

DISTRIBUTION AGREEMENT FOR NOKIA PC CONNECTIVITY SOLUTION (including NOKIA CONNECTIVITY CABLE DRIVER)

THIS DISTRIBUTION AGREEMENT FOR NOKIA PC CONNECTIVITY SOLUTION (“AGREEMENT”) is made between:

NOKIA CORPORATION, a public limited liability company incorporated in Finland, having its registered address at Keilalahdentie 4, FIN-02150 Espoo, Finland business identity code 0112038-9 including its Affiliates ("Nokia"),

AND

_____, ("Distributor"),

having its registered address at _____, business identity code _____, including its Affiliates

1. DEFINITIONS

In this Agreement, the following terms have the following meanings

“Affiliate” of a Party shall mean an entity

- (i) which is directly or indirectly controlling such Party;
- (ii) which is under the same direct or indirect ownership or control as such Party; or
- (iii) which is 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 more than fifty percent (50 %) 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.

“Confidential Information” means

(a) Technical and/or commercial information relating to the respective business of Nokia and its affiliates, their facilities products, techniques and processes, or

(b) any other information disclosed by Nokia or its affiliates to the Licensor disclosed under or in connection with this Agreement

excluding however the Licensed Technology as distributed in accordance with the Purpose.

“Licensed Technology” means, collectively,

(a) Any and all commercial quality versions of a Nokia PC Connectivity Solution (including Nokia Connectivity Cable Driver) software, delivered to Distributor by Nokia under this Agreement during the term of this Agreement, and

(b) any related documentation (if any).

“Purpose” means

(a) to reproduce the Licensed Technology for distribution as described in Appendix 1; and

(b) to distribute Licensed Technology to end-users as described in Appendix 1.

2. LICENSE AND USE

Subject to the terms and conditions of this Agreement Nokia hereby grants to Distributor, and Distributor hereby accepts, a non-transferable, non-sub-licensable, non-exclusive, worldwide, limited license to use, copy, and distribute the Licensed Technology to end-users in object code strictly within the Purpose.

No patent license to any patents of Nokia is granted under this Agreement except to the limited extent only that infringement or use of such claims of a patent cannot be avoided to the extent used in accordance with this Agreement.

There are no implied licenses granted under this Agreement.

3. RESTRICTIONS

Except as permitted explicitly hereunder, Distributor shall have no other right to copy, use, disclose, sell, market, commercialize, bundle, license, sub-license, re-license or otherwise distribute to any other party the Licensed Technology.

Distributor shall not reverse engineer, reverse compile, modify or disassemble the Licensed Technology.

Distributor shall not use or disclose the Licensed Technology for any purpose other than the Purpose. In particular, the Distributor shall not incorporate or integrate the Licensed Technology or any part thereof in any products or services other within the Purpose.

Distributor acknowledges that the distribution right hereunder is provided under the prerequisite that no charges apply to the licensing of the Licensed Technology to end-users. Nokia retains the right to cancel this Agreement with immediate effect at its sole discretion if this provision is breached.

Distributor undertakes to ensure that any end-user of the Licensed Technology may only access and use the Technology subject to executing the Nokia End-User License Agreement attached hereto as Appendix 2.

4. OWNERSHIP

The Licensed Technology and any Confidential Information of Nokia, and all rights therein (including without limitation any intellectual property rights relating thereto), are owned solely by Nokia. All Nokia's trademarks, service marks, trade names, logos or other words or

symbols are and will remain the exclusive property of Nokia and any use by Distributor of the trademarks and/or logos of Nokia is subject to a separate agreement between Nokia and Distributor.

5. TECHNICAL SUPPORT

Nokia has no obligation to furnish Distributor with any technical support whatsoever.

6. NO WARRANTY

THE LICENSED TECHNOLOGY IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EXPRESS OR IMPLIED AND NEITHER NOKIA, ITS LICENSORS OR AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE LICENSED TECHNOLOGY WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. THERE IS NO WARRANTY BY NOKIA OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED TECHNOLOGY WILL MEET THE REQUIREMENTS OF DISTRIBUTOR OR END USERS OR THAT THE OPERATION OF THE LICENSED TECHNOLOGY WILL BE UNINTERRUPTED OR ERROR-FREE. DISTRIBUTOR ASSUMES ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE LICENSED TECHNOLOGY TO ACHIEVE DISTRIBUTOR'S OR END USERS' INTENDED RESULTS.

7. LIMITATION OF LIABILITY

IN NO EVENT SHALL NOKIA, ITS EMPLOYEES OR SUPPLIERS OR AFFILIATES BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, PERSONAL INJURY, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED TECHNOLOGY, EVEN IF NOKIA OR ITS EMPLOYEES OR SUPPLIERS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES/STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, NOKIA, ITS EMPLOYEES OR LICENSORS OR AFFILIATES' LIABILITY SHALL BE LIMITED TO U.S.\$50.

8. INDEMNITY OF DISTRIBUTOR

DISTRIBUTOR INDEMNIFIES NOKIA FOR ANY CLAIMS RELATED TO THE USE, DISTRIBUTION OR OTHER EXPLOITATION OF THE LICENSED TECHNOLOGY.

9. CONFIDENTIALITY

It may be necessary and desirable that Nokia disclose Confidential Information to the Distributor.

Distributor shall keep the Confidential Information confidential and shall not disclose it to third parties without Nokia's prior written permission. Distributor may pass Confidential Information to its Affiliates and hereby warrants and guarantees that these Affiliates will abide by all terms and conditions of this Agreement.

Confidential Information received hereunder shall not be used for any purpose other than the Purpose without Nokia's prior written permission. Distributor shall restrict access to Confidential Information to only those of its employees to whom such access is necessary for carrying out the Purpose and advise such employees of the obligations assumed herein. Distributor shall not make any publicity on, press release of or reference to this Agreement, Nokia or the cooperation hereunder.

Neither Distributor, nor Distributor's employees or agents shall sell, transfer, publicly disclose, display or otherwise make available to third parties any Confidential Information except as required by the Purpose. Distributor agrees to secure and protect Confidential Information with the same degree of care that Distributor uses to secure and protect its own confidential and proprietary information of a similar nature, and to take all reasonably appropriate actions with its employees or agents who are permitted access thereto, to satisfy its obligations hereunder.

Upon its discovery of any unauthorized possession or use of the Licensed Technology arising out of Distributor's possession of the Licensed Technology, Distributor shall promptly notify Nokia of the same and shall cooperate with Nokia in every reasonable effort to regain possession or prevent further unauthorized use of the Licensed Technology.

Notwithstanding anything in this Section, neither party shall be obligated to maintain in confidence any information of the other party which: (i) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of Distributor; or (ii) was known to Distributor or its Affiliate prior to disclosure by Nokia as proven by the written records of Distributor or its Affiliate; or (iii) is disclosed to Distributor or its Affiliate by a third party who did not obtain such Confidential Information, directly or indirectly, from Nokia; or (iv) was independently developed (by personnel having no access to the Confidential Information) by Distributor or its Affiliate as proven by the written records of Distributor or its Affiliate.

10. CONTACT INFORMATION

The contact persons of the parties concerning any issues relating to this Agreement are:

Distributor:

Attention:

Address:

Phone:

Fax:

E-mail:

Nokia: Nokia Corporation
Attention: Tuija Salomaa
Address: Hatanpääkatu 1, 33900 Tampere, FINLAND
Phone: +358 7180 21289

Fax: +358 7180 77110
E-mail: Contact.PC-SW@nokia.com

11. TERMINATION

This Agreement shall be effective three (3) years from the date of signature by both parties or until terminated by either party under this section.

Either Nokia or Distributor may terminate this Agreement at any time by providing thirty (30) days prior notice to the other party.

Distributor's license rights automatically terminate immediately without notice, if Distributor fails to comply with any provision of this Agreement.

Within five (5) days after termination of this Agreement, Distributor shall destroy or return to Nokia, as instructed by Nokia, Licensed Technology and all copies of the Licensed Technology in its possession and all related materials and Confidential Information, and provide a letter certifying such destruction or return.

Sections 4 (Nokia ownership), 6 (no warranty), 7 (limitation of liability), 8 (indemnity of distributor), and 9 (confidentiality) shall survive the termination of this Agreement.

11. GENERAL

11.1 Entire Agreement

This Agreement is the entire agreement between the parties relating to the Licensed Technology and supersedes any prior representations, communications, undertakings, or discussions relating to the Licensed Technology. No terms in any purchase order or other forms shall apply, even if such purchase order or other forms are accepted by either party. This Agreement may only be modified by a writing signed by both parties.

11.2 Assignment

This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

11.3 Governing Law and Arbitration

This Agreement shall be construed and interpreted in accordance with the laws of Finland, excluding its rules for choice of law. Any disputes relating to or arising in connection with this Agreement shall be finally settled in arbitration. There shall be one arbitrator to be appointed by the Board of Arbitration of the Central Chamber of Commerce of Finland and the Arbitration Rules of the said Chamber of Commerce are to be followed in the arbitration. The award shall be final and binding and enforceable in any court of competent jurisdiction. The language to be used in proceedings shall be English.

The arbitration shall be held in Helsinki, Finland.

The parties undertake and agree that all arbitral proceedings conducted with reference to this Article shall be kept strictly confidential and all information disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings.

Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit the Parties' rights to seek interim injunctive relief or to enforce an arbitration award in any court of law.

11.4 Independent Contractors

Each party will be deemed to have the status of an independent contractor towards the other party, and nothing in this Agreement will be deemed to place the parties in the relationship of employer-employee, principal-agent, partners or joint venturers.

11.5 Waiver

The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that or any other provision of this Agreement.

11.6 Severability

If any provision contained in this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions and any partially enforceable provision will, nevertheless, be binding and enforceable, and the parties agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision.

11.7 Export Control

Distributor shall follow all export control laws and regulations relating to the Licensed Technology.

IN WITNESS WHEREOF, the parties hereto above caused this Agreement to be executed as of the date last signed hereunder.

NOKIA CORPORATION,

By:

Name: Jouni Rapakko

Title: Head of Product Management

Date:

By:

Name: Tuija Salomaa

Title: Product Coordinator

Date:

[DISTRIBUTOR] _____,

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

APPENDIX 1**PURPOSE**

Purpose means to reproduce the Licensed Technology for distribution as bundled and integrated with Distributor software for the purpose of enabling the interoperability between Nokia mobile terminal and personal computer.

Agreed method to obtain consent to Nokia EULA (Appendix 2) from the end-user:
Consent to Nokia EULA requested from the end-user during
Nokia PC Connectivity Solution installation.

APPENDIX 2

EULA

NOKIA CORPORATION END-USER SOFTWARE AGREEMENT

This Software Agreement ("Agreement") is between You (either an individual or an entity), the End User, and Nokia Corporation ("Nokia"). The Agreement authorizes You to use the Software specified in Clause 1 below, which may be stored on a CD-ROM, sent to You by electronic mail, or downloaded from Nokia's Web pages or Servers or from other sources under the terms and conditions set forth below. This is an agreement on end-user rights and not an agreement for sale. Nokia continues to own the copy of the Software and the physical media contained in the sales package and any other copy that You are authorized to make pursuant to this Agreement.

Read this Agreement carefully before installing, downloading, or using the Software. By clicking on the "I Accept" button while installing, downloading, and/or using the Software, You agree to the terms and conditions of this Agreement. If You do not agree to all of the terms and conditions of this Agreement, promptly click the "Decline" or "I Do Not Accept" button, cancel the installation or downloading, or destroy or return the Software and accompanying documentation to Nokia. YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

1. SOFTWARE.

As used in this Agreement, the term "Software" means, collectively: (i) the software product identified in the related documentation (ii) all the contents of the disk(s), CD-ROM(s), electronic mail and its file attachments, or other media with which this Agreement is provided, including the object code form of the software delivered via a CD-ROM, electronic mail, or Web page (iii) digital images, stock photographs, clip art, or other artistic works ("Stock Files") (iv) related explanatory written materials and any other possible documentation related thereto ("Documentation"); (v) fonts, and (vi) upgrades, modified versions, updates, additions, and copies of the Software (collectively "Updates"), if any, licensed to You by Nokia under this Agreement.

2. END USER RIGHTS AND USE.

Nokia grants to You non-exclusive, non-transferable end-user rights to install the Software on the local hard disk(s) or other permanent storage media of one computer and use the Software on a single computer or terminal at a time.

No patent license to any patents of Nokia and/ or its Affiliates is granted under this Agreement except to the limited extent only that infringement or use of such claims of a patent cannot be avoided to the extent used by You in accordance with this Agreement.

3. LIMITATIONS ON END USER RIGHTS.

You may not copy, distribute, or make derivative works of the Software except as follows:

- (a) You may not use, modify, translate, reproduce, or transfer the right to use the Software or copy the Software except as expressly provided in this Agreement.
- (b) You may not resell, sublicense, rent, lease, or lend the Software.
- (c) You may not reverse engineer, reverse compile, disassemble, or otherwise attempt to discover the source code of the Software (except to the extent that this restriction is expressly prohibited by law) or create derivative works based on the Software.

(d) Unless stated otherwise in the Documentation, You shall not display, modify, reproduce, or distribute any of the Stock Files included with the Software. In the event that the Documentation allows You to display the Stock Files, You shall not distribute the Stock Files on a stand-alone basis, i.e., in circumstances in which the Stock Files constitute the primary value of the product being distributed. You should review the "Readme" files associated with the Stock Files that You use to ascertain what rights You have with respect to such materials. Stock Files may not be used in the production of libelous, defamatory, fraudulent, infringing, lewd, obscene, or pornographic material or in any otherwise illegal manner. You may not register or claim any rights in the Stock Files or derivative works thereof.

(e) You agree that You shall only use the Software in a manner that complies with all applicable laws in the jurisdiction in which You use the Software, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

4. INTELLECTUAL PROPERTY RIGHTS.

The Software and all rights, without limitation including title and intellectual property rights therein, are owned by Nokia and/or its licensors and affiliates and are protected by international treaty provisions and all other applicable national laws of the country in which it is being used. The structure, organization, and code of the Software are the valuable trade secrets and confidential information of Nokia and/or its licensors and affiliates. You must not copy the Software, except as set forth in clause 3 (Limitations On End-User Rights). Any copies which You are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on the Software.

5. MULTIPLE ENVIRONMENT SOFTWARE / MULTIPLE LANGUAGE SOFTWARE / DUAL MEDIA SOFTWARE / MULTIPLE COPIES / UPDATES.

If the Software supports multiple platforms or languages, if You receive the Software on multiple media, or if You otherwise receive multiple copies of the Software, the number of computers on which all versions of the Software are installed shall be one computer. You may not rent, lease, sublicense, lend, or transfer versions or copies of the Software You do not use. If the Software is an Update to a previous version of the Software, You must possess valid end-user rights to such a previous version in order to use the Update, and You may use the previous version for ninety (90) days after You receive the Update in order to assist You in the transition to the Update. After such time You no longer have a right to use the previous version, except for the sole purpose of enabling You to install the Update.

6. COMMENCEMENT & TERMINATION.

This Agreement is effective from the first date You install the Software. You may terminate this Agreement at any time by permanently deleting, destroying, and returning, at Your own costs, the Software, all backup copies, and all related materials provided by Nokia. Your end-user rights automatically and immediately terminate without notice from Nokia if You fail to comply with any provision of this Agreement. In such an event, You must immediately delete, destroy, or return at Your own cost, the Software, all backup copies, and all related material to Nokia.

7. AS IS/WARRANTY DISCLAIMER.

YOU ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER NOKIA, ITS LICENSORS OR AFFILIATES, NOR THE COPYRIGHT HOLDERS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SOFTWARE WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THERE IS NO WARRANTY BY NOKIA OR BY ANY OTHER PARTY THAT THE

FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM IT.

8. NO OTHER OBLIGATIONS.

This Agreement creates no obligations on the part of Nokia other than as specifically set forth herein.

9. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NOKIA, ITS EMPLOYEES OR LICENSORS OR AFFILIATES BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, PERSONAL INJURY, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF NOKIA OR ITS LICENSORS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES/STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, NOKIA, ITS EMPLOYEES OR LICENSORS OR AFFILIATES' LIABILITY SHALL BE LIMITED TO FIFTY EUROS (€50). Nothing contained in this Agreement shall prejudice the statutory rights of any party dealing as a consumer. Nothing contained in this Agreement limits Nokia's liability to You in the event of death or personal injury resulting from Nokia's negligence. Nokia is acting on behalf of its employees and licensors or affiliates for the purpose of disclaiming, excluding, and/or restricting obligations, warranties, and liability as provided in this clause 9, but in no other respects and for no other purpose.

10. INDEMNITY.

You shall defend, indemnify and hold Nokia and its licensors harmless against any claims, damages, liabilities, losses, costs, suits or expenditures incurred by Nokia, its Affiliates, or licensors as a result of any infringement or alleged infringement of intellectual property rights of a third party or otherwise caused by Your use or exploitation of the Software.

11. TECHNICAL SUPPORT.

Nokia has no obligation to furnish You with technical support unless separately agreed in writing between You and Nokia.

12. EXPORT CONTROL.

The Software, including technical data, includes cryptographic software subject to export controls under the U.S. Export Administration Regulations ("EAR") and may be subject to import or export controls in other countries. The EAR prohibits the use of the Software and technical data by a Government End User, as defined hereafter, without a license from the U.S. government. A Government End User is defined in Part 772 of the EAR as "any foreign central, regional, or local government department, agency, or other entity performing governmental functions; including governmental research institutions, governmental corporations, or their separate business units (as defined in part 772 of the EAR) which are engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List, and international governmental organizations. This term does not include: utilities (telecommunications companies and Internet service providers; banks and financial institutions; transportation; broadcast or entertainment; educational organizations; civil health and medical organizations; retail or wholesale firms; and manufacturing or industrial entities not engaged in the manufacture or distribution of

items or services controlled on the Wassenaar Munitions List.)" You agree to strictly comply with all applicable import and export regulations and acknowledge that You have the responsibility to obtain licenses to export, re-export, transfer, or import the Software. You further represent that You are not a Government End User as defined above, and You will not transfer the Software to any Government End User without a license.

13. NOTICES.

All notices and return of the Software and Documentation should be delivered to:

NOKIA CORPORATION
P.O. Box 100,
FIN-00045 NOKIA GROUP
FINLAND

14. APPLICABLE LAW & GENERAL PROVISIONS.

This Agreement is governed by the laws of Finland. All disputes arising from or relating to this Agreement shall be settled by a single arbitrator appointed by the Central Chamber of Commerce of Finland. The arbitration procedure shall take place in Helsinki, Finland in the English language. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. This Agreement may only be modified by a writing signed by an authorized officer of Nokia, although Nokia may vary the terms of this Agreement.

This is the entire agreement between Nokia and You relating to the Software, and it supersedes any prior representations, discussions, undertakings, end-user agreements, communications, or advertising relating to the Software.