

MinnowBoard UEFI Development Kit (MB-UDK)

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- 1.1 "ASL Code" means code written in the 'ACPI source language' and designed and delivered to Licensee by Intel and designed to be compatible with Intel products. Such ASL Code remains ASL Code regardless of any legends in header files of the ASL Code.
- 1.2 "Assembly Code" means code written in the 'assembly source language' and designed and delivered to Licensee by Intel under this Agreement.
- 1.3 "MB-UDK" means the MinnowBoard UEFI Development Kit, which is an Intel implementation of the UEFI specification, and is based on the Intel® UEFI Development Kit 2010 (Intel® UDK2010), consisting of MB-UDK Libraries, ASL Code, DXE Driver, DXE Foundation Code, PEI Foundation Code, Peripheral Drivers, PEI Modules, Assembly Code, C Code and Reference Drivers together, as well as any and all documentation and tools, provided by Intel for the purposes of implementation.
- 1.4 "MB-UDK Libraries" means the core library services offered in the MinnowBoard UEFI Development Kit.
- 1.5 "BSD License" means the Berkeley Software Distribution License, which is a family of permissive free software licenses created for the original Berkeley Software Distribution operating system.
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- 1.8 "Derived Object Code" means the subset of Derivative Works that is the Object Code derived from Source Code or Derived Source Code.

- 1.9 "Derived Source Code" means the subset of Derivative Works that is the source code derived from Source Code by modifying the Source Code in any way.
- 1.10 "Derivative Works" means those bodies of work defined in 17 U.S.C. §101 as "derivative works" of existing copyrighted material. For purposes of this Agreement, Derivative Works include both Derived Source Code and Derived Object Code.
- 1.11 "DXE Driver" means Driver Execution Environment driver, which is a hardware device driver compliant with the execution environment as defined in the UEFI specification.
- 1.12 "DXE Foundation Code" means the foundational Driver Execution Environment code that provides the standard function and services that are available to the DXE Drivers.
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- 1.17 "Object Code" means the binary version of the Source Code, including all computer programming code, entirely in binary form, which is directly executable by a computer and includes those help, message, overlay, and other files necessary for supporting the intended use of the executable code.
- 1.18 "PEI Foundation Code" means Pre-extensible firmware interface ("PEFI") initialization foundation code, which performs basic hardware initialization in order to load and execute the DXE Foundation Code.
- 1.19 "PEI Modules" means PEFI initialization modules, which are code modules that perform basic environmental set up prior to initialization of DXE Foundation Code.
- 1.20 "Peripheral Drivers" means code that initializes and operates hardware devices that are peripheral to the Intel Processor.
- 1.21 "Reference Drivers" means those drivers supplied as part of the Source Code that are marked or tagged by Intel as 'reference drivers'.
- 1.22 "Source Code" means the source code of the MB-UDK Libraries and Reference Drivers delivered to Licensee by Intel under this Agreement, along with all Intel-delivered tools, documentation, specifications, and schematics related thereto.
- 1.23 "Subsidiaries" means, with respect to any legally recognizable entity, any entity Controlling, Controlled by, or under common Control with the entity. "Control" means (i) ownership of fifty percent (50%) or more of the outstanding shares representing the right to vote for members of the directors or other managing officers of the entity, or (ii) for an entity which does not have outstanding shares, fifty percent (50%) or more of the ownership interest representing the right to make decisions for the entity. An entity will be deemed a Subsidiary only so long as the Control exists.
- 1.24 "UDK2010" means the Intel® UEFI Development Kit 2010 (Intel® UDK2010), which is an openly available implementation of the UEFI framework provided by Intel under BSD License terms.

1.25 “UEFI” means the Unified Extensible Firmware Interface, which is an industry standard detailing an interface that helps hand off control of the system for the pre-boot environment (i.e., after the system is powered on, but before the operating system starts) to an operating system.

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and

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6.0 ASSIGNMENT, SALE OR TRANSFER

Licensee will not assign, sublicense, or otherwise transfer this Agreement or any right or obligation hereunder without Intel's prior written consent, which consent will not be unreasonably withheld in the event Licensee is acquired by an entity that is not a competitor of Intel. Any attempt to do so will be null and void.

7.0 TERMINATION

- 7.1 Licensee may terminate this Agreement and the licenses granted in the Agreement at any time upon Intel's receipt of written notice.
- 7.2 Intel may terminate this Agreement and any licenses granted in the Agreement at any time if Licensee fails to cure any material breach of this Agreement within thirty (30) days after notice of the breach. Such termination will not prejudice Intel's right to damages or any other remedy available at law or in equity.
- 7.3 Upon termination of the Agreement or any license granted hereunder for any reason whatsoever, Licensee will completely remove MB-UDK from all Derived Source Code. In the event of any termination, Licensee will, at Intel's option, either return to Intel or destroy the original and all full or partial copies of MB-UDK, including those portions in Derived Source Code, and certify to Intel that they have been destroyed.
- 7.4 The following sections will survive expiration or termination of this Agreement: sections 2.2, 2.3, 2.4, 3, 4, 5, 7, 8, 9 and 10.

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- 8.1 All rights, title and interest in and to the MB-UDK and all copies, and any updates provided by Intel, in whole or in part, are and will remain the exclusive property of Intel or its suppliers. Unless expressly permitted under Section 2.1, You will not, and will not allow any third party to:
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 - b. modify, adapt, enhance, disassemble, decompile, reverse engineer, change or create Derivative Works from the MB-UDK; or
- 8.2 Title in and to the Derived Source Code will be held by Licensee or Licensee's suppliers as appropriate, subject to Intel's underlying ownership of the MB-UDK.

9.0 EXPORT CONTROL

You acknowledge that the MB-UDK is subject to export controls under the laws and regulations of the United States and any other applicable governments. You agree to comply with these laws and regulations governing export, re-export, import, transfer, distribution, and use of the MB-UDK. In particular, but without limitation, the MB-UDK may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to any person or entity listed on a denial order published by the U.S. government or any other applicable governments. By using the MB-UDK, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the MB-UDK for any purposes prohibited by the U.S. government or other applicable governments' laws, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons. You confirm that the MB-UDK, will not be re-exported or sold to a third party who is known or suspected to be involved in activities including, without limitation, the development, design, manufacture, or production of nuclear, missile, chemical or biological weapons. You agree that MB-UDK subject to control under defense laws and regulations (e.g., the International Traffic in Arms Regulations (ITAR) must not be transferred to non-U.S. persons, whether located in the U.S. or abroad, without a government license. You will indemnify Intel against any loss related to Your failure to conform to these requirements.

10.0 GENERAL

- 10.1 Any dispute arising directly under the express terms of this Agreement or the grounds for termination of any rights granted under this Agreement will be resolved as follows: First, within forty five (45) days from one party's written request to the other, senior executives of both parties will meet to attempt to resolve the dispute. If the senior executives cannot resolve the dispute, either party may then make a written demand for formal dispute resolution by tendering to the other party notice of the dispute and its intent to invoke the terms of this Section 10.1. The parties agree to meet within ninety (90) days of the demand with an impartial mediator selected by mutual agreement to participate in a one-day, non-binding mediation. In the event the parties cannot agree on a mediator, they will each select one nominator, who will not at that time be employed by either party, and the two nominators will agree on and appoint the mediator. If the parties have not resolved the dispute or claim within thirty (30) days after the one-day, non-binding mediation, either party may begin litigation proceedings.
- 10.2 U.S. Government Contract Provisions. This Agreement is for Your temporary license of MB-UDK. No Government procurement regulation or contract clauses or provision will be considered a part of any transaction between the Parties under this Agreement unless its inclusion is required by statute, or mutually agreed upon in writing by the Parties in connection with a specific transaction. The technical data and computer software covered by this license is a "Commercial Item," as that term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to end users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other end users under the terms and conditions in this Agreement. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this MB-UDK is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses Government rights in the computer MB-UDK or documentation covered by this license. All copyright licenses granted to the U.S. Government are coextensive with the technical data and computer MB-UDK licenses granted in this Agreement. The U.S. Government will only have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.
- 10.3 Waiver and Severability. If either Party fails to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provided in this Agreement, that failure will not constitute a waiver of that provision or option, or affect the validity of this Agreement or any part of this Agreement, or the right of the waiving Party to enforce subsequently each and every provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.
- 10.4 Governing Law; Jurisdiction.
- a. The procedural and substantive laws of the State of Delaware, U.S.A., without regard to its conflicts of laws principles, will govern this Agreement. This Agreement is prepared and executed and will be interpreted in the English language only, and no translation of the Agreement into another language will have any effect. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.
 - b. The state and federal courts located in the State of Delaware will have exclusive jurisdiction of all disputes and litigation arising out of or related to this Agreement including, without limitation, matters connected with its performance. Each Party irrevocably submits to the personal jurisdiction of those courts and irrevocably waives all objections to such venue. Any claim arising under or relating to this Agreement, will be governed by the laws of the State of Delaware, excluding its conflicts of laws provisions. The parties agree that all disputes and litigation regarding the above defined claims will be subject to the exclusive jurisdiction of the courts of the State of Delaware or of the Federal courts sitting in Delaware.

- 10.5 All notices required or permitted to be given under this Agreement must be in writing, make reference to this Agreement, and be delivered by hand, or dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, addressed as follows:

If to Intel:

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95052
Attention: General Counsel
Reference ID: Theresa Ravelo, SSG Legal

\With a copy to:

Post Contract Management
1900 Prairie City Rd.
Folsom, CA 95630
Attn: Cathie McCall FM3-78

Notices will be considered served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice or request will be given to that Party at the changed address.

- 10.6 No Sublicensing, Assignment or Transfer. You may not delegate, assign or transfer this Agreement, or any of Your rights and obligations under this Agreement, whether by contract, operation of law, acquisition, merger, consolidation, sale of all or substantially all of Your outstanding shares or assets, other changes in control, or any other event, and any attempt to do so will be a material breach of this Agreement and will be null and void. In addition, You may not sublicense, assign or transfer any MB-UDK or any part of the MB-UDK, or any right in this Agreement, whether by contract, operation of law, acquisition, merger, consolidation, sale of all or substantially all of a party's outstanding shares or assets, other changes in control, or any other event, to any third party temporarily (such as loaning, rental, licensing or timeshare) or permanently, except as expressly permitted under Section 2.1 or 2.2, without the prior written consent of Intel in each instance which consent Intel may withhold in its sole discretion. Any attempted sublicense, assignment or transfer that is not expressly permitted under Section 2 or is without consent will be a material breach of this Agreement and will be null and void. Subject to the other provisions of this Section 11.4, this Agreement will bind and inure to the benefit of the Parties and their permitted successors and assigns whether by contract, operation of law, acquisition, merger, consolidation, sale of all or substantially all of a party's outstanding shares or assets, other changes in control, or any other event.
- 10.7 You agree that this Agreement binds You and each of Your affiliates and the employees, agents, representatives and persons associated with any of them.
- 10.8 Entire Agreement. This Agreement, the Attachments, Exhibits, Appendix and Non Disclosure Agreement(s) contain the complete and exclusive statement of the agreement between the Parties and supersede all proposals, oral or written, and all other communications between the Parties relating to the subject matter of this Agreement. Only a written instrument duly executed by authorized representatives of Intel and You may modify this Agreement.

EXHIBIT A

SUPPORTED PLATFORMS

List of supported platforms with which the MB-UDK may be used:

Intel® Atom™ Processor E640 (1GHz, 32-bit)

EXHIBIT B

MINIMUM OBJECT CODE

END-USER LICENSING TERMS

Licensee will ensure that terms at least as restrictive and protective of Intel's interests as the following minimum terms, as described below, are included in all End User Licenses. These minimum terms apply to distribution of the Object Code and Derived Object Code.

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Copy the Object Code and Derived Object Code and accompanying materials ("Software") onto the End User's computers for End User's internal use solely for development and maintenance of the End User's products supporting Intel Chipsets or Intel Processors.

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1. Sublicense or further distribute the Software, or permit simultaneous use of the Software by more than one user.
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5. The technical data and Software covered by this license is a "Commercial Item," as the term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to End Users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other End Users pursuant to the terms and conditions of the End User License. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this software is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses Government rights in the computer software or documentation covered by this license.

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