

## SPN Membership Agreement

You have applied to join the Symbian Partner Network (“SPN”). Membership of the SPN is subject to your agreement to the following terms and conditions (“Agreement”).

You are entering into this Agreement on behalf of the company, partnership or business that you represent. This Agreement is between the company, partnership or business you represent and Symbian Software Limited.

Please read this Agreement carefully. This sets out the terms under which you are granted membership of the SPN.

**By ticking the “I Accept” box below, you confirm that you have authority to bind the company, partnership or business that you represent and you agree to be bound by this Agreement. If you do not have authority or you do not agree to the terms of this Agreement, do not check “I Accept” and do not continue with the registration.**

### 1. Scope of this Agreement and Definitions

This Agreement sets out the terms and conditions that apply to your participation in the SPN. The SPN is designed to enable Symbian and you to work together to develop, market and promote solutions for Symbian OS. Your membership of the SPN is subject to the approval of Symbian in its sole discretion.

In this Agreement, the following words or expressions have the following meanings:

“Affiliate”	means, in relation to a company, a company directly or indirectly (i) Controlling, (ii) Controlled by, or (iii) under common Control with, that company;
‘Control’	means, the holding of shares bearing the majority of the voting rights attaching to all the shares in that company, or having the power to control the composition of the board of directors of that company and “Controlling” and “Controlled” shall be construed accordingly;
“Confidential Information”	means information of a confidential nature belonging to a party or its Affiliates, their business affairs, activities, products or services, or the work relating to that party, or its Affiliates including, without limitation in the case of Symbian, Symbian OS and any information of a confidential nature concerning Symbian OS;
“Symbian, we or us”	means Symbian Software Limited;
“Symbian Competitor”	means those parts of an entity who from time to time directly compete with Symbian, or who have publicly announced plans to directly compete with Symbian, or who ought reasonably to be considered to have plans to directly compete with Symbian in the development and/or licensing and/or distribution of operating systems which can be used on wireless communication devices (whether voice or data centric);
“Symbian Marks”	means the trademarks and logos made available to you as set out at <a href="http://www.symbian.com/news/picturelibrary/logos/logos.html">http://www.symbian.com/news/picturelibrary/logos/logos.html</a> ;
“Symbian OS”	means the operating system, applications, communication technologies, connectivity software and user interface frameworks licensed by Symbian from time to time;

“SPN”	means the Symbian Partner Network;
“Website”	means the Symbian website <a href="http://developer.symbian.com/sdnpp">http://developer.symbian.com/sdnpp</a> or any successor site;
“You” or “you”	means the company, partnership, or business you represent, and “your” shall be construed accordingly.
“Your Marks”	means the trademarks and logos you make available to us when you register for the SPN or which you subsequently make available to us.

## 2. Commencement

This Agreement will commence on the date you receive notification by email from us that you are a member of the SPN and shall continue for a period of twelve (12) months and shall automatically terminate on expiry of such twelve (12) months. Thereafter you will be required to renew your membership of the SPN for a further twelve (12) months.

## 3. Grant of rights by Symbian

Symbian hereby grants to you and your Affiliates a non-sublicensable, non-transferable, royalty-free and non-exclusive licence to use and apply the Symbian Marks solely for the purposes of marketing and promoting your partnership with us, your products or services worldwide in conjunction with Symbian OS and in connection with the marketing and promotional activities to be performed by you under the SPN. You shall not be obliged to use the Symbian Marks and any such use is at your sole discretion, provided you comply with the Symbian trade mark use requirements in this Agreement.

Your use of the Symbian Marks must be in accordance with the Symbian Trade Mark Usage Guidelines set out at <http://www.symbian.com/news/picturelibrary/logos/logos.html>.

Your use of the Symbian Marks shall be in the form and style in which Symbian may direct from time to time.

You acknowledge and agree that all property and right in the Symbian Marks shall be and remain the sole and exclusive property of Symbian. Except as expressly provided in this clause 3 nothing in this Agreement shall have the effect of granting to or vesting in you any right, title or interest in or to the Symbian Marks or any other intellectual property rights of Symbian. All goodwill generated by you from the use of the Symbian Marks shall accrue for the benefit of Symbian.

As a benefit of the SPN Symbian grants you the right to access the Website. The Website terms of use set out below apply to the use of the Website and its services by you and your employees and your Affiliates’ employees. You are responsible for making all arrangements necessary for you to have access to the Website, and for ensuring that all persons who can access the Website through your internet connection have been authorised by you and comply with the Website’s terms of use.

## 4. Grant of rights by You

You hereby grant to Symbian Software Limited and its Affiliates a non-transferable, non-sublicensable royalty-free and non-exclusive licence to use and apply Your Marks on or in relation to marketing and promotional activities performed by Symbian in relation to You in connection with the SPN.

All use of Your Marks permitted by this Clause 4 shall be in accordance with the Trade Mark usage guidelines (if any) provided to us by you in writing at the time you register for the SPN or otherwise notified to us in writing.

The use of each of Your Marks by Symbian shall be in the form and style in which you may direct from time to time.

Symbian acknowledges and agrees that all property and right in the Your Marks shall be and remain your sole and exclusive property. Except as expressly provided in this Clause 4, nothing in this Agreement shall have the effect of granting to or vesting in Symbian any right, title or interest in or to Your Marks or any of your other intellectual property rights. All goodwill generated by Symbian from the use of Your Marks shall accrue for the benefit of you.

## **5. Fees**

Your membership of the SPN is subject to approval of your application by Symbian and your payment of the SPN annual membership fee applicable at the date you register for the SPN. In order to renew your membership of the SPN, you will be required to pay the annual membership fee then applicable and verify that the information submitted for your company registration is still correct. At Symbian's sole discretion, additional services may from time to time be made available to you by Symbian and may be subject to additional fees which will be notified to you.

## **6. Confidentiality**

Each party may be given access to Confidential Information of the other party in order to perform its obligations under this Agreement. Each party shall keep confidential and not disclose, except as is allowed under this Agreement to any third party any Confidential Information of the other party or its Affiliates and shall take appropriate steps by instruction, agreement or otherwise to prevent unauthorized disclosure by its officers, employees, agents or consultants.

Nothing in this Agreement shall prevent a party from disclosing any information which:

- is or becomes public knowledge other than by a breach of this Agreement by its officers, employees, agents or consultants.
- its officers, employees, agents or consultants may develop independently of the other party or receive (before or after the date of this Agreement) without restriction from a third party (other than an Affiliate of the other party or where you knew or had reason to believe that the third party disclosed the information in breach of confidence);
- it can show was in its possession or known to it prior to receipt from us without an obligation of confidence;
- was furnished to it without restriction on disclosure or use; or
- is required to be disclosed in accordance with applicable laws, regulations, court, judicial or other government order, provided that it shall give the other party notice prior to such disclosure and shall comply with any applicable protective order.

Notwithstanding any other provision of this Clause 6, it shall not be a breach of a party's obligations under this Clause to disclose Confidential Information to any employee, or officer who has a need to receive disclosure of the same for the purposes contemplated by this Agreement, and only to the extent such disclosure is necessary for the purposes contemplated by this Agreement, provided that any person to whom the Confidential Information is disclosed by such party shall be bound by obligations of confidentiality no less stringent than the confidentiality terms herein and provided that such party shall be responsible for compliance with those obligations.

The provisions of this Clause 6 shall apply for the duration of your participation in the SPN and for the period of three years thereafter, except where the Confidential Information relates to source code or roadmaps proprietary to either party in which case the obligations of confidentiality shall apply for the term of the Agreement and thereafter without limit in time.

## **7. Mutual Obligations**

Each party undertakes:

- to comply with all relevant laws and regulations in respect of its obligations hereunder;
- not to make any warranties, claims or representations about the other party, its business, products or services, with the exception only of those warranties, claims or representations (if any) specifically contained in the other party's then-current marketing or promotional literature, or as otherwise agreed between the parties;
- not to enter into or to purport to enter into any contract or other legally binding obligation on behalf of the other party; and
- to inform the other party of any adverse reports, claims or complaints relating to the your products or services as such relate to Symbian OS which it receives or of which it otherwise becomes aware.

Each party acknowledges and affirms that it shall take full responsibility for the performance of its obligations hereunder.

Both parties shall be free to use any comments, suggestions, know-how, development ideas, defect fixes or technical feedback ("Feedback") related to its products or services received from the other party for any purpose including (without limitation) the development, manufacture, marketing and maintenance or support of its products and services. For the avoidance of doubt all Feedback is and shall be given entirely voluntarily and neither party is obliged to make use of Feedback provided. The ownership of Feedback and all intellectual property rights in and to Feedback shall remain with the party providing it.

## **8. Termination**

Each party may terminate this Agreement by providing to the other party not less than sixty (60) days written notice of such termination.

Each party may terminate this Agreement forthwith upon notice in writing if the other party:

- ceases or threatens to cease business, makes or offers to make any arrangement or composition with creditors or commits an act of bankruptcy or if a receiving order is made against it or if any resolution or petition is passed or made for its winding up (other than solely for the purposes of amalgamation or reconstruction) or if an administrator, administrative receiver, receiver or manager is appointed of any of its business, assets or undertaking or if it suffers the seizure of any assets for non-payment of any debt or if it takes or suffers any similar or analogous action in consequence of debt; or
- is in material breach of this Agreement and does not remedy that breach (if remediable) within thirty (30) days of receipt of written notice from the party not in breach requiring it to do so; or
- challenges or disputes the validity or ownership of any of its trade marks, or takes any action either directly or indirectly to oppose the renewal or to cancel the registration of any of its registered trade marks.

On termination of this Agreement for any reason all rights and licences granted hereunder shall cease immediately to be of any force and effect, whereupon You shall, as soon as practicable and in any event within 60 days, cease all use of Symbian's Marks and we shall, as soon as practicable and in any event within 60 days, cease all use of Your Marks.

Termination of this Agreement in accordance with its terms shall not give either party the right to claim any compensation from the other by reason of such termination, but termination shall be without prejudice to the accrued rights of the parties or the continuation in force of any provision which is expressly stated to survive or by implication survives such termination.

## **9. Limitation of Liability**

Nothing in this Agreement shall limit either party's liability for: (i) wilful default or fraud; (ii) death or personal injury caused by its negligence (iii) any liability that cannot be excluded by law; or (iv) breaches of the confidentiality provisions set out in clause 6.

Each party limits its liability under this Agreement to the extent it is entitled to under law and in any event each party's liability shall not exceed in aggregate the applicable annual membership fee.

## **10. Notices**

Any notice required to be given hereunder shall be in writing and shall be given by delivering the same by email with confirmation back from recipient of receipt if sent to Symbian at [spn.legal@symbian.com](mailto:spn.legal@symbian.com) and if sent to you to the email address provided by you to Symbian at registration or as otherwise notified to Symbian. Any such notice given as aforesaid shall be deemed to have been given upon receipt. Notices may also be delivered by hand or first class post to the registered office of the parties.

## **11. Assignment**

Each party may assign its rights and obligations under this Agreement to an Affiliate without the consent of the other party on written notice to the other party. Neither party shall otherwise assign or otherwise transfer its rights or obligations under this Agreement without the other party's prior written consent. You shall not assign or transfer this Agreement to a Symbian Competitor and Symbian shall not assign or transfer this agreement to a competitor of your company.

## **12. General**

This Agreement is governed by the laws of England, and if any disputes arise from or in relation to it, you agree to submit to the exclusive jurisdiction of the English Courts.

No delay, failure or omission by either party to carry out or observe any of its obligation hereunder shall give rise to any claim against such party or be deemed to be in breach of this Agreement if and for as long as such failure or omission arises from any cause beyond the reasonable control of that party.

This Agreement sets forth the entire agreement between the parties regarding its subject matter and supersedes and excludes all prior agreements or arrangements in that regard made between them.

The relationship of the parties is that of independent contractors dealing at arms' length. Nothing in this Agreement shall constitute a partnership, association, joint venture, or other co-operative entity between the parties.

The failure of either party to enforce any right, power or remedy provided by law or under this Agreement does not constitute a waiver of such term and shall not affect the right later to enforce that or any other term of this Agreement.

The illegality, invalidity or unenforceability of any term of this Agreement, to any extent under the law of any jurisdiction, shall not adversely affect the legality, validity or enforceability of the remaining terms of this Agreement, or of any part of this Agreement in any other jurisdiction.

In the event of any conflict between this Agreement and any specific additional terms that you must accept in order to access services or software available by Symbian (including without limitation the Website Terms of Use and services offered through the Website) the latter terms shall prevail in relation to your use of that specific service or software

## WEBSITE TERMS OF USE

The Symbian web site at the following URL: <https://developer.symbian.com/sdnpp/> together with all related discussion forums, wiki, directories and databases (the "Website") are offered by Symbian Software Limited (a company registered in England and Wales with registered number 4190020) (referred to as "Symbian", "we" or "our") whose registered office is at 2-6 Boundary Row, Southwark, London, SE1 8HP, UK. The Symbian privacy policy set out at <http://www.symbian.com/about/terms/legal/privay.html> explains how we use the information we collect about you. By using and/or by becoming a registered user of SDN++ you agree to these terms of use. You represent that you have legal authority to enter into these terms of use on your behalf and on behalf of the company, partnership or business that you represent.

**By ticking the "I Accept" box, you agree to be bound by the terms of this Agreement.**

References to "Affiliates" of Symbian in these Terms of Use means any company that controls, is controlled by or is under common control with Symbian, where "control" means the holding of shares bearing the majority of the voting rights attaching to all the share in that company or having the power to control the composition of the board of directors of that company and controlling and controlled shall be construed accordingly.

### 1. Services

This Website and the products and services made available through this Website from time to time are together hereinafter referred to as "the Services". The Services are subject to change at any time and Symbian may add or remove Services as it sees fit in its sole discretion. Some of the Services may be subject to you agreeing to additional terms and conditions relating to their use. In addition Symbian may restrict access to specific Services or parts of the Website.

We may suspend access to the Services at any time (including without limitation for the purposes of website maintenance) without liability to you.

### 2. Membership and personal use limitation

To use the Services, you will be required to register. The registration conditions are outlined in this clause.

- a) To use the Website, you must register and obtain a unique user identification and password at <http://developer.symbian.com/register>. All information that you provide to Symbian must be truthful. You must not use an inappropriate user name and Symbian reserves the right to require you to submit a different user name if the chosen name is inappropriate or already in use.
- b) You agree to keep secure and not provide, disclose to or share with any third parties any username or password that you use to access the Services, or any other personal information. Symbian will NEVER ask for your password – and you must not give your password or reminder question out to anyone.
- c) You must not log into the Website using a third party's username or password. You must not impersonate another person, or access (or attempt to access) another user's account or registration details. You agree to inform Symbian by sending an email to [sdnpp.support@symbian.com](mailto:sdnpp.support@symbian.com) if you become aware of any misuse of your user details.
- d) Symbian reserves the right to temporarily or permanently suspend your use of the Website and/or your user account if you breach these Terms of Use, or for any other reason, and to inform law enforcement agencies or other relevant parties of particular breaches at its discretion.
- e) Symbian will gather, use and store the personal data (such as your name and email address) you submit in accordance with its Privacy Policy, found at [www.symbian.com/about/terms/legal/privacy.html](http://www.symbian.com/about/terms/legal/privacy.html). By entering into this Agreement you consent to Symbian processing your personal data as set out in its Privacy Policy.

- f) By registering, you agree that Symbian may use the data submitted at the time of registration to contact you for the purposes of the administration of the Services. If you tick the opt-in box to receive communications from us you give consent to the use of your personal information by Symbian and/or other companies selected by us for the purposes described.
- g) You may terminate your registration at any time by sending an email to [sdnpp.support@symbian.com](mailto:sdnpp.support@symbian.com).

Symbian reserves the right to reject your application in its sole discretion.

### **3. Content**

Symbian makes no representations about the suitability of the content, material, documentation, tools or information contained in the pages, documents, downloads, discussion forums, wiki, directories, databases and graphics published on the Website, but excluding Submissions from Website users as defined in clause 4 ("Content"), for any purpose. All Content is provided on an "as is" basis without warranty of any kind. Symbian hereby disclaims all warranties and conditions with regard to the Content, including all implied warranties and conditions of satisfactory quality, fitness for a particular purpose, title and non-infringement and any other conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity.

While we attempt to ensure that the Content is accurate, we cannot guarantee that it will always be fault-free or up to date. The Content could include technical inaccuracies, typographical errors or out of date material. We endeavour to correct errors and omissions as quickly as practicable. We do not accept liability for any such errors and omissions, or any out of date material or material provided by any third party. Commentary and other materials posted on the Website are not intended to amount to advice on which reliance should be placed and we therefore disclaim all liability and responsibility arising from any such reliance.

Further, Symbian does not warrant that you will have uninterrupted use of the Website or Services or that the Website will be free from viruses, corrupted data, trojans, logic bombs worms, defects or other code that manifests contaminating or destructive properties, or that your use of the Website will not damage your computer.

The Content includes trade secrets and information of a confidential nature of Symbian including but not limited to Symbian OS and information of a confidential nature concerning Symbian OS, information relating to Symbian's business affairs, activities, products or services and the work relating to Symbian and/or Affiliates of Symbian by, with or for any third parties ("Confidential Information"). Your access to and use of such Confidential Information is subject to the confidentiality terms set forth in your licence to use Symbian OS (Development Kit Licence, Customisation Kit Licence or Binary Access Kit as applicable) or the terms of your SPN Membership Agreement if your company, partnership or business does not have such licence.

Changes are regularly made to the Content. Symbian may make improvements and/or changes to the Services and/or the Content at any time without notice.

### **4. SDN++ Forum and Wiki**

When using the Website and viewing submissions on the interactive parts of the Website (such as forums and wiki), you need to be aware of the following issues:

- a) The Website may include contributions from various sources over which Symbian has no control (including any content submitted by third party users). The views expressed on the Website are not necessarily those of, or endorsed by, Symbian.
- b) You and other users of the Website may submit material (including images, text, software and files), comments and website links to the Website including through forums, wikis and other interactive services ("Submissions"). Symbian does not pre-screen or exercise editorial control over Submissions, and takes no responsibility for such Submissions.

- c) Symbian reserves the right to edit or remove Submissions at any time and in its sole discretion, including those that are in breach of these Terms of Use or in breach of any obligation of confidentiality you owe Symbian, infringe or are alleged to infringe the intellectual property rights of any third party, or are defamatory, or otherwise are not relevant to the Website and Symbian will not be liable in relation to the removal of, or failure to remove, any Submissions.

## 5. Your Submissions and use of the Services

You will not use any part of the Website or the Services for any purpose that is prohibited by these Terms of Use. In particular:

- (a) You must not imply that you or your Submissions are connected with, employed, endorsed, sponsored or licensed by Symbian or any of its partners, licensees or Affiliates, if this is not the case.
- b) You must not breach obligations of confidentiality that you owe to another party either in posting or using a Submission. If you are unsure whether material is confidential, please check with the owner of that information. Submissions posted by you will be accessible by all other users of this Website or, in the case of Submissions posted to an area that is designated a 'private zone', by all users whom Symbian has authorised to access such private zone.
- c) Your Submissions must not be illegal, defamatory, discriminatory, or invasive of privacy. Your Submissions must not encourage racial hatred, or be abusive, or (in the reasonable opinion of Symbian) be objectionable or offensive. You must not harass, threaten, embarrass, disparage, defame, or be derogatory to Symbian, its Affiliates, partners, licensees or other users of the Services. In particular, you should not attack the personality or character of other users.
- (d) You must not improperly use, modify, or hack into Submissions, the Website or the Services, or attempt to interfere with or decipher any transmissions to or from the server running the Services. You warrant that to the best of your knowledge and belief, your Submissions do not contain viruses or corrupted data.
- e) You must not engage in any illegal activity in your use of the Services (including the distribution of any counterfeit software) and must comply with all applicable rules, laws and regulations, including national, local and foreign laws (where applicable).
- f) You must not deliberately disrupt the Services in any way (including by means of spamming, flooding, use of offensive language, uploading of large images or files, constant hitting of the return key, excessive "shouting" by use of capitalisation, submitting unsupported complaints or falsely reporting faults).
- g) You must not modify, adapt, copy, broadcast, distribute, transmit, reverse engineer, display, perform, reproduce, publish, license, create derivative works from, transfer, sell, lease, download, or store (in any medium) in any way any Submissions or other content of the Website for any purpose whatsoever without permission.
- h) You may not use the Website for the purposes of advertising and you must not post Submissions that purely consist of advertising or promotional material. Any reference to a product or event must be relevant to the subject matter under discussion. You may not accept payment or anything of value from a third party in exchange for performing any commercial activity on or through the Website.
- i) You may not collect and/or store user names and/or email addresses and/or other personal details of other users by electronic or other means for the purposes of sending unauthorised emails (such as "spamming"), chain letters, junk mail or other unsolicited communications.
- k) Please also comply with the following guidelines for the use of the Website to help ensure their effectiveness for all users: -
- Search the facility for existing answers before you ask a question, to save you time.
  - Please stay in line with the topic and if you move to a new topic start a new discussion
  - Be polite in discussions – Symbian will not tolerate any inappropriate or unduly inflammatory comments. Comments should be relevant and constructive.
  - Don't delete other user's Submissions.

Please contact Symbian at [sdnpp.support@symbian.com](mailto:sdnpp.support@symbian.com) or via any specific means provided as part of the Website for reporting inappropriate Submissions if you feel that any Submission breaches these Terms of Use in any way or infringes your intellectual property rights and supply any other information that Symbian may reasonably require in order to verify and establish your report. Any decisions or action regarding reported Submissions will be entirely at Symbian's discretion.

You warrant that all Submissions or other materials you upload or provide for use on the Website do not infringe any third party copyright, trade marks, any other intellectual property rights or any applicable law and that you are entitled to upload or provide them for display on the Website. You warrant that your use of the Website will be for lawful purposes only and you will indemnify us and our Affiliates, partners, licensors, service providers, content providers, and their and our directors, officers, employees and agents against all claims, losses, liabilities, costs, damages and expenses incurred by us or them due to any breach by you of these Terms of Use or your use of the Website. For the purposes of this section, references to "your use" of the Website shall be deemed to include any use by a third party where such third party accesses the Website using your computer or user identification.

## **6. Licence to Symbian**

The following conditions govern the usage of your Submissions by Symbian. You need to be sure that Symbian and its Affiliates are able to disclose and use the material that you post.

By posting a Submission to the Website, you grant to Symbian, a perpetual, non-exclusive, worldwide, irrevocable, royalty-free, transferable, licence to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, play, host, communicate, make available and publish your Submission without restriction including for the purposes of the Services, for internal purposes and for commercial purposes and to permit its Affiliates, licensees and partners to do the same. You waive any "moral rights" that you may hold in respect of your Submissions. For the avoidance of doubt, Symbian is not obliged to make use of your Submissions.

## **7. Access restriction**

We reserve the right in our sole discretion to deny or suspend any user access to the Website or any part thereof without notice.

## **8. Intellectual property and copyright**

All intellectual property rights (including copyright) in this Website, the selection and arrangement thereof, and all software compilations, underlying source code, software and all other material on the Website except Submissions are reserved to, and owned by or licensed to, Symbian, or are otherwise used by Symbian as permitted by the copyright owner, or by any applicable law. Symbian reserves all rights not expressly granted herein.

Subject to clause 9 below and the provisions relating to Confidential Information in Clause 3 above, Symbian grants you a limited licence to download and access Content on the Website for your own use. Except as set out in this clause 8, you are not permitted to copy, broadcast, sell, lease, download, store (in any medium), transmit, distribute, show or play in public, reverse engineer, perform, reproduce, publish, licence, create derivative works from, modify, adapt or change in any way any Content (whether in digital or printed form) for any other purpose whatsoever without the express written authorisation of Symbian.

## 9. Downloads

Any product, tools or code you download from the Website are provided to you under the terms of the licenses accompanying those downloads on the Website. The licence terms may be provided together with the product, tools or code or may be an existing licence agreement between Symbian and the partnership, company or business you represent the terms of which will be stated to apply to your use of such product, tool or code.

Certain third party software, and links to download of such software, may be made available on the Website. Symbian is in no way responsible for such software. It makes no warranty or representation regarding and does not endorse such software.

## 10. Third Party Links

This Website may contain links to third party web sites which are controlled and operated by third parties. Your use of each third party web site is subject to the terms of use and other guidelines, if any, contained within the relevant web site. You agree to review and accept such terms of use prior to using such third party web sites.

Symbian makes no representations whatsoever about any third party web site which you may access through the Website. When you access a third party web site, you agree that it is independent from Symbian, and that Symbian has no control over any content on that web site. In addition, a link to a third party web site does not mean that Symbian endorses or accepts any responsibility for the content, or the use, of such web site. It is up to you to take precautions to ensure that whatever you select for your use is free of such items as viruses, worms, Trojans and other items of a destructive nature.

**11. Complaints** If you are concerned about any of the material that appears on the Website, or otherwise have any queries or comments, please contact Symbian at [sdnpp.support@symbian.com](mailto:sdnpp.support@symbian.com).

## 12. Limitation of liability

For the avoidance of doubt, we do not limit our liability for death or personal injury to the extent only that it arises as a result of our negligence or the negligence of our affiliates, directors, employees or other representatives, nor do we limit any other liability that cannot be excluded or limited under applicable law.

Your use of the Website and any Content including Submissions is at your own risk. Symbian hereby disclaims all representations and warranties, whether express or implied, including without limitation warranties of non-infringement, merchantability, satisfactory quality and fitness for a particular purpose.

Because the Website is an additional service provided to you without extra charge, in no event will Symbian be liable for any damages whatsoever, whether in an action for breach of contract, negligence or other tortious action, arising out of or in connection with

- your use of the Website;
- the use of Content available from the Website;
- the performance of software;
- the provision of or failure to provide Services;
- the use or reproduction of any Submissions;
- any inaccuracy of any Submissions or any other errors or omissions;
- any viruses or corrupted data contained in Submissions;
- any technical failure, or any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft, destruction, unauthorised access or alteration relating to any Submission or the Website and any such unauthorised access to your Submissions shall not be deemed to be a breach of confidentiality by Symbian;
- any acts or Submissions of any Symbian employees acting in their personal capacity as users of the Website; and
- any link to a third party Website;

even if foreseeable or Symbian is expressly advised of the possibility of such damages.

Without prejudice to any other provision of this agreement (including the limitation above), under no circumstances shall Symbian be liable for any direct, special, indirect or consequential damages or losses (including those resulting from loss of use, data, goodwill, income, revenue, business, contracts, anticipated savings or profits).

**13. Governing Law and Other**

- a) These Terms of Use are governed by and construed in accordance with the laws of England and Wales and are subject to the exclusive jurisdiction of the English courts.
- b) The failure by Symbian to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of any such right or provision.
- c) If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and will not affect the validity or enforceability of the remaining provisions.
- d) These Terms of Use will apply to each use of this Website by you and the provisions of clauses 3 to 13 shall continue after termination of your use of the Website.
- e) We may amend these Terms of Use at any time in our sole discretion. Symbian will notify you of any material changes to these Terms of Use by posting a notice on this Website or by email communication. By continuing to use the Website you will be deemed to have accepted such amendments. **If any of the Terms of Use are unacceptable to you, you should discontinue using the Website.**
- f) In the event of any conflict between these Terms of Use and any specific additional terms that you must accept in order to access Services or software available through this Website the latter terms shall prevail in relation to your use of that specific Service or software.