

LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into by and between the Wireless Application Protocol Forum Ltd. ("WAP Forum") and You. In consideration of the covenants set forth below, the parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

- (a) "WAP Forum Marks" mean the WAP Forum's marks and logos (including the W@P Certified Logo, W@P Logo and the WAP Forum mark), whether pending or registered and whether now used or adopted in the future.
- (b) "W@P Certified Logo" means specifically the W@P Certified mark, presently shown at http://www.wapforum.org/wap_logos/downloads.htm, or such additional or replacement locations or logo(s) as the WAP Forum may provide from time to time, and no other logo, mark, or designation.
- (c) "W@P Logo" means the W@P mark presently shown at http://www.wapforum.org/wap_logos, or such additional or replacement locations or logo(s) as the WAP Forum may provide from time to time, and no other logo, mark, or designation.
- (d) "WAP Certification Tests" mean the tests as required by the WAP Certification Policy.
- (e) "Territory" means worldwide.
- (f) "Term" means from the date that You agree to this Agreement for as long as the Certified Product complies with the WAP Certification Tests, unless earlier terminated under this Agreement.
- (g) "You" and "Your" means both the individual and the corporation (including all affiliates of the corporation), which agree to this Agreement as indicated below.
- (h) "Trademark Usage Requirements" means the requirements set forth at <http://www.wapforum.org>, which may be modified by the WAP Forum from time to time and which are included in and form part of this Agreement.
- (i) "Certified Product" means any device or product which has been tested and is certified in accordance with the WAP Certification Policy.

(j) “WAP Certification Policy” means the certification policy set forth at <http://www.wapforum.org/cert/go-cert.html>, or such additional or replacement locations as the WAP Forum may provide and as modified by the WAP Forum from time to time, which are included in and form part of this Agreement.

2. LICENSE GRANT

(a) Subject to this Agreement and in consideration of Your compliance with the WAP Certification Tests and the WAP Certification Policy, the WAP Forum grants to You for the Term and in the Territory:

(i) a royalty-free, non-exclusive, non-transferable license to use only the W@P Certified Logo in connection with the Certified Product, provided the W@P Certified Logo is used by You specifically as set forth under this Agreement; and

(ii) a royalty-free, non-exclusive, non-transferable license to use the W@P Certified Logo in advertising, promotional material or other literature to indicate the Certified Product meets the WAP Certification Tests, provided the W@P Certified Logo is used by You specifically as set forth under this Agreement and the Trademark Usage Requirements.

You are specifically granted the right to sublicense the W@P Certified Logo solely for the purpose of contracting for the manufacture of Certified Product to Your specifications. You are granted no other right, title, license to or interest in the W@P Certified Logo, or any of the WAP Forum Marks, for any purpose. No right to create modifications or derivatives of the WAP Forum Marks is granted pursuant to this license.

(b) You acknowledge that the WAP Forum makes no representations regarding the WAP Forum’s ability to register the WAP Forum Marks, or the availability for use in any country of the WAP Forum Marks.

(c) The WAP Forum may eliminate any jurisdiction from the Territory if it determines that use or continued use of the WAP Forum Marks in such jurisdiction may subject the WAP Forum or any third party to legal liability, or may jeopardize the WAP Forum’s rights in the WAP Forum Marks. In such event, as quickly as possible but in no event later than ninety (90) calendar days of receipt of notice from the WAP Forum, or such earlier date as required by court or judicial order, You shall cease all use of the WAP Forum Marks in such jurisdiction.

(d) Subject only to the rights specifically granted to You hereunder, nothing contained in this Agreement shall be construed to limit or restrict, in any way or manner, any right of the WAP Forum to encumber, transfer, license, access, reference, use, or practice the WAP Forum Marks in any way for any purpose or use, including,

without limitation, the WAP Forum's use, licensing, and/or registration of the WAP Forum Marks anywhere in the world for any purpose.

(e) The WAP Forum reserves the right to alter the W@P Certified Logo or to replace it with a different logo ("New Logo"). In such event, upon notice from the WAP Forum, You shall cease all use of the W@P Certified Logo as quickly as reasonably possible on any Certified Product. You agree to use the New Logo supplied by the WAP Forum for any Certified Product developed subsequent to receipt of notice from the WAP Forum, provided such New Logo is not confusingly similar with any of Your existing trademarks.

3. USE OF THE WAP FORUM TRADEMARKS

(a) You agree to comply with the Trademark Usage Requirements as defined at the time of first commercial release of Your Certified Product.

(b) You agree that any representations regarding the Certified Product and compliance with any WAP Forum specifications or WAP Certification Tests must clearly indicate that the representations are made by You, and not by the WAP Forum.

(c) You agree that wherever the W@P Certified Logo is displayed, You will also display Your own corporate name and logo, or such other name and logo as may be required to be displayed pursuant to Your original equipment manufacturer agreement. You agree to display the W@P Certified Logo in a size and style less prominent than, and separately from Your or other names, marks or logos, and in such a manner that it is clear that the W@P Certified Logo refers only to the specific Certified Product which has passed the WAP Certification Tests and not any other product of Yours or any third party. For example, if the Certified Product which displays the W@P Certified Logo is used with any other product that has not passed the WAP Certification Tests, You agree to display the W@P Certified Logo in such a manner that it is clear that the W@P Certified Logo refers only to the Certified Product (that has passed the WAP Certification Tests) and not to any other product which has not passed the WAP Certification Tests.

(d) You shall legibly display the following trademark legend or the equivalent for countries where the use of TM is inappropriate, provided You have first notified the WAP Forum in writing of such equivalent legend and the countries where this will be used, on all materials in or on which the WAP Forum Marks appear:

"TM: The W@P Certified, W@P and WAP Forum marks are worldwide trademarks or registered trademarks of Wireless Application Protocol Forum Ltd."

(e) You agree not to use the WAP Forum Marks in any manner which, in the WAP Forum's sole discretion, may diminish or otherwise damage the WAP Forum's reputation or its goodwill in the WAP Forum Marks, including, but not limited to, uses which would be deemed to be obscene, pornographic, excessively violent or otherwise in poor taste or unlawful, or which are designed to encourage unlawful activities.

(f) You agree that your use of the WAP Forum Marks will not be misleading or likely to cause confusion as to whether your Certified Product is sponsored by, endorsed by or affiliated with the WAP Forum.

(g) Without prejudice to the provisions of section 3(c), the W@P Certified Logo must appear by itself; it may not be combined with any other graphic or textual elements and may not be used as a design element or part of any other logo or trademark.

(h) You may not use the W@P Certified Logo on any Certified Product that is in violation of any applicable laws or governmental regulations. You may not use the WAP Forum Marks in connection with any disparaging statements about the WAP Forum or statements that otherwise reflect poorly on the WAP Forum.

(i) You may never use the W@P Logo on any Certified Product. Only the W@P Certified Logo may be used on Certified Product pursuant to the terms of this Agreement. The W@P Logo may be used as set forth in the Trademark Usage Requirements.

4. PROTECTION OF THE WAP FORUM TRADEMARKS

(a) You understand and agree that the WAP Forum is the sole owner of all right, title, and interest in and to the WAP Forum Marks, and all goodwill associated with the WAP Forum Marks and that all use of the WAP Forum Marks inures to the benefit of the WAP Forum.

(b) You agree not to challenge the WAP Forum's ownership or use of the WAP Forum Marks; not to attempt to register any WAP Forum Marks, or any mark or logo substantially similar thereto; not to remove, alter, or add to the WAP Forum Marks; and not to incorporate the W@P Certified Logo or any of the WAP Forum Marks into Your trademarks, service marks, company names, domain names, or any other similar designations. Any goodwill arising from Your use of the WAP Forum Marks is solely for the WAP Forum's benefit and is owned by the WAP Forum.

(c) If, at any time, You acquire any rights in, or trademark registrations or applications for, the WAP Forum Marks by operation of law or otherwise, You will immediately upon request from the WAP Forum and at no expense to the WAP Forum assign such rights,

registrations or applications to the WAP Forum, along with any and all associated goodwill.

5. WARRANTIES; LIMITATION OF LIABILITY

5.1 WAP Forum's Warranties, Limitation of Liability and Indemnity

5.1.1 You acknowledge and accept that the WAP Forum is granting the license under section 2 hereof on a royalty-free basis and accordingly the WAP Forum shall have no obligation, duty or liability of any kind whatsoever whether in contract, tort, statute or otherwise to You arising out of any use made by You of the WAP Forum Marks, whether under this Agreement or otherwise, and that any such use is entirely at Your own risk. You further acknowledge and accept that the WAP Forum is not responsible for any loss and/or damage arising out of the use or non-use by You of the WAP Forum Marks or for any other loss and/or damage arising out of or in connection with this Agreement (whether such loss or damage arises in contract, tort, by statute or otherwise).

5.1.2 You acknowledge and accept that the WAP Forum makes no representations or warranties of any kind in respect of the WAP Forum Marks, including without limitation the validity of the WAP Forum's rights in the WAP Forum Marks in any country, and that all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise, in respect of the WAP Forum Marks are hereby excluded by the WAP Forum to the fullest extent permitted by law.

5.1.3 Without prejudice to any other provision in this section 5, the WAP Forum shall not be liable to You whether in contract, tort, by statute or otherwise in respect of any loss of profits and/or for any special, indirect, incidental or consequential loss or damage arising out of or in connection with this Agreement, including without limitation:

- (a) loss of revenue; and/or
- (b) loss of anticipated savings; and/or
- (c) loss of business and/or goods; and/or
- (d) loss of goodwill; and/or
- (e) loss of use; and/or
- (f) loss and/or corruption of data and/or other information,

and/or

(g) downtime.

For the avoidance of doubt, neither the types of loss and/or damage specified in clauses (a) to (g), inclusive of this section 5.1.3 nor any similar types of loss and/or damage shall constitute direct loss for the purposes of this Agreement.

5.1.4 For the avoidance of doubt, You acknowledge and accept that the WAP Forum does not grant any indemnity against infringement or other claims arising from or in connection with Your use or non-use of the WAP Forum Marks in accordance with this Agreement or for any other loss and/or damage arising out of or in connection with this Agreement.

5.2 Licensee's Indemnity and Limitation of Liability

5.2.1 You agree to indemnify and to hold the WAP Forum harmless against any and all third-party actions, claims, losses, demands, damages, liabilities, and expenses, including without limitation reasonable attorneys' fees, incurred and/or suffered by the WAP Forum, which arise, in whole or in part, out of or in connection with, any breach of this Agreement by You, and/or any act or omission of You, whether negligent or otherwise, and/or arising out of or in connection with the use of Your product and/or use of the WAP Forum Marks in connection with Your product, including without limitation product liability.

5.2.2 Subject to the provisions of section 5.2.1 above, You are excluded from all other liability for damages to the WAP Forum arising out of or in connection with this Agreement.

5.2.3 Subject to the provisions of section 5.2.1 above, You shall not be liable to the WAP Forum, whether in contract, tort, by statute or otherwise in respect of any loss of profits and/or for any special, indirect, incidental or consequential loss or damage arising out of or in connection with this Agreement, including without limitation:

- (a) loss of revenue; and/or
- (b) loss of anticipated savings; and/or
- (c) loss of business and/or goods; and/or
- (d) loss of goodwill; and/or

- (e) loss of use; and/or
- (f) loss and/or corruption of data and/or other information, and/or
- (g) downtime.

For the avoidance of doubt, neither the types of loss and/or damage specified in clauses (a) to (g), inclusive of this section 5.2.3 nor any similar types of loss and/or damage shall constitute direct loss for the purposes of this Agreement.

5.3 Nothing in this Agreement shall exclude or restrict the liability of either party for fraudulent misrepresentation and/or for death or personal injury arising as a result of the negligence of either party, its officers, employees, agents and/or sub-contractors.

5.4 If you do not agree to the terms of this section 5, You may not use the WAP Forum Marks.

6. TERMINATION

This Agreement may be terminated by either party for breach of any provision of this Agreement and such termination shall be effective thirty (30) days after written notice of termination to the other party if the breach or default has not been cured prior to the end of such thirty (30) days. Any failure of Your Certified Product to be in continued compliance with the WAP Certification Tests and any failure by You to strictly abide by the WAP Certification Policy and this Agreement shall be deemed to be a breach of this Agreement.

7. OBLIGATIONS UPON EXPIRATION OR TERMINATION

(a) Upon termination of this Agreement, the rights granted to You hereunder shall terminate completely. You must cease all use of the W@P Certified Logo on any Certified Product and all use of the WAP Forum Marks in collateral material associated with Certified Product both within sixty (60) days of the termination of this Agreement.

(b) Nothing in this Paragraph 7 shall limit the WAP Forum's right to pursue other legal remedies, including immediate court or judicial relief. Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

8. RESERVATION OF RIGHTS

The WAP Forum reserves the right, at any time and without cause, to modify or suspend these terms and withdraw any permission granted under this Agreement, provided that the WAP Forum gives You sixty (60) days' prior written notice with a statement of reasons for such action. The WAP Forum reserves the right to take action against any misuse or unfair, misleading, diluting, or infringing use of the WAP Forum Marks.

9. GENERAL

(a) You understand and agree that the WAP Forum may audit the use of the WAP Forum Marks to determine compliance with these terms and conditions of this Agreement. The costs of any such audit shall be borne by the WAP Forum. The WAP Forum shall provide You with thirty (30) days' prior written notice of its intention to perform any audit, which shall be conducted during normal business hours.

(b) This Agreement is not intended to and shall not create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner which expresses or implies any relationship other than that of licensor and licensee, nor bind the other party.

(c) The WAP Forum may assign this Agreement or any of its rights or obligations hereunder in any manner. You may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder without the WAP Forum's written consent, except to Your affiliated companies whereupon written consent is not required. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

(d) Without prejudice to any rights and remedies otherwise available to the WAP Forum, You acknowledge and agree that damages would not be an adequate remedy in the event of an unauthorized use, reproduction or display of the W@P Certified Logo or WAP Forum Marks, and, therefore, that the WAP Forum shall be entitled to relief by way of immediate injunctive or other equitable relief to restrain any such use, reproduction, distribution or disclosure, threatened or actual.

(e) All notices or other communications permitted or required under this Agreement, except as set forth in the last sentence of this section below, must be in writing and must be delivered by personal delivery, or facsimile or e-mail transmission or by commercial express courier service postage prepaid, and shall be deemed given upon personal delivery, or five (5) days after deposit in the mail, or upon acknowledgment of receipt of facsimile or e-mail transmission. Notices shall be sent to the address You have given to the WAP Forum or to such other address as either party may change by

notice as provided herein. Notice is hereby given regarding revisions related to the Trademark Usage Requirements, the W@P Certified Logo, the W@P Logo, the WAP Certification Tests, and the WAP Certification Policy by posting of such revisions on the WAP Forum Web site.

(f) Any waiver of any term or provision of this Agreement, or any delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver, nor create an expectation of non-enforcement, of that or any other term, provision or right.

(g) The headings used herein are for convenience only and shall not be considered in the interpretation and construction of this Agreement.

(h) The English language shall control this Agreement in all respects, and any version of this Agreement in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement. All communications and notices made or given pursuant to this Agreement, and all documentation and support to be provided, shall be in the English language.

(i)(1) The parties to this Agreement agree that they will make good faith efforts to settle any dispute, claim or controversy (a "Dispute") arising out of or related to this Agreement by discussion and negotiation between executive level officers and/or officials of each and to resolve such Dispute within thirty (30) days of written notice to a party requesting such discussions, provided that nothing shall prevent either party from availing itself of a judicial proceeding at any time earlier if that party believes in good faith that injunctive relief is necessary to prevent irreparable, material harm.

(i)(2) This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales, excluding its choice of law rules. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement shall be subject to the exclusive jurisdiction of the courts of England, and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts. The parties hereby expressly waive any right to a jury trial and agree that any proceeding hereunder shall be tried by a judge without a jury.

(j) If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled and which the court shall grant.

(k) The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and the remainder of this Agreement shall continue in full force and effect.

(l) The parties hereto acknowledge that they have read this Agreement and understand it, and they agree to be bound by all its terms and conditions. They further agree that this Agreement constitutes the full and complete understanding and agreement of the parties hereto and supersedes all prior or contemporaneous oral or written communications, understandings and agreements. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties thereto.

Agreed to by

Wireless Application Protocol Forum Ltd.
2570 West El Camino Real, Suite 304
Mountain View, California 94040-1313
U.S.A.
Facsimile Number: (650) 949-6765
E-mail: info@wapforum.org

and

You

By clicking this button, You explicitly agree to the terms set forth above in this License Agreement and You confirm that You are authorized by Your company to enter into this License Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales, excluding its choice of law rules. If you do not agree to all of the terms set forth above, You may not use the WAP Forum Marks.

Agreed to Button