

Subscription Agreement for MoSync SDK

This Subscription Agreement ("Agreement") is established by and between

MoSync AB

Saltmätargatan 8A

S-11359 Stockholm

Sweden

- hereinafter referred to as "MoSync AB" -

and

Customer as identified on the Order Form.

– hereinafter referred to as "Customer" -,

Both MoSync AB and Customer are

- hereinafter jointly referred to as "Party" or "Parties"-.

1 Definitions

- "Application" means an application, running on a handheld, mobile device, developed with the MoSync SDK;
- To "distribute" refers to any form of distribution to the public via sale or otherwise, including rental;
- "End-user" means a user of an application running on the end-user's mobile phone or other handheld device;
- "Invoice Period" means the period for which MoSync is eligible for remuneration from the Customer via invoice as established in the Order Form;
- "MoSync SDK" is the Software owned and developed by MoSync AB – specifically designed for the development of mobile phone applications as can be downloaded from the MoSync website [<http://www.mosync.com/>]]
- "Order Form" means (a) the order form as completed and submitted by Customer via MoSync AB's online store, or (b) the applicable MoSync AB document signed by Customer and delivered to MoSync AB via mail, fax, or as a scan via e-mail;
- "Model Subscription Fee" means the periodic fee set forth in this Agreement, including the Order Form
- "Subscription Model" means a certain structure and extent of MoSync AB's and Customer's rights and obligations as defined in this Agreement, including the Addendum, and determined by Customer's choice in the Order Form as accepted by

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MoSync AB, in particular MoSync AB's obligation to grant Customer certain rights to possess the MoSync SDK and the Device Database, to use the MoSync SDK and the Device Database for the purpose of developing Applications, and to receive various support services, all against payment of a monthly or annual fee by Customer;

- “Software” means the “MoSync SDK”, i.e. computer programmes published by MoSync AB.
 - “Device Database” is a set of information records related to device data mobile terminals (sometimes referred to as handsets, cellphones). These records govern how a mobile applications, when generated using the MoSync SDK, shall adapt an application build to a specific device, make or model. The Device Database can be distributed as part of the MoSync SDK installation, but can also be accessed through other means, as wrapped in a stand alone piece of software, as part of a webservice or otherwise.
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 - Major Version refers to major updates and enhancements to the MoSync SDK, and are related to as MoSync SDK version 2.n where (n=1,2,3...)
 - MoSync Update [*def.:* for instance: means new releases of MoSync containing error corrections and minor enhancements]
 - Device Database Updates, the addition and enhancement of device profile data, i.e. adding new device data usable to create MoSync mobile applications.

2 Subject Matter of the Agreement

MoSync AB offers three Subscription Models (Basic Pro, Gold Pro, and Platinum) regarding the use of and support for the MoSync SDK and the Device Database. The rights and obligations under these Subscription Models are set forth below in this Agreement including the Addendum. Customer chooses the Subscription Model applicable to him/her via the Order Form.

3 Delivery of MoSync and Device Database

- 3.1 MoSync AB makes available to Customer at least the most recent version of the MoSync SDK existing at the time of the conclusion of this Agreement. MoSync AB will provide MoSync SDK Updates, and further Major Versions according to the Subscription Model chosen as set forth in the Addendum. MoSync AB makes available the MoSync SDK both in source and object code form.

3.2 MoSync makes available to Customer for the term of this Agreement the most recent version of the Device Database available at the time of the conclusion of this Agreement. MoSync AB will provide Device Database Updates, in accordance with the Subscription Model chosen as described on the MoSync website, for the duration of the subscription period.

3.3 MoSync AB fulfils its obligations under Sec. 3.1 and 3.2 by providing Customer promptly after reception of payment of the annual or first monthly Subscription Fee with the opportunity to download its first copy of the MoSync SDK and the Device Database from MoSync AB's website. The MoSync SDK and Device Database Updates shall also – to the extent MoSync AB is obligated thereto according to Sec. 3.1, 3.2 and the Addendum – be delivered via digital download. After this Agreement has terminated, Customer is obligated to delete all copies of the Device Database he/she has in his/her possession to the extent that they are not bundled as part of an Application.

4 Support

4.1 MoSync AB's provides support services according to the Subscription Model chosen as set forth in the Addendum.

4.2 Under the Basic and Gold Subscription Model, Customer receives the support services only for the seats specified in the Order Form.

4.3 MoSync AB is not obligated to provide support for any form of the MoSync SDK that is modified by Customer or any third party in any shape or form.

5 Grant of Rights

5.1 MoSync AB grants to Customer

5.1.1 for the term of this Agreement the non-exclusive, non-transferable, worldwide right to use, reproduce and modify the MoSync SDK insofar as this use, reproduction and modification is necessary for its own development of Applications;

5.1.2 the perpetual, non-exclusive, worldwide right to reproduce parts of the MoSync SDK in modified or unmodified form and only bundled as part of and for the sole purpose of running an Application developed by Customer,

- to distribute copies of parts of the MoSync SDK in modified or unmodified form and only bundled as part of and for the sole purpose of running an Application developed by Customer,
- to make parts of the MoSync SDK available to the public in modified or unmodified form and only bundled as part of and for the sole purpose of running an Application developed by Customer.

5.2 MoSync AB grants to Customer

5.2.1 for the term of this Agreement the non-exclusive, non-transferable, worldwide right to reproduce the Device Database on its computer systems and to use the data contained therein insofar as this use, reproduction and modification is necessary for its own development of Applications.

5.2.2 the perpetual, non-exclusive, worldwide right

- to reproduce parts of the Device Database only bundled as part of and for the sole purpose of running an Application developed by Customer,
- to distribute copies of parts of the Device Database only bundled as part of and for the sole purpose of running an Application developed by Customer,
- to make parts of the Device Database available to the public only bundled as part of and for the sole purpose of running an Application developed by Customer.

5.3 Under the Basic and Gold Subscription Model Customer receives the rights set forth in Sec. 5.1.1, 5.2.1, only for the seats specified in the Order Form.

6 Subscription Fee, Terms of Payment

6.1 The Subscription Fee depends on the Subscription Model as chosen in the Order Form and on Customer's choice of the Invoice Period in the Order Form and is determined according to the schedule in the Addendum.

6.2 The Subscription Fee is payable in advance for the Invoice Period. Upon conclusion of this Agreement Customer will receive an invoice by MoSync AB. Upon payment of the annual/monthly fee in due time Customer will be granted access to the Device Database in accordance with Sec. 3.3.

7 Term of Agreement; Termination

- 7.1 This Agreement becomes effective at the time, when (a) Customer submits its order via MoSync AB's online store, or (b) the applicable Order Form is signed by Customer, delivered to MoSync AB via mail, fax, or as a scan via e-mail, and Customer receives MoSync AB's acceptance of Customer's order in writing, including via fax and e-mail.
- 7.2 It is effective for an initial period of one (1) year, after which the Agreement will be renewed on the same terms and conditions for successive periods of one (1) year, unless one Party notifies the other Party that the Agreement shall not be renewed. The notice must be in writing, including fax and e-mail, and must be received by the other Party at least one (1) month prior to the expiration of the term due to expire.
- 7.3 Each party may terminate the Agreement for good cause without a notice period. There is a good cause if the terminating party, taking into account all the circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. The termination notice must be in writing, including fax and e-mail.

8 Warranty and Liability

- 8.1 MoSync AB declares that it has no knowledge of any lack of title regarding the copyrights under this Agreement. Customer shall be responsible for other intellectual property rights such as trademarks, patents, utility Models, know-how, etc. In relation to the End User, MoSync AB shall not be liable. MoSync AB does not warrant the usability, usefulness or practicability of MoSync or its economic exploitability.
- 8.2 Claims for damages, consequential damages and claims for compensation of useless expenses against MoSync AB shall be excluded irrespective of their legal basis, unless the damage was caused wilfully or grossly negligent. Customer shall be liable for the use of the MoSync SDK in the single Application and shall conduct tests in order to prevent any damage.

9 Endorsement

Customer agrees that MoSync AB may use Customer as a reference. Customer agrees to be contacted in this capacity by media and/or other current or potential customers of MoSync AB and will provide information regarding its customer experience to these third parties in good

faith. Such reference contacts will be limited to a reasonable extent. Moreover, MoSync AB may publish a press release containing the announcement that Customer has entered into this Agreement. Customer may also publish such a press release. Before issuing the press release, the respective Party shall give its draft press release to the other party for its review and approval prior to any such publication. The approval must not be unreasonably withheld or delayed.

10 Export Regulations

Customer shall not export, either directly or indirectly, the Application, without first obtaining any required license or other approval from Sweden and any other applicable jurisdiction. In the event Customer exports any Application from a foreign destination, Customer shall ensure that the distribution and export/re-export or import of Customer's Application is in compliance with all laws, regulations, orders, or other restrictions of the Swedish Export Administration Regulations, the appropriate foreign government and any other applicable jurisdiction. Customer agrees that neither Customer nor any of Customer's subsidiaries will export/re-export any technical data, process, product, or service, directly or indirectly, to any country for which the Swedish government or any agency thereof or the foreign government from where it is shipping, or any other applicable jurisdiction requires an export license, or other governmental approval, without first obtaining such license or approval.

11 General Provisions

- 11.1 The terms and conditions of this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior understandings and agreements relating to the subject matter of this Agreement.
- 11.2 No amendment to this Agreement shall be valid, unless made in writing and signed by all parties hereto.
- 11.3 If any term or provision of this Agreement is construed to be or adjudged invalid, void or unenforceable, the remaining terms and provisions will remain in full force and effect. The invalid term or provision will be modified in such manner as to cause this Agreement to be valid and enforceable while preserving to the maximum extent possible the terms, conditions and benefits as negotiated by the parties; the same shall be done in case of a gap.

- 11.4 This Agreement shall be governed by and construed in accordance with the laws of Sweden, specifically excluding the application of principles of conflict of laws.
- 11.5 All disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Stockholm, Sweden.

Addendum

The Subscription Models entitle Customer to services as follows:

- Basic Pro Subscription:
 - Single seat (one named user) non-floating
 - Forum support
 - 1 Major Version of MoSync with 1 year MoSync Updates [A definition of Major Version would be useful (see above under Definitions).
 - Automatic Device Database Updates as they are made available
 - Automatic MoSync Updates as they occur
 - Access to premium knowledge-base

- Gold Pro Subscription:
 - Single seat (one named user) non-floating
 - up to 10 support emails (response time 8 hours) per year
 - up to 4 hours telephone support (or 10 calls, CET 9am to 6pm) per year
 - 4 Hotfixes (totalling to 2 Days of engineering), specific to a Customer
 - Prioritized feature requests, enabling Customer to affect feature implementation to a limited extent
 - Forum support
 - 1 Major Version of MoSync with 1 year of MoSync Updates
 - Automatic Device Database Updates
 - Automatic MoSync Updates
 - Access to premium tools; software that lends extended functionality for developers not available in the Basic configuration
 - Access to premium knowledge-base

- Platinum Subscription:
 - Single and Multiple users
 - Unnamed users
 - Floating subscription(s) available
 - up to X support emails (response time 8 hours), X being subject to separate agreement
 - X hours telephone support, X being subject to separate agreement
 - X Hotfixes, X being subject to separate agreement
 - Prioritized feature requests

- Forum support
- Multiple major versions
- Automatic Device Database Updates
- Automatic MoSync Updates
- Access to new platforms on the market earlier than under other Subscription Models
- Verified device profiles
- Access to premium tools
- Access to premium knowledge-base
- Provision of non-recurring engineering (NRE), subject to separate agreement