



SYNCML INITIATIVE INTELLECTUAL PROPERTY AGREEMENT

This Intellectual Property Agreement ("AGREEMENT") is entered into as of the _____ day of _____ 2001 ("EFFECTIVE DATE") by and between SyncML Initiative, Ltd. (the "Company"), on behalf of itself and each of the existing MEMBERS of the SyncML Initiative ("SyncML" or the "SyncML Initiative"), and the MEMBER identified in the signature page below (the "Licensing Member").

WHEREAS, the Company has been incorporated in England, United Kingdom, as a company limited by guarantee in order to create and promote the adoption and use of one or more universal data synchronization and data access specifications to be used for synchronizing or exchanging data between multiple different networked devices, including without limitation, network devices that are intermittently connected to the network and network devices that are continuously connected to the network, and to undertake these activities through the SyncML Initiative;

WHEREAS, the Company has established, and manages, the SyncML Initiative;

WHEREAS, the LICENSING MEMBER would like to participate in the SyncML Initiative in accordance with the applicable written application for membership ("Membership Application"), the RULES and this AGREEMENT;

WHEREAS, execution of this AGREEMENT is a condition precedent to the LICENSING MEMBER'S membership in the SyncML Initiative.

NOW THEREFORE, in consideration of its membership in the SyncML Initiative, and the benefits, rights, privileges and powers deriving therefrom, and in consideration of all other MEMBERS entering into AGREEMENTS in identical form and all future parties who wish to become MEMBERS entering into such an AGREEMENT as a condition precedent to becoming a MEMBER (such that all MEMBERS shall be regarded as parties to a single instance of this AGREEMENT), the LICENSING MEMBER agrees to the following:

Agreement

1 Definitions

"BOARD OF DIRECTORS" shall mean the Board of Directors of the Company.

"EXPERT GROUP" shall mean a technical group responsible for carrying out the work of defining data synchronization protocols.

"FULLY COMPLIANT" shall mean: (a) supporting or implementing all of the portions of a SPECIFICATION that are defined by that SPECIFICATION to be "Required", or (b) implementing all portions of a SPECIFICATION required for a specific type of product or component thereof.

"INVENTION" shall mean any idea, concept, know-how, or technique first conceived or reduced to practice under the auspices of the EXPERT GROUP in creation of a SPECIFICATION and for which a patent application is filed by one or more MEMBERS.

"MATERIALS" shall mean any literary work or other work of authorship, created or prepared under the auspices of the EXPERT GROUP while in creation of a SPECIFICATION.

"NECESSARY CLAIMS" shall mean those claims of all patents and patent applications, under which a MEMBER has the right, at any time during the term of their membership in the SyncML Initiative, to grant licenses within the bounds of the SCOPE (defined below), all to the extent and only to the extent that the MEMBER has the right to grant such licenses as of the date of any license to be entered into with the other MEMBER(S) as contemplated in Section 4.3 of this AGREEMENT, and which are necessarily infringed by an implementation of a version of a SPECIFICATION approved by the BOARD OF DIRECTORS pursuant to Section 8.2 or 8.3 below, where such infringement could not have been avoided by another technically feasible noninfringing implementation of such SPECIFICATION. Notwithstanding the foregoing sentence, NECESSARY CLAIMS do not include any claims (i) other than those set forth above even if contained in the same patent as NECESSARY CLAIMS; or (ii) that read solely on any implementations of any portion of the SPECIFICATION that are not within the bounds of the SCOPE.

"MEMBER" shall mean any entity, including its SUBSIDIARIES, that is a Member of the SyncML Initiative (i.e., a Sponsor Member, a Promoter Member or a Supporter Member), as those terms are defined in the RULES. "MEMBERS" shall mean all Members of the SyncML Initiative and their respective SUBSIDIARIES.

"PREEXISTING MATERIALS" shall mean literary works or other works of authorship which are created or prepared outside the auspices of the EXPERT GROUP.

"PROMOTER" shall mean any entity, including its SUBSIDIARIES that is a Promoter Member of the SyncML Initiative, as that term is defined in the RULES.

"RULES" shall mean the rules of the SyncML Initiative.

"SCOPE" shall mean the protocols and data formats needed for SyncML interoperability. For clarification, the SCOPE shall not include: (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a SPECIFICATION, but are not themselves expressly set forth in that SPECIFICATION (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, sync engine technology, etc.); (ii) the implementation of other specifications, for example, even if referred to in a SPECIFICATION; (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be FULLY COMPLIANT with a SPECIFICATION; or (iv) application programming interfaces, content formats, applications, or user interfaces including the technology used to generate, display or interact with a user.

"SPECIFICATION" shall mean a document containing a set of technical criteria which describe the basic interfaces and attributes for synchronizing or exchanging data between multiple different networked devices, which is finally adopted by the BOARD OF DIRECTORS pursuant to Section 8.2 below, and any updates, revisions or new versions thereto finally adopted by the BOARD OF DIRECTORS pursuant to Section 8.3 below. Although referred to in the singular, the BOARD OF DIRECTORS may create and adopt more than one SPECIFICATION, and the term SPECIFICATION as used herein refers to each SPECIFICATION so created and adopted in accordance with this AGREEMENT.

"SPONSOR" shall mean any entity, including its SUBSIDIARIES, that is a Sponsor Member of the SyncML Initiative, as that term is defined in the RULES.

"SUBSIDIARY" of a party hereto or of a third party shall mean a corporation, company or other entity:

- (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a party hereto or such third party, but such corporation, company or other entity shall be deemed to be a SUBSIDIARY only so long as such ownership or control exists; or
- (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated Initiative, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is now or hereafter, owned or controlled, directly or indirectly, by a party hereto or such third party, but such corporation, company or other entity shall be deemed to be a SUBSIDIARY only so long as such ownership or control exists.

“SUPPORTER” shall mean any entity, including its SUBSIDIARIES, that is a Supporter Member of the SyncML Initiative, as that term is defined in the RULES.

2 Developed Intellectual Property

- 2.1 If MATERIALS and/or INVENTIONS are created by all or some of the MEMBERS hereunder (hereinafter referred to as "DEVELOPED MATERIALS" and "DEVELOPED INVENTIONS", respectively), then such DEVELOPED MATERIALS and/or DEVELOPED INVENTIONS will be subject to licensing conditions by those MEMBERS responsible for such creation, as specified in this AGREEMENT.
- 2.2 Any DEVELOPED MATERIALS created by a MEMBER alone, or in combination with other MEMBERS ("CREATING MEMBERS") (such DEVELOPED MATERIALS being referred to hereafter as "LICENSED MATERIALS") shall be owned by the CREATING MEMBERS without accounting to each other, or the other MEMBERS, each of the CREATING MEMBERS having an undivided and equal ownership in the LICENSED MATERIALS. In addition, a MEMBER may also include PREEXISTING MATERIALS in LICENSED MATERIALS, provided that such MEMBER has sufficient rights and licenses to enable it to grant the rights and licenses set forth below.
- 2.3 Any DEVELOPED INVENTIONS created by a MEMBER alone, or in combination with other MEMBERS ("INVENTING MEMBERS") (such DEVELOPED INVENTIONS being referred to hereafter as "LICENSED INVENTIONS") shall be owned by the INVENTING MEMBERS, with each of the INVENTING MEMBERS having an undivided and equal ownership in the LICENSED INVENTIONS and being free to grant licenses under such LICENSED INVENTIONS and patents issuing thereon without accounting to each other or the other MEMBERS consistent with such undivided interest.
- 2.4 The CREATING MEMBERS and the INVENTING MEMBERS understand and agree that neither the EXPERT GROUP nor the BOARD OF DIRECTORS has any obligation to include the LICENSED MATERIALS or LICENSED INVENTIONS in any SPECIFICATIONS.

3 License Grants

- 3.1 If and to the extent the SPECIFICATION includes any LICENSED MATERIALS or is covered by a patent filed as a result of the creation of LICENSED INVENTIONS, the MEMBERS, other than the CREATING MEMBERS who created those LICENSED MATERIALS or INVENTING MEMBERS who created those LICENSED INVENTIONS, as the case may be, are granted licenses as follows:
 - (a) The CREATING MEMBERS hereby grant all other MEMBERS an irrevocable, perpetual, non-exclusive, worldwide, paid-up copyright license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the LICENSED MATERIALS included in the SPECIFICATION and derivative works thereof as set out in this AGREEMENT.
 - (b) The INVENTING MEMBERS hereby grant all other MEMBERS an irrevocable, perpetual, non-exclusive, worldwide, paid-up right and license under any patents filed as a result of the creation of LICENSED INVENTIONS that are necessarily infringed by an implementation of a SPECIFICATION, subject to any third party intellectual property rights, to make, have made, import, use, lease, sell, offer for sale or otherwise transfer any apparatus and article of manufacture and to practice any method, covered by any such patents solely to implement a SPECIFICATION as set out in this AGREEMENT.
- 3.2 Except as explicitly set forth in this AGREEMENT, a MEMBER does not grant any other MEMBER or third party any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such MEMBER.
- 3.3 Subject to the intellectual property rights of the other MEMBERS and any third parties (including NECESSARY CLAIMS identified under Section 4.1 below), each MEMBER is authorized to create and have created, and to reproduce and license, lease, sell or otherwise distribute (directly and indirectly) implementations based on a SPECIFICATION.

- 3.4 In accordance with the Trademark License Agreement attached hereto, each MEMBER shall have the right to use certain trademarks of the COMPANY.

4 Disclosure of Patents

- 4.1 During the REVIEW PERIOD, as defined in Section 8.2 below, or within forty five (45) days after the EFFECTIVE DATE if a SPECIFICATION has been finally adopted by the BOARD OF DIRECTORS prior to the EFFECTIVE DATE, the LICENSING MEMBER shall disclose to the BOARD OF DIRECTORS, in writing, the existence of any NECESSARY CLAIMS of any of its patents or patent applications that are personally known to the individuals acting on behalf of the LICENSING MEMBER with respect to the SPECIFICATION and that have been determined, by the LICENSING MEMBER, to cover the SPECIFICATION. It is understood and agreed that such individuals do not represent that they personally know of all potentially pertinent claims of patents and patent applications owned or claimed by the LICENSING MEMBER or any third parties.
- 4.2 The obligation set forth in Section 4.1 above does not, however, imply any obligations on MEMBERS (collectively or individually) to perform or conduct patent searches. Further, nothing in this AGREEMENT nor the act of a MEMBER submitting, supporting, or approving a proposal for a SPECIFICATION shall be construed or otherwise interpreted as any kind of express or implied representation that such MEMBER does or does not hold any patents or patent applications which contain claims that cover such SPECIFICATION.
- 4.3 Upon adoption by the BOARD OF DIRECTORS of a SPECIFICATION, as set out in Section 8.2 or 8.3 below without timely withdrawal under Section 9.1 below, each MEMBER that has NECESSARY CLAIMS hereby covenants to grant to each of the other MEMBERS, under reasonable and nondiscriminatory terms and conditions (including a reasonable royalty rate), a nonexclusive, nontransferable, license under its NECESSARY CLAIMS, to implement that SPECIFICATION in a FULLY COMPLIANT manner, and to sell, promote or otherwise distribute the resulting implementation, which license may be made subject to the condition that those who seek licenses under this Section 4.3 agree to reciprocate or upon such other terms as the relevant parties agree, provided however, that for such grants of third parties rights which a MEMBER has the right to make, the grant shall be subject at least to the terms and conditions that the MEMBER is subject to, which terms and conditions shall be considered reasonable and nondiscriminatory. The negotiation of licenses pursuant to this Section 4.3 shall be left to the parties concerned. Additionally, in no event shall a MEMBER be required to grant a license pursuant to this Section with respect to technology that is not required to implement a SPECIFICATION.

5 Marking Requirements

- 5.1 Any SPECIFICATIONS published by the BOARD OF DIRECTORS shall contain the following printed notice in a clear and conspicuous place: "Implementation of all or part of this SPECIFICATION may require licenses under third party intellectual property rights, including without limitation, patent rights (such a third party may or may not be a SyncML InitiativeMember). Neither SyncML Initiative Ltd. nor any of the SyncML Initiative Members are responsible or shall be held responsible in any manner for identifying or failing to identify any or all such third party intellectual property rights."
- 5.2 Any published SPECIFICATION for which any relevant third party patent has been identified by the BOARD OF DIRECTORS shall include the following notice in a clear and conspicuous place: "Implementation of this SPECIFICATION as stated in [insert reference to relevant provisions affected by patent claim] may involve the use of a patent/patent number XXX [delete as appropriate] concerning [insert subject matter] claimed by [insert claimant name if known] as granted by [insert country, if known]. SyncMLInitiative Ltd. and the SyncML Initiative Members take no position concerning the evidence, validity and scope of this claimed patent right. Implementation of certain elements of this SPECIFICATION may also require licenses under third party intellectual property rights other than those identified above, including without limitation, patent rights (such a third party may or may not be a Member). Neither SyncML Initiative Ltd nor any of the SyncML Initiative Members are responsible or shall be held responsible in any manner for identifying or failing to identify any or all such third party intellectual property rights."

6 Confidentiality

- 6.1 The MEMBERS expect that MATERIALS, prior to their publication by the BOARD OF DIRECTORS, shall be treated by the MEMBERS as CONFIDENTIAL INFORMATION in accordance with Section 6.2 below. In addition, should the need arise for a MEMBER to provide any of the other MEMBERS with information that it considers to be confidential to it, such disclosure shall be conducted in accordance with Section 6.2 below.

6.2 Should a MEMBER ("DISCLOSING MEMBER") need to disclose to one or more other MEMBERS ("RECEIVING MEMBER") confidential information required to carry out this AGREEMENT including (i) information relating to the DISCLOSING MEMBER's business, which the DISCLOSING MEMBER deems proprietary and confidential, and/or (ii) contents of the MATERIALS prior to their publication, (hereinafter referred to as "CONFIDENTIAL INFORMATION"), it shall do so in accordance with this Section 6.2. CONFIDENTIAL INFORMATION shall be marked "Confidential" or, if in non-tangible form, shall be identified as confidential at the time of disclosure and reduced to writing, marked "Confidential" and delivered to the RECEIVING MEMBER within thirty (30) days of the original date of disclosure. The RECEIVING MEMBER agrees that (i) it will use the same degree of care and discretion to avoid disclosure of CONFIDENTIAL INFORMATION to third parties that it takes to protect its own similar information that it does not wish to disclose; (ii) it will only disclose CONFIDENTIAL INFORMATION to its employees who have a 'need to know'; and (iii) it will use the CONFIDENTIAL INFORMATION only for furthering the SyncML Initiative. This obligation of confidentiality shall expire two (2) years from the date the CONFIDENTIAL INFORMATION is first disclosed to the RECEIVING MEMBER, and shall not apply to any information which the RECEIVING MEMBER can demonstrate: (a) is or becomes publicly available other than by the RECEIVING MEMBER's breach of a duty; (b) is rightfully received from a third party without any obligation of confidentiality; (c) is rightfully known by the RECEIVING MEMBER without any limitation on disclosure prior to its receipt; (d) is independently developed by employees of the RECEIVING MEMBER; (e) is released for disclosure by the DISCLOSING MEMBER with the DISCLOSING MEMBER's written consent, but only to the extent of and subject to such conditions as may be imposed in such written consent; or (f) is not identified as confidential at the time of disclosure. In addition, disclosure of CONFIDENTIAL INFORMATION will not be precluded if such disclosure is: (a) in response to a valid order of a court or other governmental body or any political subdivision thereof; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a protective order; or (b) necessary to establish rights under this AGREEMENT. It is understood that receipt of CONFIDENTIAL INFORMATION under this AGREEMENT will not create any obligation in any way limiting or restricting the assignment and/or reassignment of any MEMBER employees. Notwithstanding anything herein to the contrary, any party may use RESIDUALS for any purpose, including without limitation use in development, manufacture, promotion, sale and maintenance of its products and services; provided that this right to RESIDUALS does not represent a license under any patents, copyrights or mask works of the DISCLOSING MEMBER. The term "RESIDUALS" means any information retained in the unaided memories of the RECEIVING MEMBER's employees who have had access to the CONFIDENTIAL INFORMATION pursuant to the terms of this AGREEMENT. An employee's memory is unaided if the employee has not intentionally memorized the CONFIDENTIAL INFORMATION for the purpose of retaining and subsequently using or disclosing it.

7 Expert Group

- 7.1 Any SPONSOR or PROMOTER, or group of SPONSORS and PROMOTERS may propose to the BOARD OF DIRECTORS the establishment of one or more EXPERT GROUPS. Such proposal shall include the purposes of each EXPERT GROUP, particularly including the specific technical area to be the subject of the EXPERT GROUP, and the SPONSORS and PROMOTERS that initially desire to participate in such EXPERT GROUP. The BOARD OF DIRECTORS shall (i) approve the formation of each EXPERT GROUP by a two-thirds (2/3) majority vote, and (ii) appoint the chairperson of such EXPERT GROUP. The BOARD OF DIRECTORS shall provide timely notice of the formation and chairperson of each EXPERT GROUP to all SPONSORS and PROMOTERS. After the first meeting of an EXPERT GROUP, a schedule for meeting and activity milestone dates will be proposed and presented to the BOARD OF DIRECTORS.
- 7.2 Any SPONSOR or PROMOTER may join an EXPERT GROUP. The schedule of meetings of the EXPERT GROUP shall be published by the BOARD OF DIRECTORS. SPONSORS and PROMOTERS who have joined the EXPERT GROUP shall be entitled to vote in any vote taken by the EXPERT GROUP. A simple majority shall be required to pass for votes of the EXPERT GROUP, provided that a majority of the participants in such EXPERT GROUP must be present in order to hold a vote.
- 7.3 Any MEMBER, upon agreement of the BOARD OF DIRECTORS, may solicit suggestions for incorporation in the SPECIFICATION from a third party before the SPECIFICATION is finalized by having such third party execute and deliver an agreement, the form and content of which are agreed to by the BOARD OF DIRECTORS.

8 Approval of Specification

- 8.1 An EXPERT GROUP may decide to circulate interim drafts of MATERIALS to the MEMBERS for review and comment. In addition, an EXPERT GROUP may request that an interim draft of any MATERIALS be published. This request, along with the associated MATERIALS, shall be transferred to the BOARD OF DIRECTORS and upon an affirmative majority vote by the BOARD OF DIRECTORS, such MATERIALS shall be published.
- 8.2 The end result of an EXPERT GROUP shall be MATERIALS (in the form of final drafts or proposals) on the subject matter or undertaking assigned to such EXPERT GROUP, which drafts or proposals shall be formally submitted to the BOARD OF DIRECTORS. When the EXPERT GROUP reports to the BOARD OF DIRECTORS that a proposed final SPECIFICATION is complete, or at any other time upon majority vote of the BOARD OF DIRECTORS, the BOARD OF DIRECTORS will take steps to accept or reject the SPECIFICATION as set forth herein. To adopt the SPECIFICATION, written notice (which shall include a copy of the proposed final SPECIFICATION) shall be sent to all members of the BOARD OF DIRECTORS advising of a meeting to be held for the purposes of adopting the SPECIFICATION. Such meeting shall take place no sooner than forty-five (45) days after submission to the BOARD OF DIRECTORS of the proposed final SPECIFICATION (the "REVIEW PERIOD"). At such meeting, the BOARD OF DIRECTORS shall vote on the proposed final SPECIFICATION. Adoption of the SPECIFICATION or any update to the SPECIFICATION requires approval of seventy-five percent (75%) of the BOARD OF DIRECTORS. Such SPECIFICATION shall be made available to all MEMBERS by the BOARD OF DIRECTORS upon adoption.
- 8.3 After any SPECIFICATIONS have been approved in accordance with Section 8.2 above, any updates or alterations thereto shall be treated as a proposal to develop a new SPECIFICATION and shall be subject to the same processes and procedures used for development as set forth above. The adoption of new SPECIFICATIONS shall not terminate any right or obligation of any MEMBER under this AGREEMENT, including any licenses or covenants granted or received by a MEMBER with respect to any earlier adopted SPECIFICATIONS.
- 8.4 The MEMBERS intend to reasonably cooperate, when appropriate, to promote interoperability among the implementations of the SPECIFICATION and to develop mutually supported means and procedures for timely interoperability testing of such implementations.

9 Withdrawal from Membership

- 9.1 In accordance with Section 2.5 of the RULES, a MEMBER may resign as a Member at any time. At any time prior to, or during a REVIEW PERIOD, a MEMBER may give written notice of its intent to resign from its membership and terminate this AGREEMENT, thereby avoiding the obligations under Section 4.3 with respect to any SPECIFICATIONS that have not yet been adopted as final by the BOARD OF DIRECTORS in accordance with Section 8.2 or 8.3 above. Within two (2) weeks following adoption of a SPECIFICATION, any MEMBER that voted against such SPECIFICATION shall be permitted to resign from its membership and terminate this AGREEMENT by giving written notice of such intention, thereby avoiding the obligations under Section 4.3 with respect to such SPECIFICATION. After such two (2) week period following adoption of a SPECIFICATION, any MEMBER that voted against such SPECIFICATION shall be permitted to resign from its membership and terminate this AGREEMENT by giving written notice of such intention, but shall not avoid the obligations under Section 4.3 with respect to such SPECIFICATION. In accordance with the terms of the RULES, upon its withdrawal, any dues, assessments, fees or penalties owed by a withdrawing MEMBER prior to such MEMBER's withdrawal shall become immediately due and payable.
- 9.2 Any licenses or rights previously granted or received by a withdrawing MEMBER and any obligations that attached prior to withdrawal shall survive and continue beyond termination of this AGREEMENT. No licenses shall be deemed granted or received by such withdrawing MEMBER as to any new SPECIFICATIONS, adopted after the date of such withdrawal. With respect to the withdrawing MEMBER, Sections 1 (Definitions), 2 (Developed Intellectual Property), 3 (License Grants), 6 (Confidentiality), 9 (Withdrawal from Membership) and 10 (General) of this AGREEMENT shall continue in full force and effect. In addition, any licenses or rights previously granted or received by a SUBSIDIARY and any obligations which attached prior to the date on which it ceased being a SUBSIDIARY shall survive and continue even though it is no longer an SUBSIDIARY. No licenses shall be deemed granted or received by such former SUBSIDIARY as to any new SPECIFICATIONS adopted after the date that it is no longer a SUBSIDIARY.

10 General

- 10.1 All LICENSED MATERIALS and LICENSED INVENTIONS are provided "AS IS", and neither the Company nor any MEMBER makes any warranty of any kind, express or implied, including any implied warranties of merchantability, non-infringement of third party intellectual property rights, and fitness for a particular purpose. Neither the Company nor any of the MEMBERS warrant or assume any liabilities in connection with the rights granted, nor the actions anticipated or taken under this AGREEMENT. IN NO EVENT SHALL THE COMPANY OR ANY MEMBER BE LIABLE TO ANY OF THE OTHER MEMBERS FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR FOR DIRECT, INDIRECT, SPECIAL OR EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 10.2 This AGREEMENT does not create a joint venture, partnership or other form of business initiative among the Company and the MEMBERS nor an obligation, except as expressly stated herein, to develop, make available, use, license, buy or sell any information, product, services or technology.
- 10.3 Neither the Company nor any of the MEMBERS shall assign or otherwise transfer its rights or obligations under this AGREEMENT without the approval of seventy-five percent (75%) of the Board of Directors. The Company and each MEMBER agrees to comply with all applicable laws, rules and regulations, including without limitation, those relating to the export or re-export of technical data when exporting or re-exporting any MATERIALS.
- 10.4 Except as otherwise explicitly provided for in this AGREEMENT, all costs and expenses incurred by any party in carrying out its obligations under this AGREEMENT shall be paid by the party that incurred the expense. Each party shall possess or obtain at its own expense all necessary licenses or permits.
- 10.5 If any provision of this AGREEMENT is invalid, illegal or unenforceable at law, the rest of the provisions remain in effect and the invalid, illegal or unenforceable provision shall be modified to the minimum extent necessary to make such provision valid, legal or enforceable, as the case may be. The headings in this AGREEMENT are for reference only. They will not affect the meaning or interpretation of this AGREEMENT.
- 10.6 No party will bring a legal action under this AGREEMENT more than two years after the cause of action arose. Each party waives its rights to a jury trial in any resulting litigation.
- 10.7 No party shall bear any responsibility or liability for any losses arising out of any delay or interruption of its performance of obligations under this AGREEMENT due to any act of God, act of governmental authority, or due to war, flood, civil commotion, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed.
- 10.8 No approval, consent or waiver will be enforceable unless signed by the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.
- 10.9 This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.10 This AGREEMENT shall come into effect as of the EFFECTIVE DATE provided that the LICENSING MEMBER'S Membership Application is accepted by the BOARD OF DIRECTORS and the LICENSING MEMBER has paid all dues applicable to its class of membership, each as provided in the RULES. The terms of this AGREEMENT, however, shall be retroactive to apply to any and all SPECIFICATIONS adopted prior to the EFFECTIVE DATE for each MEMBER. In particular, the covenant to grant a license under Section 4.3 shall include implementations of SPECIFICATIONS adopted prior to the date on which the relevant MEMBER became a MEMBER, as if the relevant MEMBER had been a MEMBER prior to the adoption of the earlier adopted SPECIFICATIONS. This AGREEMENT may only be terminated by the written consent of all SPONSOR MEMBERS, except that this AGREEMENT is automatically terminated as to a particular MEMBER if that MEMBER ceases to be a MEMBER. In particular, this AGREEMENT shall not terminate upon the winding up of the Company or upon any other change in the Company or SyncML Initiative, except by the written consent of all SPONSOR MEMBERS. Upon termination of this AGREEMENT, Sections 1 (Definitions), 2 (Developed Intellectual Property), 3 (License Grants), 6

(Confidentiality), 9 (Withdrawal from Membership) and 10 (General) of this AGREEMENT shall continue in full force and effect after termination with respect to all MEMBERS.

10.11 All notices hereunder shall be written and sent to all MEMBERS at such addresses as the MEMBERS may later specify by such written notice. Such notices shall be deemed served when personally delivered, or, if transmitted by facsimile or electronic transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report. Notice may also be sent by nationally recognized courier service, effective upon delivery.

10.12 The parties agree to attempt to settle any claim or controversy arising out of this AGREEMENT through consultation and negotiation in the spirit of mutual cooperation. If those attempts fail, then the dispute will be submitted for non-binding mediation conducted by a mutually acceptable mediator. The mediator will be chosen by the parties within twenty-one (21) days after written notice by either party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator and the parties will share equally the costs of the mediation. Any dispute which cannot be resolved between the parties through negotiation or mediation within forty-five (45) days of the date of the initial demand for mediation by one of the parties, may then be submitted to the courts within New York for resolution. The use of any mediation procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. Nothing in this Section 10.12 will prevent either party from resorting to judicial proceedings, if (i) good faith efforts to resolve the dispute have been unsuccessful, (ii) the claim or suit involves intellectual property rights, or (iii) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.

10.13 Except for the rights expressly provided by this AGREEMENT, no MEMBER grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

10.14 The intention of this AGREEMENT is to supersede all of the SyncML Specification Sponsor Agreements previously signed by the SyncML sponsors and all of the SyncML Supporter Agreements previously signed by the SyncML supporters. Accordingly, the LICENSING MEMBER agrees that this AGREEMENT shall supersede any and all prior agreements concerning its subject matter, including, but not limited to, any previous SyncML Specification Sponsor Agreement and any previous SyncML Supporter Agreement, if any, entered into by the LICENSING MEMBER. Further, this AGREEMENT constitutes the entire agreement between the Company and the MEMBERS concerning its subject matter. No addition to or modification of any provision of this AGREEMENT shall be binding upon the Company and the MEMBERS unless made by a written instrument signed by a duly authorized representative of each of the MEMBERS. Any action related to this AGREEMENT will be governed by New York law.

The parties agree any reproduction of this AGREEMENT made by reliable means (for example, photocopy or facsimile) is an original.

ACCEPTED AND AGREED TO FOR:

LICENSING MEMBER

SyncML Initiative Ltd.

By: _____

By: _____

Title: _____

Name: _____

Date: _____

Title: _____

(NAME)_____

Date: _____

(ADDRESS)_____

SyncML TRADEMARK LICENSE AGREEMENT

This SyncML Trademark License Agreement (the "License") is an attachment to the SyncML Initiative Intellectual Property Agreement (the "IP Agreement"). Capitalized terms used, but not defined, in this License shall have the same meanings as in the IP Agreement, unless specified otherwise. This License shall be effective as to you, the LICENSING MEMBER (or "Member" within this License), as of the date that your Membership Application is accepted by the BOARD OF DIRECTORS and you have paid all dues applicable to your class of membership, each as provided in the RULES.

Effective upon such date, the COMPANY, having ownership of the SyncML Trademarks (as defined below) hereby grants you the following rights related to such SyncML Trademarks in consideration for your acceptance of the terms and conditions of membership in the SyncML Initiative, including, but not limited to, obligations defined by the RULES, the Membership Application and the IP Agreement.

1. DEFINITIONS.

- 1.1. "Compliant Portions" shall mean only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with the SyncML SPECIFICATION and (ii) are within the bounds of the Scope (as defined in the IP Agreement).
- 1.2. "Conformance Trademark(s)" shall mean the trademark(s) specified in Attachment 2 hereto.
- 1.3. "Conformance Trademark License" shall mean the trademark license granted in Section 2.2 and Attachment 2.
- 1.4. "Instructions" shall have a meaning as defined in Section 3.1.
- 1.5. "Internet" shall mean the computer network which permits the distribution of information (including without limitation, text, images and sound) to all or most countries of the world and which permits contemporaneous or near contemporaneous access to that information in those countries.
- 1.6. "Interoperability Trademark(s)" shall mean the trademarks specified in Attachment 3 hereto.
- 1.7. "Interoperability Trademark License" shall mean the trademark license granted in Section 2.3 and Attachment 3.
- 1.8. "Material(s)" shall mean all material used in the supply and promotion of the SyncML Product(s) (whether written or recorded in any other medium) and includes artwork, advertising materials (irrespective of the medium in which they are recorded), display materials, packaging materials, letterhead, business cards, invoices, price lists and other sales material, brochures, posters and internal and external signage.
- 1.9. "Member" shall mean you, the LICENSING MEMBER, provided that you have accepted the terms and conditions of the Membership Agreement and are either a Supporter Member, Promoter Member, or Sponsor Member as defined in the RULES.
- 1.10. "Membership Agreement" shall mean the membership agreement between Member and SyncML Initiative read and accepted by Member.
- 1.11. "Membership Trademark(s)" shall mean the trademark(s) specified in Attachment 1 hereto.

- 1.12. "Membership Trademark License" shall mean the trademark license granted in Section 2.1 and Attachment 1.
- 1.13. "SyncML Conformance Testing Process" shall mean the conformance testing process created by the SyncML Initiative.
- 1.14. "SyncML Conformant Products" shall mean products that include one or more Compliant Portions that pass the SyncML Conformance Testing Process (including any ongoing requirements, if any) and/or any variations of such Compliant Portions which may result from platform porting, language translation, bug fixes or other minor code changes or patches, provided that the overall functionality of such Compliant Portions has not been substantially modified thereby.
- 1.15. "SyncML Interoperability Committee" shall mean the committee of the BOARD OF DIRECTORS of SyncML Initiative which develops, administers and executes the SyncML Conformance Testing Process and the SyncML Interoperability Process.
- 1.16. "SyncML Interoperability Process" shall mean the interoperability testing process created by SyncML Initiative.
- 1.17. "SyncML Products" shall mean products that include one or more Compliant Portions that pass the SyncML Conformance Testing Process and the SyncML Interoperability Process (including any ongoing requirements, if any) and/or any variations of such Compliant Portions which may result from platform porting, language translation, bug fixes or other minor code changes or patches, provided that the overall functionality of such Compliant Portions has not been substantially modified thereby.
- 1.18. "SyncML Trademark(s)" shall mean the trademark(s) specified in Attachments 1, 2 and 3 hereto, including Membership Trademark(s), Conformance Trademark(s) and Interoperability Trademark(s), which Attachments may be amended as provided herein.
- 1.19. "Third Parties" shall have the meaning as defined in Section 2.4.

2. LICENSE GRANT.

- 2.1. Membership Trademark License. As a member of the SyncML Initiative, subject to the continuing satisfaction of the terms and conditions of the Qualifying Conditions section and the Licensed Trademark Usage section of Attachment 1, as well as the terms and conditions of this License and the Instructions, SyncML Initiative hereby grants Member a world-wide, royalty-free, non-exclusive, non-transferable right to use the Membership Trademark(s) (with a right to sublicense the same), the terms and conditions of this Membership Trademark License being subject to amendment from time to time by the SyncML Initiative by amendment to the Attachment 1 or the Instructions. Any such amendment to Attachment 1 or the Instructions shall require approval of the BOARD OF DIRECTORS in accordance with the Rules.
- 2.2. Conformance Trademark License. As a condition precedent to Member being granted a Conformance Trademark License, Member must first satisfy the terms and conditions for a Membership Trademark License as provided in Section 2.1. For SyncML Conformant Products, subject to the continuing satisfaction of the terms and conditions of the Qualifying Conditions section and the Licensed Trademark Usage section of Attachment 2, as well as the terms and conditions of this License and the Instructions, SyncML Initiative hereby grants Member a world-wide, royalty-free, non-exclusive, non-transferable, right to use the Conformance Trademark(s) (with a right to sublicense the same), the terms and conditions of this Conformance Trademark License being subject to amendment from time to time by the SyncML Initiative by amendment to the Attachment 2 or the Instructions. Any

amendment to Attachment 2, the Instructions or the SyncML Conformance Testing Process and SyncML Interoperability Process referenced therein, shall require approval of the BOARD OF DIRECTORS in accordance with the Rules; provided, however, that if such amendment implements a process that is substantially more restrictive of the Member's ability to use the Conformance Trademark(s) than the process that exists on the effective date of this License, such amendment shall require approval of seventy-five percent (75%) of the full BOARD OF DIRECTORS.

- 2.3. Interoperability Trademark License. As a condition precedent to Member being granted an Interoperability Trademark License, Member must first satisfy the terms and conditions for a Membership Trademark License as referenced in Section 2.1. For SyncML Products, subject to the continuing satisfaction of the terms and conditions of the Qualifying Conditions section and the Licensed Trademark Usage section of Attachment 3, as well as the terms and conditions of this License and the Instructions, SyncML Initiative hereby grants Member a world-wide, royalty-free, non-exclusive, non-transferable, right to use the Interoperability Trademark(s) (with a right to sublicense the same), the terms and conditions of this Interoperability Trademark License being subject to amendment from time to time by the SyncML Initiative by amendment to the Attachment 3 or the Instructions. Any amendment to Attachment 3, the Instructions or the SyncML Conformance Testing Process and SyncML Interoperability Process referenced therein, shall require approval of the BOARD OF DIRECTORS in accordance with the Rules; provided, however, that if such amendment implements a process that is substantially more restrictive of the Member's ability to use the Interoperability Trademark(s) than the process that exists on the effective date of this License, such amendment shall require approval of seventy-five percent (75%) of the full BOARD OF DIRECTORS.
- 2.4. Rights granted under Sections 2.1, 2.2 and 2.3 include the right to extend the respective trademark license to allow third party or joint venture partners ("Third Parties") to perform work on behalf of Member as long as in either case the parties are operating under Member's control and supervision.
- 2.5. Member acknowledges that SyncML Initiative has any and all rights to the SyncML Trademark(s) and that except for the license rights expressly set forth in this License, Member shall have no interest or right to SyncML Trademark(s). Except as provided in Sections 2.1, 2.2 and 2.3, in no event shall anything in this License be construed as granting, expressly or by implication, estoppel or otherwise, a license to any of SyncML Initiative's or any of its Members' technology or intellectual property rights.
- 2.6. Member ensures that any SUBSIDIARIES sublicensees and Third Parties agree to be bound by the relevant terms of this License.
- 2.7. The obligations and restrictions placed on Member and/or SyncML Initiative hereunder shall remain in force and effect only so long as SyncML Initiative maintains valid and subsisting rights in the SyncML Trademark(s).

3. IDENTIFICATION AND USE OF SYNCML TRADEMARK(S).

- 3.1. Subject to Section 3.3, Member shall recognize the substantial goodwill in the SyncML Trademark(s) and shall comply with the SyncML Initiative's instructions ("Instructions") attached hereto as Attachment 4, as amended from time to time, regarding the use, appearance and placement of the SyncML Trademark(s).
- 3.2. The Member may use the SyncML Trademark(s) as permitted in the Membership Agreement, this License and/or in the Instructions. Member shall not use the SyncML Trademark(s) in a fashion or manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the SyncML Trademark(s). In particular, therefore, and without restricting the limitation of the prior

sentence, the SyncML Trademark(s) shall not be used by a Member in connection with unlawful, obscene, pornographic, excessively violent, or excessively hazardous activities.

- 3.3. Notwithstanding any provision of this License, Member is not obligated to use any of the SyncML Trademark(s) on any product, advertising, or in any other manner. Member is not and shall not be obligated to refer to SyncML Initiative or publicize Member's membership therein in connection with use of the SyncML Trademark(s).
- 3.4. The Member shall not use, adopt or register any trade name, corporate name, service mark, certification mark, or trademark likely to cause confusion with the SyncML Trademark(s) in accordance with applicable law.
- 3.5. The Member may not use or adopt any trademarks other than SyncML Trademark(s) to refer to SyncML SPECIFICATION(s), except with the unanimous approval of the BOARD OF DIRECTORS.

4. INTERNET USAGE.

The Member may use, register or attempt to register, any domain name, user name or Uniform Resource Locator (URL) incorporating the SyncML Trademark(s) or any words or combinations of letters substantially similar to the SyncML Trademark(s) only as provided in the Instructions.

5. QUALITY AND INSPECTION OF SYNCML TRADEMARK(S).

- 5.1. In order to be licensed hereunder, the Member shall ensure that its SyncML Products identified by the SyncML Trademark(s) shall comply with the SyncML Conformance Testing Process and the SyncML Interoperability Process, as required. For the purpose of clarification, the Member acknowledges and understands that compliance with the SyncML Conformance Testing Process or the SyncML Interoperability Process does not constitute a waiver of Member's other obligations in the Membership Agreement or this License.
- 5.2. The Member shall ensure that SyncML Products identified by the SyncML Trademark(s) at all times maintain a level of quality that meets or exceeds industry standards.

6. ADVERTISING AND PROMOTION.

The Member shall ensure that all Material (a) in which the SyncML Trademark(s) is incorporated or (b) in or upon which any SyncML Trademark(s) appear or are reproduced, is consistent with the Membership Agreement, this License, the SyncML SPECIFICATION and Instructions whenever applicable.

7. PRESERVATION OF SYNCML TRADEMARK(S).

- 7.1. Member acknowledges that SyncML Initiative is the owner of any and all SyncML Trademark(s). Subject to Section 2.7, Member agrees not to challenge the ownership, or the validity of any registrations of the SyncML Trademark(s).
- 7.2. Member may not alter the SyncML Trademark(s) in any way without the prior written approval of SyncML Initiative.

8. COVENANTS OF SYNCML INITIATIVE.

- 8.1. SyncML Initiative shall use commercially reasonable efforts to register the Trademark License as

reasonably necessary in the countries in which the SyncML Trademark(s) are registered or applied for registration.

8.2. SyncML Initiative hereby represents and warrants that, to its knowledge, it has good and marketable title to the SyncML Trademarks and has authority to enter into this License.

8.3. SyncML Initiative shall provide notice to Member of any allegation or claim made by a third person that the use of a SyncML Trademark in accordance with this License infringes the rights of a third person.

9. RIGHTS OF SYNCML INITIATIVE.

9.1. Subject to the limitations specified in Section 2 hereof, SyncML Initiative may amend Attachments 1, 2 or 3 to add, delete or change any SyncML Trademark(s), and any terms and conditions for their usage, so long as such addition, deletion or change has been approved by SyncML Initiative in accordance with the provisions of its RULES. SyncML Initiative shall make and distribute any corresponding changes to the Instructions.

9.2. SyncML Initiative may require that Member cease using or limit its use of the SyncML Trademark(s) if:

- a. an allegation or claim is made by a third person that the use of a SyncML Trademark in accordance with this License infringes the rights of a third person and the SyncML Initiative decides to cease using such SyncML Trademark; or
- b. an allegation or claim is made by a third person that the use of a SyncML Trademark in accordance with this License is misleading or deceptive and the SyncML Initiative decides to cease using such SyncML Trademark; or
- c. the Member's use of a SyncML Trademark causes or is likely to cause irreparable damage of the goodwill, value or reputation associated with such SyncML Trademark or any business of the SyncML Initiative other than for reasons of fair competition; or
- d. SyncML Initiative has deleted or changed any SyncML Trademark(s) in accordance with Section 9.1 above; or
- e. it becomes known to SyncML Initiative that such Member is marketing a product with a Conformance Trademark or an Interoperability Trademark and the product is not in fact a SyncML Conformant Product or a SyncML Product, respectively,

provided that the SyncML Initiative notifies the Member of the fact as set forth above in (a), (b) (c), (d) or (e) which notice shall contain particulars of such allegation, claim or use and gives Member a reasonable amount of time to cure or discontinue such use. The notice shall also set forth whether use by the Member should cease or be limited; and, in the case of limited use, shall set forth such limitations.

10. PROCEEDINGS AND PROTECTION OF RIGHTS.

10.1. Member shall notify SyncML Initiative as soon as reasonably possible if it receives any written allegation that the Member's use of any SyncML Trademark infringes any third party rights.

10.2. SyncML Initiative shall notify the Member as soon as reasonably possible if it receives any written allegation that the Member's use of any SyncML Trademark infringes any third party rights.

10.3. The SyncML Initiative reserves the right to determine in its absolute discretion whether and what

action will be taken to protect the SyncML Trademark(s) from infringement or to defend the rights of SyncML Initiative to the SyncML Trademark(s).

10.4. SyncML Initiative shall have absolute control over any litigation involving or affecting the SyncML Trademark(s) and Member may not initiate proceedings or infringements in respect of the SyncML Trademark(s), unless SyncML Initiative upon Member's request has notified Member in writing that SyncML Initiative will not initiate such proceedings. Each party shall bear its own costs arising out of the negotiation, preparation and execution of any litigation and the SyncML Initiative is not responsible for any cost or damage incurred by the Member.

10.5. Member shall

- a. provide such reasonable non-monetary assistance to SyncML Initiative as it will require from time to time in protecting and defending the SyncML Trademark(s),
- b. provide to SyncML Initiative any evidence required by the SyncML Initiative from time to time for use in any proceedings either in respect of any alleged infringement of the SyncML Trademark(s) or any challenge to or defense of the rights of the SyncML Initiative to the SyncML Trademark(s),

provided that SyncML Initiative shall reimburse the Member for the Member's reasonable costs and expenses of complying with this Section 10.5.

10.6. In the event that SyncML Initiative chooses not to enforce its rights to SyncML Trademark(s), then Member may enforce and defend the SyncML Trademark(s) at its own expense and shall be entitled to all the damages and profits arising in respect of such litigation. SyncML Initiative shall provide reasonable assistance to the Member as reasonably required in protecting and defending the SyncML Trademark(s), provided that the Member shall reimburse the SyncML Initiative for the SyncML Initiative's reasonable costs and expenses of such assistance.

11. GENERAL.

11.1 Survival. Section 11 and any other provisions that by necessary implication are intended to survive the termination of this License, shall survive any termination and expiration of this License.

11.2 No Other Licenses. Except for the rights expressly provided by this License and the Membership Agreement, no Member grants or receives, by implication, or estoppel, or otherwise, any rights under any trademarks or other intellectual property rights.

11.3 No Warranty. **MEMBER ACKNOWLEDGES THAT THE SYNCML TRADEMARK(S) ARE ALL PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.**

11.4 Limitation of Liability. **IN NO EVENT WILL ANY PARTY HERETO OR ANY OTHER MEMBER OF SYNCML INITIATIVE BE LIABLE TO ANY OTHER PARTY OR MEMBER OF SYNCML INITIATIVE FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY PARTY INCLUDING THIRD PARTIES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY**

WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

- 11.5 Governing Law. This License shall be construed and controlled by the laws of England and Wales without reference to conflict of laws principles.
- 11.6 Jurisdiction. The parties agree that all disputes arising in any way out of this License shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in the courts in England.
- 11.7 Notices. All notices hereunder shall be electronic or written and sent to the parties at such addresses as the Parties may specify by such written notice to SyncML Initiative. For purposes of this section, notice can include notice by written mail, electronic mail or by facsimile.
- Such notices shall be deemed served when received and acknowledged by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Any party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.
- 11.8 Not Partners. The parties hereto are independent companies and are not partners or joint venturers with each other.
- 11.9 Complete Agreement; No Waiver. Except for the Membership Agreement, the IP Agreement and the RULES of SyncML Initiative, this License 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 License shall be binding unless accepted in writing by an authorized representative of all 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.
- 11.10 No Rule of Strict Construction. Regardless of which party may have drafted this License, no rule of strict construction shall be applied against any party. If any provision of this License is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this License, and the remainder of the License will continue in effect.
- 11.11 Compliance with Laws and Bylaws. Anything contained in this License to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government.
- 11.12 Effectiveness of License. This License may be effective and enforceable against SyncML Initiative and you immediately upon your acceptance of the Membership Agreement and IP Agreement, and shall be terminated in accordance with termination of either agreements.

ATTACHMENT 1

Membership Trademark License

Membership Trademark(s)

SYNCML (word mark)

SyncML

SYNCML (logo)



Qualifying Conditions

If and when Member satisfies the conditions for membership specified in the RULES and Member is accepted as a member in the SyncML Initiative, Member is granted a limited right to use the Membership Trademark(s) according to the terms and conditions of this Attachment 1, as well as the terms and conditions of the License and the Instructions, for so long as the Member remains a member of the SyncML Initiative.

Licensed Trademark Usage

Under this Membership Trademark License, Member may use the Membership Trademark(s) to generally promote Member's membership in SyncML Initiative, but only as specified in the Instructions. Member may not, however, use the Membership Trademark(s) in connection with any specific products or services, or otherwise indicate any compliance, compatibility or conformance with the SPECIFICATIONS, without first passing the SyncML Conformance Testing Process or the SyncML Interoperability Process.

ATTACHMENT 2

Conformance Trademark License

Conformance Trademark(s)

SYNCML (word mark) SyncML

Qualifying Conditions

If and when a product of Member passes the SyncML Conformance Testing Process, Member is granted a limited right to use the Conformance Trademark(s) according to the terms and conditions of this Attachment 2, as well as the terms and conditions of the License and the Instructions, in connection with advertising for that particular SyncML Conformant Product.

Licensed Trademark Usage

Under this Conformance Trademark License, Member may use the Conformance Trademark(s) to promote the conformance of the Member's SyncML Conformant Product with the SPECIFICATIONS, but only as specified in the Instructions. Member may not, however, use the Conformance Trademark(s) in a manner that suggests that the SyncML Conformant Product has passed the SyncML Interoperability Process, without first passing the SyncML Interoperability Process. Member also may not use the Conformance Trademark(s) in a manner that causes confusion as to which products have passed the SyncML Conformance Testing Process and which products have passed the SyncML Interoperability Process.

ATTACHMENT 3

Interoperability Trademark License

Interoperability Trademark(s)

SYNCML (word mark)

SyncML

SYNCML (logo)



Qualifying Conditions

If and when a product of Member passes the SyncML Interoperability Process, Member is granted a limited right to use the Interoperability Trademark(s) according to the terms and conditions of this Attachment 3, as well as the terms and conditions of the License and the Instructions, in connection with advertising for that particular SyncML Product.

Licensed Trademark Usage

Under this Interoperability Trademark License, Member may use the Interoperability Trademark(s) to promote the conformance and interoperability of the Member's SyncML Product, but only as specified in the Instructions. Member may not, however, use the Interoperability Trademark(s) in a manner that causes confusion as to which products have passed the SyncML Conformance Testing Process and which products have passed the SyncML Interoperability Process.

ATTACHMENT 4

Instructions for Use of SyncML Trademarks

Purpose

The purpose of these Instructions is to provide further guidelines to a licensee and/or sublicensee under the SyncML Trademark License Agreement (“Trademark Agreement”) for the proper use of SyncML trademarks. The SyncML trademarks are used in accordance with the SyncML Trademark License Agreement. The SyncML trademarks include:

- The SyncML word mark
- The SyncML figure mark

As further provided in the Trademark Agreement, should a licensee and/or sublicensee wish to use one of the SyncML trademarks on products or any product-related material the product in question must include a portion which has passed the SyncML Conformance Testing Process and/or the Interoperability Process as specified by SyncML Initiative or a variation thereof with substantially the same functionality.

It is important that the SyncML trademarks are used properly to protect the value of brand. Licensees and/or Sublicensees of the SyncML trademarks must comply with these Instructions regarding the use, appearance and placement of the SyncML trademarks specified in this document or otherwise informed by SyncML Initiative.

SyncML Initiative

SyncML is an open industry initiative formed to develop and promote a common protocol for synchronizing data among workstations, network application servers, and mobile information appliances. The many existing products for synchronizing data serve specific devices, particular applications, and limited types of network connection. With the rapid growth of information appliances that require access to up-to-date information but are only intermittently connected to the networked data, data synchronization is a bottleneck to industry growth and interoperability. A common synchronization protocol opens the way for devices to reach more kinds of network information, and expand the choice of interoperable products for consumers.

SyncML is used both as the name of the initiative and as the name of the specification. SyncML brand is to be used to promote licensees as members of SyncML Initiative and to communicate the SyncML conformance or interoperability of a certain product. The guidelines are mandatory to follow when using the SyncML identifiers and have been designed to have a consistent use of the main logo and name in all communications by the initiative members as well as by the industry.

The www.SyncML.org website has an up-to-date list of members and more information on the initiative.

General instructions about the use of the SyncML identifiers

The trademark symbols, TM or ®, are not used with the SyncML logo or wordmark. However, it is recommended to include the following footnote when using the SyncML logo: 'Other product names mentioned herein may be trademarks of their respective owners'.

The SyncML trademarks can be applied on licensees' and/or sublicensees' advertisements, packaging, point-of-sales materials, press materials, product and sales literature, radio/TV commercials, Internet pages, products, and outdoor posters.

- Do not use the logo or name in any manner that will diminish or otherwise damage the goodwill associated with the SyncML Initiative, the name or the logo, including but not limited to use in connection with unlawful, obscene, pornographic, excessively violent or excessively hazardous activities.

- The SyncML identifiers (the SyncML name and logos) cannot be larger or more prominently displayed than company's trade name, trademark or logo.
- SyncML identifiers can not be used as product names, ingredient brands or any certification marks since SyncML is primarily the name of the SyncML Initiative and its specification at this stage.
- The quality of Products used in conjunction with the Logo at all times needs to meet or exceed the industry standards.
- Do not adopt, use or register any corporate name, trademark, domain name, service mark or certification mark similar to or containing the SyncML name or logo during the term of the SyncML Initiative Membership Agreement.
- Member's and/or sublicensee's name, logo, or trademark must appear on any products or materials relating to the products where the logo is used.

The SyncML wordmark should not to be used as the root or primary URL address except by SyncML Initiative Ltd. Correct usage is as part of the URL in, for instance, www.companyname.com/syncml or www.companyname.com/syncml/solutions. It is not correct to use, for instance www.syncml.fi or www.syncml.solutions.com or such similar web addresses.

Allowed logotypes

- The full range of allowed logotypes is shown here and is available in both digital (Macintosh and PC) and non-digital (bromides) formats via the www.SyncML.org for use by licensees and/or sublicensees and press.
- For best reproduction of the logotypes, use only supplied digital files as available via www.SyncML.com.
- Do not attempt to duplicate, create or recreate the logotype.

Protected area and small size use

- No text or graphics may appear too close to the SyncML logo. The amount of clear space (the protected area) surrounding the logotypes should never be less than shown here:
- The minimum size shown here is the smallest size the logotype can be reproduced:
- If the logo is to be used at a smaller size, use a specially drawn version without the frame:
- The maximum size shown is the largest size the logotype can be reproduced:

Use of SyncML in text

- SyncML is a trademark, and as such its spelling cannot be changed.
- Always use the proper spelling of the SyncML trademark, and do not join the SyncML trademark to other words, symbols or numbers, either as one word or with a hyphen.
- Use of plain text form SyncML is allowed in the same font as used in the overall materials.
- The spelling of SyncML cannot be changed.
- The SyncML name must never be used in possessive form.
- The SyncML name must never be used in plural form.
- The SyncML name must never be used as a verb.
- Do not make puns out of the SyncML name or portray it in a negative manner.

See examples below.

Do
The features of the SyncML technology...
SyncML solutions...

Do not
SyncML's features...
SyncMLs...
SyncML-ize...
SyncML-featured...

Use of SyncML wordmark in relation with events

This includes a set of endorsements/instructions and recommendations for different types of conferences created by the SyncML Initiative.

- Level 1: Official endorsement

Applies to only a select number of events per year:

- European conference
- SyncML developers conference in US
- Japan/Asia (TBD)

The Level 1 event organizer shall receive the following from the SyncML Initiative:

- Publicity items such as printed collaterals and materials may bear the figure mark and wordmark of the SyncML Initiative at any size, so long as the trademark conforms to the usage guidelines set forth in the SyncML brand book.
- Any comments for the name of the conference?

- Level 2 Seminar Endorsement

The Level 2 event organizer shall receive the following from the SyncML Initiative:

- The ability to use the SyncML trademarks as long as the use is approved by the initiative and event organizer complies with SyncML trademark guidelines
 - All level 2-event endorsements shall be considered on an event by event basis
 - Any comments for the name of the conference?

- Level 3 Seminar Endorsement

The event organizer is allowed to use, with the approval of SyncML Initiative, the word SyncML in the name of a breakout session or a stream, but not in the name of the conference nor can they use the SyncML logo

- All level 3-event endorsements shall be considered on an event by event basis

Each level of endorsement set forth above shall require the approval of the SyncML Initiative Board of Directors, upon recommendation from the SyncML Marketing Committee.

Unacceptable usage

- Distortion of the logotype

Do not condense, expand or distort the logotype in any way. It is very important to observe the correct scaling procedure when enlarging or reducing digital files of the logotype.

- Color change

Do not alter the colors of the logotype.

- Outline

Do not add a surrounding outline to the logotype. If there is a problem with the logotype being readable, use an alternative version or place it elsewhere.

- Usage on images

Do not place the logotype on areas of the image where it is not clearly visible. Care must be taken on the correct positioning to ensure maximum clarity of the logotype.

- Different placement

Do not move the "SyncML" identifier to a different position within the frame.

- Different proportions to the frame

Do not change the proportions of the "SyncML" identifier in respect to the logo frame.

- No build effects can be used in new media (animations etc).

SyncML name and logo are protected as trademarks.