITUTE ACCEPTANCE OF THIS AGREEMENT.

## 1. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to define the terms and conditions under which a Member accepts certain licenses, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to herein defined software assets and certain intellectual property rights thereto and in consideration for said licenses assumes certain undertakings.

## 2. DEFINITIONS

"Affiliate" means an entity, which is (i) directly or indirectly controlling such party, (ii) under the same direct or indirect ownership or control as such party, or (iii) directly or indirectly owned or controlled by such party. For these purposes, an entity shall be treated as being controlled by another if that other entity has fifty percent (50%) or more of the votes in such entity, is able to direct its affairs and/or to control the composition of its board of directors or equivalent body. Notwithstanding the above, Affiliates excluded under Rule 2.3 of the Membership Rules will not constitute "Affiliates" for the purposes of this Agreement.

"Copyrights" means any and all copyrights and trade secrets worldwide, but excluding any patents and trademarks.

"Device" means any end-user device with capability for wireless communications.

"Foundation" means Symbian Foundation Limited; a company limited by guarantee incorporated under the laws of England and Wales, with its principal place of business at 1 Boundary Row, Southwark, London SE1 8HP, UK.

"Foundation Platform" means a Platform for Devices being developed and/or distributed by the Foundation and not substantially based on any operating system other than Symbian, as well as associated software development kits, other development tools and related documentation.

"Foundation Outbound License" means a then current software license agreement adopted by the Foundation in full compliance with its Membership Rules for the purpose of outbound licensing of the Foundation Platform or some of its constituent components.

"Member" means any entity which is and remains a member of the Foundation and makes any use of the Software Component.

"Membership Rules" means the rules of membership stipulated by the Foundation from time to time, including applicable appendices and schedules.

"Modification" means any work of authorship being additions and/or changes to source code files of the Software Component.

"Party" and the "Parties" mean the Foundation and/or the Member.

"Platform" means a software platform consisting of operating system and user interface software.

“Software Component” means a set of software source code released and licensed by the Foundation or any Member under this Agreement and any associated documentation and/or any part of the same.

“Symbian” means the operating system referred to as "Symbian operating system" before the incorporation of the Foundation and originally contributed by Nokia Corporation to the Foundation.

### **3. LICENSE GRANT**

#### **3.1 Copyright License**

Subject to the terms and conditions of this Agreement, Foundation hereby grants to the Member a non-exclusive, non-transferable, perpetual and irrevocable (except as set forth in Clause 8 below), royalty-free, fully paid-up, worldwide right and license under Copyrights licensable by the Foundation to:

- (i) internally reproduce the Software Component and create Modifications;
- (ii) sublicense, distribute and make available the Software Component and any Modifications in source and/or binary code form to other Members under the terms and conditions of this Agreement; and
- (iii) publicly display, publicly perform, distribute, and make available the Software Component and any Modifications solely in binary code form, in connection with the products and/or services of the Member and only as part of the Foundation Platform, to third parties.

#### **3.2 Use By Affiliates and/or Contractors**

The licenses granted to the Member in Clause 3.1 above shall cover (i) Member's Affiliates and (ii) contractors and suppliers of the Member and/or its Affiliate when performing work or providing services for or on behalf of the Member and/or its Affiliates; provided, however, that (a) the Member or its Affiliates, as applicable, shall have in force with such third parties written agreements with terms and conditions applicable to the Software Component and utilization thereof that are equally protective of the Copyrights and Confidential Information (as defined below in Clause 6.1) as this Agreement and (b) the Member shall remain liable for the acts and/or omissions of such third parties and its Affiliates as for its own.

#### **3.3 No Other Licenses**

No trademark licenses are granted hereunder. Member's use of Foundation's trademarks is subject to the Foundation Trademark and Compliance Policy in force from time to time.

No patent licenses, releases, immunities or any other rights under any patents are granted hereunder, whether expressly or impliedly. Patent licenses for the Software Component are set forth in the Foundation Patent Policy in force from time to time.

Except for the licenses expressly set forth in this Agreement, no other, further or different licenses, releases, immunities or any other rights under any intellectual property rights are granted, whether expressly, impliedly, by estoppel or otherwise.

### **4 UNDERTAKINGS OF THE MEMBER**

#### **4.1 Submission of Modifications**

Immediately upon exercising its rights under sub-Clause (ii) or (iii) of Clause 3.1 above, the Member shall provide any and all Modification(s) to the Foundation under the terms and conditions of the Foundation's then current Member Contribution Agreement.

## **4.2 No Obligation to Utilize by Foundation**

For the avoidance of doubt, the Foundation has the right and no obligation whatsoever to utilize any Modification(s) provided by the Member under Clause 4.1 above and the Foundation shall have the right, at its exclusive discretion, to include, suspend and/or exclude any Modification(s) from any release of the Foundation Platform.

## **5 COMMERCIAL DISTRIBUTION**

In the event the Member distributes commercially the Software Component and/or any Modifications, it may accept certain responsibilities, obligations and/or liabilities with respect to end users, business partners and the like provided however that the Member shall at all times remain in compliance with this Agreement. Since this Agreement is intended to facilitate the commercial use of the Software Component and the Modifications, the Member may include the Software Component and/or any Modifications in a commercial product offering provided that the Member shall bear the sole responsibility and liability therefore.

## **6 CONFIDENTIALITY**

### **6.1 Confidentiality Obligations**

Member expressly acknowledges and agrees that the human-readable form of the Software Component is confidential information of the Foundation and/or its licensors ("Confidential Information"). Further, Member expressly acknowledges and agrees that:

- (i) it shall keep the Confidential Information as strictly confidential and grant limited access to Confidential Information only to those of its employees to whom such access is necessary for the performance under this Agreement; and
- (ii) it shall not, without the prior written permission of the Foundation, disclose the Confidential Information to any third party other than under Clause 3.2 or to other Members.

### **6.2 Exceptions to Confidentiality**

The confidentiality obligations set forth in Clause 6.1 above shall not apply to Confidential Information which (a) is required to be disclosed by law, order or regulation of a governmental authority or a court of competent jurisdiction, provided that the Member (to the extent permitted by law) promptly informs the Foundation in writing thereof and enables the Foundation to take any appropriate action in order to limit such disclosure; or (b) as proven by the written records of the Member, certifiably:

- (i) was in the possession of the Member prior to disclosure of the Confidential Information under this Agreement;
- (ii) or was publicly available at the time of disclosure or later became publicly available without breach of above confidentiality obligations, including without limitation any information contained in any version of the Foundation Platform made generally publicly available by the Foundation under Foundation Outbound License;
- (iii) or was disclosed by a third party without breach of any confidentiality obligation owed to the Foundation;
- (iv) or was independently developed by the Member without use of any Confidential Information.

### **6.3 Residual Knowledge**

This Clause 6 is not intended to prevent the Member and/or its Affiliates from using Residual Knowledge, provided that no license to any patents or copyrights is expressly or impliedly granted with respect to such use. "Residual Knowledge" means those concepts or ideas which are of general application, and that are retained in the unaided memories (i.e. without conscious memorization or subsequent reference to any material which is written, stored in magnetic, electronic or physical form or otherwise fixed) of the employees who have had access to Confidential Information. Further,

Foundation recognizes that Member's receipt of Confidential Information shall not create an obligation in any way limiting or restricting the work assignments of employees within Member's organization.

## **7 WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY**

### **7.1 Warranty Disclaimer**

SUBJECT TO ANY STATUTORY WARRANTIES OR CONDITIONS WHICH CAN NOT BE EXCLUDED, THE SOFTWARE COMPONENT IS PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, AND STATUTORY ARE HEREBY DISCLAIMED. THE ENTIRE RISK ARISING OUT OF OR RELATING TO THE USE OR PERFORMANCE OF THE SOFTWARE COMPONENT REMAINS WITH THE MEMBER.

### **7.2 Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE FOUNDATION OR ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUE, LOST DATA, PROCUREMENT OF SUBSTITUTE GOODS, OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF THE FOUNDATION OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. IN ADDITION, THE FOUNDATION AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY DAMAGES CLAIMED HEREUNDER BY MEMBER BASED ON ANY THIRD PARTY CLAIM. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR I) DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE, II) WILFULL BREACH AND III) FRAUD.

### **7.3 Member Indemnity Obligation**

The Member will indemnify, hold harmless, and defend the Foundation from and against any claims arising out of or resulting from the Member's (including any third parties under Clause 3.2) exploitation of the Software Component and/or Modification(s).

### **7.4 Allocation of Risk**

The Member acknowledges and agrees that all limitations of liability set forth in this Clause 7 allocate the risks between the Parties under this Agreement. The Member accepts this allocation of risk and acknowledges that the allocation of risk is for the consideration of the benefits for the Member hereunder.

## **8 TERM AND TERMINATION**

### **8.1 Termination for Breach**

All of the Member's rights under this Agreement shall terminate if it fails to comply with any of the material terms or conditions of this Agreement and does not cure such failure in a reasonable period of time after the Member becomes aware of such non-compliance. If all Member's rights under this Agreement terminate, the Member agrees to cease use and distribution of the Software Component as soon as reasonably practicable. However, the Member's obligations under this Agreement and any licenses granted by the Member relating to the Software Component shall continue and survive.

### **8.2 Termination by Member**

The Member may terminate this Agreement by ceasing all utilization of the Software Component, Modification(s) and the rights and licenses granted to the Member in this Agreement.

### **8.3 Survival**

Clauses 2, 6, 7, 8, 9 and 10 shall be deemed to survive any cancellation, expiration or termination of this Agreement.

## **9 MISCELLANEOUS**

### **9.1 Entire Agreement**

The terms and conditions of this Agreement and the Membership Rules of the Foundation shall constitute the entire agreement between the Parties and shall supersede all prior written or oral understandings between the Parties or any prior representation, warranty, promise or assurance made by either Party with regard to the subject matter hereof.

### **9.2 No Waiver**

Neither failure to exercise, nor any delay in exercising by either Party, any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy.

### **9.3 Partial Invalidity**

If any term and/or condition of this Agreement is or becomes invalid or unenforceable, the validity or enforceability of any other term and/or condition of this Agreement shall not be affected and such invalid or unenforceable term and/or condition shall be enforced to the maximum extent permitted by law and completed by a valid interpretation of such term and/or condition, which to the extent possible achieves the original purpose of the invalid or unenforceable term and/or condition.

### **9.4 Independent Parties**

The Parties are independent contractors under this Agreement. Nothing in this Agreement shall be construed as creating any form of partnership, representative joint venture or other formal business organization of any kind between the Parties.

### **9.5 Headings**

The headings of this Agreement are for convenience of reference only and shall not in any way limit or affect the meaning or interpretation of the terms and conditions of this Agreement.

### **9.6 Export Control**

The Member acknowledges that the laws and regulations of applicable local jurisdictions, including without limitation the Export Administration Regulations (EAR) of the United States, restrict the export and re-export of certain hardware, software, other commodities, technology and technical data. The Member agrees that it will not knowingly export or re-export the Software Component, or any portion thereof, in any form in violation of such laws and regulations without the appropriate United States and/or other local government export or import licenses or other official authorization.

## **10 APPLICABLE LAW AND DISPUTE RESOLUTION**

### **10.1 Applicable Law**

The governing law of the contract shall be the substantive laws of England and Wales excluding their choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## **10.2 Dispute Resolution**

Any dispute arising out of or in connection with this Agreement including without limitation any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this Clause 10.2. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.