



LICENSE AGREEMENT
SYNCML INITIATIVE TEST TOOL

SyncML Initiative Ltd ("SyncML") hereby grants the following license to you, the End User of the SyncML Test Tool software ("Software") in consideration of receipt of the license fee set forth in Appendix A ("License Fee Schedule").

1. GRANT OF LICENSE. SYNCML hereby grants to you a non-exclusive, non-sublicenseable license to use the Software and any related documentation ("Documentation") for use in accordance with the license fee paid pursuant to the License Fee Schedule.

2. LICENSE RESTRICTIONS. You may not: (i) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Software or Documentation; (ii) copy the Software or Documentation (except for back-up or archival purposes); (iii) rent, lease, transfer, or otherwise transfer rights to the Software or Documentation; (iv) remove any copyright or proprietary notices or labels on the Software or Documentation. Violation of such restriction shall result in the immediate termination your license.

3. LIMITED WARRANTY AND LIABILITY.

(a) SYNCML warrants that for a period of ninety (90) days from the date you acquire the Software, if operated as directed in the Documentation, will perform substantially as set forth in the Documentation. SYNCML also warrants the media containing the Software, if provided by SYNCML, to be free from defects in material and workmanship for ninety (90) days from the date you acquire the Software.

(b) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3(a), NO OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE APPLY TO THE SOFTWARE OR DOCUMENTATION.

(c) If you make any modifications to the Software during the warranty period; if the media is subjected to accident abuse or improper use; or if you violate the terms of this License Agreement, this warranty shall immediately terminate. This warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and software for which the Software was designed as described in the Documentation. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS; YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

(d) Your Remedies. SYNCML's sole liability for a breach of this warranty shall be in SYNCML's sole discretion: (i) to replace your defective media; or (ii) to advise you how to achieve substantially the same functionality with the Software as described in the Documentation through a procedure different from that set forth in the Documentation; or (iii) if the above remedies are impracticable, to refund the license fee, if any, you paid for the Software. Repaired, corrected or replaced Software and Documentation shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software or if longer for thirty (30) days after the date SYNCML either shipped to you the repaired or replaced Software or advised you as to how to operate the Software so as to achieve the functionality described in the Documentation, whichever is applicable. Only if you inform SYNCML of the problem with the Software during the applicable warranty period and provide evidence of the date you acquired the Software will SYNCML be obligated to honor this warranty.

LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WHETHER IN TORT CONTRACT OR OTHERWISE SHALL SYNCML OR ITS MEMBERS OR CONTRIBUTORS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF SYNCML SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY OTHER PARTY. FURTHER, IN NO EVENT SHALL SYNCML'S LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE LICENSE FEE PAID TO SYNCML FOR THE SOFTWARE AND DOCUMENTATION. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

4. INDEMNIFICATION. . You agree to hold harmless, indemnify and defend SYNCML, its officers, directors and employees, from and against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of claim related to changes made by you to the Software or methods of operation of the Software.

5. TERMINATION. This License Agreement will automatically terminate if you fail to comply with any term hereof. No notice shall be required from SYNCML to effect such termination. You may also terminate this License Agreement at any time by notifying SYNCML in writing of termination. Upon any termination of this License Agreement, you shall immediately discontinue use of the Software and shall certify destruction of, all full or partial copies of the Software, documentation and related materials provided by SYNCML. Your obligation to pay accrued charges and fees shall survive any termination of this License Agreement.

6. NO ASSIGNMENT. This Agreement is personal to you, and may not be assigned without SYNCML's express written consent, which shall not be unreasonably denied. In the event that you are an entity that merges with another entity or are acquired

by another entity during the Term, you shall provide written notice of such merger or acquisition not later than the date on which any public announcement is made.

7. INTEGRATION. This License Agreement constitutes the entire agreement and understanding between you and SyncML as to the subject matter contained herein and supercedes any and all agreements directed to such subject matter. No modification of this Agreement shall be effective unless in writing and signed by you and SyncML.

8. INTERPRETATION. This License Agreement shall be interpreted in accordance with the laws of the State of New York, United States of America. All disputes shall be settled by mediation, which shall take place in London, England, unless mutually agreed otherwise by SyncML and you. Each party shall be responsible for their own costs associated with any such mediation. Failure to reach settlement of such dispute within thirty (30) days of commencement of such mediation or failure by one of such parties to commence mediation, suit may be filed in London, England, to which jurisdiction, you hereby consent.

APPENDIX A

License Fee Schedule For Fully Paid License Fee

SyncML Supporter Members	\$4000 for first site license, \$5000 for each subsequent license.
Non-Members	\$5000 for each site license.