

BLUETOOTH APPLICATION ACCELERATOR END-USER LICENSE AGREEMENT

PLEASE READ THIS END-USER LICENSE AGREEMENT FOR BLUETOOTH APPLICATION ACCELERATOR (THE "AGREEMENT") CAREFULLY. THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN THE BLUETOOTH SIG, INC. (THE "LICENSOR" OR "BLUETOOTH SIG"), A DELAWARE NON-STOCK, NON-PROFIT CORPORATION, AND THE END-USER OBTAINING THE BLUETOOTH APPLICATION ACCELERATOR HEREIN ("LICENSEE"). FOR PURPOSES OF THIS AGREEMENT, "YOU" AND "YOUR" INCLUDES LICENSEE OR THE INDIVIDUAL ACTING ON BEHALF OF LICENSEE, WHICHEVER IS APPLICABLE. BY CLICKING THE "I ACCEPT" BUTTON OR BY ACQUIRING, INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE BLUETOOTH APPLICATION ACCELERATOR, YOU ACCEPT THE AGREEMENT. BY ACCEPTING THE AGREEMENT ON BEHALF OF A LICENSEE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO DO SO. IF YOU ARE NOT SO AUTHORIZED, NOR DEEMED IN LAW TO HAVE SUCH AUTHORITY, YOU ASSUME SOLE PERSONAL LIABILITY FOR THE OBLIGATIONS SET OUT IN THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU SHOULD CLICK THE "I REJECT" BUTTON AND DO NOT ACQUIRE, INSTALL, COPY, DOWNLOAD, ACCESS OR OTHERWISE USE THE BLUETOOTH APPLICATION ACCELERATOR, WHICH MAY INCLUDE ASSOCIATED MEDIA, PRINTED MATERIALS, AND "ON-LINE" OR ELECTRONIC DOCUMENTATION (THE "SOFTWARE").

BACKGROUND

WHEREAS, LICENSOR is a non-stock, non-profit corporation that desires to provide third party application developers with the Software to develop Bluetooth-enabled applications for Smart Ready devices and port those Bluetooth-enabled applications across platforms (the "Software"); and

WHEREAS, the LICENSOR is the owner of all right, title and interest in the Software; and

WHEREAS, LICENSEE desires to use the Software solely for the purpose of developing Bluetooth-enabled applications for Smart Ready devices and porting those Bluetooth-enabled applications across platforms and LICENSOR has agreed to grant the LICENSEE certain rights with respect to the SOFTWARE solely for such purpose on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the LICENSOR and LICENSEE agree as follows:

THE AGREEMENT

1. LICENSE GRANT

1.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a royalty-free, non-transferable, non-exclusive, world-wide right and license to use the Software solely for the purpose of developing Bluetooth-enabled applications for Smart Ready devices and porting those Bluetooth-enabled applications across platforms.

1.2 Installation and Use. Licensee may install and use an unlimited number of copies of the

Software.

1.3 Licensee may reproduce and distribute an unlimited number of copies of the Software, provided that each copy is a true and complete copy, including all copyright and trademark notices, and is accompanied by a copy of this EULA.

1.4 In no event will the license granted to Licensee under Section 1.1 be construed as granting Licensee, expressly or by implication, estoppel or otherwise, a license under any of Licensor's intellectual property rights other than the Software intellectual property rights as set forth herein.

1.5 Notwithstanding the foregoing, any license created by the Bluetooth SIG Patent/Copyright License Agreement with regard to Bluetooth SIG Member patents and/or copyrights expressly survives this End User License Agreement and is not affected by this Agreement.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

2.1 **Modifications and Derivative Works.** Licensee may modify the software, and use it to create derivative works,

3. LICENSOR'S SERVICES

3.1 Licensor is not obligated to provide any support to Licensee with respect to the Software.

3.2 Should Licensee have any questions concerning this Agreement, or if Licensee desires to contact Licensor for any reason, please contact Devportadm@bluetooth.com.

4. LIMITED WARRANTY

4.1 **NO WARRANTIES.** LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SOFTWARE OR DERIVATIVE WORKS. THE SOFTWARE AND ANY DERIVATIVE WORK IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH LICENSEE. LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY THE USERS OF THE SOFTWARE OR DERIVATIVE WORKS.

4.2 **NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** LICENSOR HAS MADE EVERY EFFORT POSSIBLE TO ENSURE THAT THE SOFTWARE IS FREE OF ANY BUGS OR ERRORS; HOWEVER, IN NO WAY IS THIS SOFTWARE TO BE CONSIDERED ERROR OR BUG FREE. BY USING THE SOFTWARE LICENSEE ASSUMES ALL RESPONSIBILITY FOR ANY DAMAGES OR LOST DATA THAT MAY RESULT FROM ANY ERRORS OR BUGS IN THE SOFTWARE. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL LICENSOR OR ITS MEMBERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE

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- 4.3 Licensee represents and warrants that Licensee fully understands the risks associated with any use of the Software, any part thereof or any derivative works, and hereby knowingly and voluntarily, without coercion or duress, solely assumes any and all risks, responsibilities, obligations and Claims in connection with the Software, any part thereof or any derivative works, including, without limitation, all uses by, on behalf of or through Licensee thereof, including, without limitation, (i) determining whether the Software is appropriate or will meet any requirement or need of Licensee's or any person, (ii) unavailability or interruption of any Software or operations in connection therewith, (iii) loss, inaccuracy, corruption or damage to any Software, other software, data, or other property, and (iv) damage, injury or harm to any person.
- 4.4 Notwithstanding anything to the contrary, and without limiting the application of the foregoing, in no event will Licensor (or any of its parent, subsidiaries or other affiliates, any of their respective successors or assigns, or any of their respective shareholders, owners, principals, members, directors, managers, officers, employees, agents, representatives, consultants, or advisors or Members) be responsible or liable for any Claims in connection with any Software, including any access, copying, modification, derivative works, distribution and/or other uses thereof.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Licensee recognizes and agrees that: (i) Licensor retains all right, title and interest in the Software and associated intellectual property rights; and (ii) Licensee has no other rights or interests in any other rights other than the rights specifically granted to the Licensee under this Agreement.
- 5.2 Title to copyrights and other proprietary rights in derivative works created by Licensee shall be owned by Licensee subject, however, to the underlying ownership interest(s) of the Licensor(s) in the copyrights and other proprietary rights in the original Software.
- 5.3 All the same rights and licenses granted herein and all other terms and conditions contained in this Agreement pertaining to the Software shall continue to apply to any parts of the Software included in derivative works. Licensee's derivative work should clearly notify users that it is a modified version and not the original Software distributed by the Licensor..
- 5.4 Licensee agrees to perform its rights and obligations hereunder in a manner fully compliant with all applicable laws.

- 6. TERM AND TERMINATION.** This Agreement will be effective upon installation of the Software and will terminate upon the earlier of: (a) Licensee's failure to comply with any term of this Agreement; or (b) Licensee's return, destruction, or deletion of all instances and copies of the Software in its possession. Upon termination of this Agreement, at Licensor's request, Licensee will certify in writing to Licensor that all instances and copies of the Software, or any portion thereof, have either been returned to Licensor or otherwise destroyed or deleted the Software and all copies thereof from any of Licensee's computers, hard drives, networks, and other media.

Sections 4 through 8, inclusive, survive termination of this Agreement and remain enforceable in accordance with their terms.

7. MISCELLANEOUS

- 7.1 Assignment.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assignees. The rights and obligations of Licensee under this Agreement are personal and cannot be assigned, sublicensed or otherwise transferred by Licensee and Licensee will not attempt to do so without a prior written consent of Licensor. Any attempted assignment, sublicense or transfer in contravention of this Agreement will be null and void and of no force and effect. Licensor may assign or transfer all or any of its rights and obligations under this Agreement at any time and, in the case of a transfer of obligations, the transfer will be effected by a novation, such that thereafter this Agreement will be between the assignee (as "Licensor") and Licensee. Except as permitted under Section 1 hereof, Licensee will not permit any other third party (including but not limited to consultants and independent contractor) to exercise any rights under this Agreement.
- 7.2 Injunctive Relief.** Licensee acknowledges that it is likely to be difficult, if not impossible, to value the damage to Licensor from a breach by Licensee of Section 1 (License Grant) of the Agreement and that such damages are likely to be substantial and/or irreparable and that Licensor's remedy at law would be inadequate. In the event of such a violation and upon adequate proof of such violation, therefore, in addition to any other relief to which Licensor may be entitled, Licensor will be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.
- 7.3 Authority.** The individual accepting this Agreement represents and warrants that the individual is authorized and has the power and authority to execute and deliver this Agreement on behalf of Licensee and to perform its obligations hereunder.
- 7.4 Entire Agreement; Waiver.** This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement will be binding unless agreed to in writing by an authorized representative of all the Parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.
- 7.5 Governing Law, Dispute Resolution.** This Agreement will be construed and controlled by the laws of the State of Washington, United States of America and the federal law of the United States of America, without reference to conflict of law principles. Licensor and Licensee agree that all disputes arising in any way out of this Agreement will be heard exclusively in, and irrevocably consent to the jurisdiction and venue in, the state and federal courts of the State of Washington, King County.
- 7.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- 7.7 Amendment.** This Agreement may be amended or modified only by a written instrument signed by Licensor and Licensee.

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