

IMS Test Lab Agreement

Entered into as per the provisions of this agreement between

Ericsson AB, reg no 556056-6258, Business Unit Multimedia, 164 80 STOCKHOLM (below referred to as "**Ericsson**"),

and

[fill in complete name of legal entity, reg no and address] (below referred to as "**User**").

WHEREAS Ericsson has developed the IMS customer test laboratory (the "**Test Lab**") and decided to make it available for use by approved users for the purpose of testing and verification of certain applications both via the Internet and on-site in Ericsson's terminal room. Information about the Test Lab and pre-requisites for being accepted as a user can be found on the web site at www.ericsson.com/mobilityworld (the "**Web Site**").

WHEREAS the User has visited the Web Site and acquainted himself with the information provided therein concerning the Test Lab and testing and verification of applications,

WHEREAS the User desires to sign this agreement (together with its appendices, below referred to as the "**Agreement**") in order to be granted a non-exclusive right to use the Test Lab for the said purpose.

NOW, THEREFORE, by signing of this Agreement, the User hereby acknowledges, warrants and agrees to the following with Ericsson.

1 Grant of Right to Use the Test Lab

- 1.1 After receipt of Ericsson's confirmation of acceptance of this Agreement, the User is, subject to the terms and conditions of this Agreement, granted the non-exclusive, non-transferable, revocable, restricted access right to use the Test Lab for testing and verification, as per this Agreement, of his application(s) (herein the "Product(s)") described under the heading Product Information in Appendix 1 (IMS Test Application Form) (herein the "Application Form").
- 1.2 Ericsson reserves the right to, without prior notice; reject Products as not suitable for testing and/or verification by use of the Test Lab.
- 1.3 The right to use granted under Sub-clause 1.1 is also conditional upon User's compliance with the rules for usage that at any time may be published at the Web Site.
- 1.4 The User is not permitted to assign, transfer, sublicense or sublet any rights granted as per this Agreement, or otherwise use them as host for others.

2 Evaluation and Acceptance Procedure

- 2.1 In order to be granted the right to use the Test Lab, the User shall fill in the Application Form completely and accurately, and send it, together with one original of this document duly signed by authorised representatives of the User, to Ericsson Canada Inc., Attn: Marc Leclerc, 8400 Decarie Blvd, Town of Mount-Royal, Qc, CANADA, H4P 2N2.
- 2.2 Upon receipt of a duly signed original of this Agreement and the Application Form, Ericsson will start an internal evaluation procedure in order to determine whether the User and its Products described in the Application Form can be approved for the purposes of utilizing the Test Lab for the purposes set out in the Agreement. The evaluation will cover i.e. Technical Requirements and other circumstances of relevance. Ericsson shall, as soon as reasonably possible, respond in writing (electronically or by ordinary mail) to the User's Representative set out in Clause 18 below, and either confirm its acceptance of this Agreement or inform the User that his application has been rejected.
- 2.3 By signing of this Agreement, the User (i) approves and acknowledges that Ericsson reserves the sole right to decide upon whether a User's application shall be approved or rejected and that Ericsson is not obliged to give any reasons for its decisions, and (ii) declares himself to be legally bound by the provisions set out herein governing the User's duties and obligations.

3 Effective Date

- 3.1 This Agreement becomes legally binding for Ericsson at the date of Ericsson's acceptance thereof as per Sub-Clause 2.2 above (herein defined as the "**Effective Date**").
- 3.2 If Ericsson rejects the application, the User shall concurrently be deemed to be released from the duties and obligations imposed on him as a result of signing of this Agreement. Neither the User nor

Ericsson will be entitled to any compensation or compensation from the other as a consequence of such rejection.

4 Technical Requirements and Support Services

- 4.1 In order utilize the Test Lab the User must comply with all of the following technical requirements (herein the “**Technical Requirements**”); the User shall have (i) tested the Products on the IMS Service Development Studio (SDS) available at the Web Site, and (ii) a secure public internet connection with satisfactory fire wall(s) (proxied or unproxied) and (iii) in all other respects comply with the technical requirements and other conditions set out in the Application Form and at the Web Site (as amended from time to time).
- 4.2 The User is entitled to technical support services (herein the “**Support Services**”) in accordance with the terms and conditions set out in Appendix 2 (Support Services).

5 User’s Obligations

The User shall;

- a) use the Test Lab only for testing and verification of Products that comply with the Product description contained in the Application Form provided by the User,
- b) use the Test Lab only in accordance with the terms and conditions of this Agreement,
- c) comply with the Technical Requirements,
- d) fill in the Application Form completely and correctly and not leave out any information about the Products or other circumstances that could be of importance for Ericsson to gain knowledge about in order to evaluate if the User should be allowed to use the Test Lab,
- e) have tested the Product in the IMS Service Development Studio (SDS) (which can be downloaded free of charge at the Web Site) with accurate result before starting a complete test by aid of the Test Lab,
- f) refrain from marketing and/or giving publicity to statements of a nature that could give the impression that the Products tested and verified by aid of the Test Lab is approved or certified by, or by other means qualitatively or functionally accepted by Ericsson,

6 Ericsson’s Obligations

Ericsson shall;

- a) provide the User with information about the OpenVPN client certificates/key/configuration and password to extract files from the provided zip file through which the User can access the Test Lab in order to carry out tests and verifications,

- b) subject to the terms in this Agreement, make available the Test Lab for remote testing and verification of Product(s) during booked time slots, during the term of this Agreement,
- c) provide the User with access to the Support Services amounting to maximum two (2) hours during the pre-booked timeslot, during office hours Monday to Friday 9.00 – 17.00 (GMT - 5.00), excluding public holidays and other days during which the Support Services will be closed down (such other days to be announced at the Web Site in advance).

7 Availability and Malfunctions

- 7.1 Ericsson makes no warranties or representations concerning availability or security of the Test Lab, nor that User's Products are fit for being tested or otherwise verified in the Test Lab. Ericsson informs and User accepts that availability of the Test Lab at the Web Site from time to time can be non-existing or restricted due to lack of capacity, data transmission faults, interruption of power and other circumstances outside Ericsson's reasonable control. Further, the User agree that Ericsson's responsibility and liability for non-availability shall be limited to what is set out below in this Clause 8 and in other parts of this Agreement.
Planned temporary closing down of the Test Lab will be announced in advance at the Web Site.
- 7.2 Ericsson is only responsible for defects and/or other malfunctions (below jointly referred to as "**Malfunction(s)**") in the Test Lab, the Web Site and/or support services provided by Ericsson to the extent such Malfunctions causes the Test Lab to be not available for testing purposes by the User according to this Agreement. Ericsson's responsibility in case of such Malfunctions is limited to an obligation to use its reasonable efforts to correct any Malfunction without any unreasonable delay. If in spite of Ericsson using all reasonable efforts, it proves difficult or not commercially suitable (in the opinion of Ericsson), to correct the Malfunction without unreasonable delay, the Malfunction will not be corrected.
- 7.3 Notwithstanding Sub-Clause 7.2, Ericsson shall have no responsibility or liability for a) Malfunctions of a temporary nature (meaning such Malfunctions that exist more than 12 hours during weekdays and/or during weekends and public holidays); or b) Malfunctions that are not attributable to the Test Lab or Web Site, such as circumstances related to the User and/or any third party.
- 7.4 Ericsson's responsibilities set out above in this Clause 7 constitute the only and exclusive remedies available to the User in case of Malfunctions in the Test Lab, the Web Site and support services provided by Ericsson hereunder.

8 No Warranties

- 8.1 The Test Lab and the Web Site is provided for use "as is" without any warranty of any kind. The entire risk as to the quality, functioning and performance of the Products is borne by the User.
- 8.2 Ericsson does not make and hereby disclaims any warranties, whether express or implied, with respect to the Test Lab, the Web Site and the Support Services, including but not limited to any warranty of merchantability or fitness for a particular purpose or against infringement, or any express or implied warranty arising out of trade usage or out of a course of dealing or course of performance.

- 8.3 Further, Ericsson is expressly released by the User from any and all responsibility and liability in relation to results of tests and verifications carried out in the Test Lab. Ericsson shall not bear any responsibility or liability for the Products inter-operability with other products and applications.

9 Intellectual Property Rights

- 9.1 Ericsson retains all rights to trademarks and any and all other intellectual property rights, existing and future, owned or rightfully used by Ericsson whether in conjunction with the Test Lab, the Web Site or otherwise. This Agreement shall not be deemed to constitute any right for the User to use such trademarks or other intellectual property rights unless explicitly stated in this Agreement.
- 9.2 By signing this Agreement, User grants Ericsson a license to post the User's trademarks including company name and logotype as well as any name and logotype of User's tested Product(s) on the "tested applications catalogue" on Ericsson's external website to inform that User's Product(s) has been tested in the Test Lab.
- 9.3 User acknowledges that the trademarks in appendix 3 ("Trademarks") contain the corporate trademark of Telefonaktiebolaget L M Ericsson and that each part of the corporate trademark combined and separate are also trademarks of Ericsson.
- 9.4 User may utilize the Trademarks only to communicate that the Products have undergone testing and verification in the Test Lab.
- 9.5 Any use by User of any of the Trademarks shall be in strict accordance with Ericsson's usage rules prevailing from time to time including the Ericsson graphic identity specified in the Ericsson Brand Portal <http://brand.ericsson.net> or in "Graphic Ground Rules" as well as in the document "Guidelines for usage of Ericsson's IOT logos" and Ericsson's further instructions.
- 9.6 Nothing in this Agreement shall be deemed to grant User any right, title or interest in any of the Trademarks, except the right to use the Trademarks as permitted in this Article 9. Except as provided herein, User shall not have any right to use the Trademarks or any derivative thereof or any combinations of trademarks, trade names or company names including said word, device or slogan, and further, User will refrain from using or registering any trademark, device, slogan, trade name or company name confusingly similar thereto. User shall refrain from registering domain names identical with or including the Trademarks unless specifically authorized by Ericsson in writing.
- 9.7 User shall not publish, encourage or approve any advertising or practice that might be detrimental to the good name, Trademarks, goodwill or reputation of Ericsson or its products, nor will it act in a manner that may have such an effect.
- 9.8 Upon receipt of written notice from Ericsson, or the expiration or termination of this Agreement, all of User's rights concerning use of the Trademarks shall automatically terminate and User shall then immediately cease to use the Trademarks and any domain names earlier agreed upon and withdraw, or upon request automatically transfer said domain name registrations to Ericsson without

any compensation to User. User shall forthwith sign all documents deemed necessary by Ericsson to confirm such transfer.

- 9.9 Ericsson may, where recordation of use of the Trademarks applied for or registered is compulsory or recommended, apply for registration of User as a permitted user of the Trademarks within the Territory. If this Agreement is insufficient for such registration, the parties will sign a short form supplementary agreement in form satisfactory to the registrar of trademarks in the Territory.

10 Infringement

- 10.1 Ericsson shall not be held responsible by the User for any infringement of intellectual property rights or trademarks belonging to third parties as a result of this Agreement, unless such infringement has been caused by gross negligence or willful acts by Ericsson.
- 10.2 The User undertakes to promptly inform Ericsson in writing if he becomes aware of any claim (or threatening claim) of infringement of any intellectual property right or trademark as a result of use of the Test Lab.

11 Misuse

The User has no right to utilize the IMS Expert Center Test Lab for testing of Products or applications that that have not been accepted by the Ericsson Mobility World Developer Program.

12 Limitation of Liability

- 12.1 In no event shall Ericsson be liable for any indirect, incidental, special, consequential, punitive or tort damages of any nature or kind whatsoever, including but not limited to loss of profits, loss of contract, loss of use, loss of time, loss of data or loss, damage or costs resulting from interruption of business operation, in connection with or arising out of this Agreement or the use or performance of either the Test Lab and/or the Web Site.
- 12.2 Ericsson explicitly disclaims any warranty for the Test Lab, the results of the use of the Test Lab, User's Products and any and all liability for the Products' inability to interface or operate with the any other applications or products.
- 12.3 Further, the entire liability of Ericsson, for any claim or cause of action arising hereunder (whether in contract, by way of negligence, tort or otherwise) shall not exceed an amount of ten thousand (10,000) EUR.

13 Confidentiality

- 13.1 All disclosure of information by the User under or in connection with this Agreement will be deemed to be non-confidential, unless the User has specifically designated it as confidential or proprietary prior to the time of disclosure.
- 13.2 Ericsson agrees to keep confidential all written and verbal information designed as being confidential and received from the User in connection with the Agreement, and the User agrees to keep confidential all written and verbal information disclosed by or otherwise obtained from Ericsson in connection with this Agreement. Each of the Parties also agrees not to make use of such information for any purposes other than to perform its obligations in connection with the Agreement. This undertaking shall be valid until five (5) years after expiration of this Agreement.

The above undertaking shall, however, not apply to information

- which, through no fault of the receiving party, is or becomes generally known to the public through publication or falls into the public domain,
- which the receiving party can establish was in its possession, without any restrictions as to its disclosure, at the time of its receipt hereunder, or
- which is subsequently lawfully acquired by the receiving party independently of any other party to this Agreement.

14 Force Majeure

The performance by either party of its obligations under this Agreement shall be excused for a period that is reasonable under the circumstances, if the failure or delay thereof is caused by any unforeseeable events or circumstances beyond such party's reasonable control such as labour disputes, acts of God, riots, war, fire, explosion, natural disasters, embargo or requisition. The party wishing to claim relief by reason of any such circumstance shall notify the other party in writing without delay on the intervention and on the cessation thereof.

15 Term and Termination

- 15.1 This Agreement shall become in full force and effect between the parties at the Effective Date and remain in force until either party terminates it. Either party shall be entitled to terminate the Agreement without cause with fourteen (14) days prior written notice.
- 15.2 In addition, either Party may immediately terminate this Agreement if the other party should commit a breach hereof which is not insignificant. For avoidance of doubt, if the User commit a breach against Clauses 5, 9, 10 and 11, such breach shall always be considered as significant.
- 15.3 In addition to Sub-Clause 16.2, Ericsson shall have the right to immediately terminate this Agreement if:
- a) the User become insolvent; make an assignment for the benefit of creditors; file a voluntary bankruptcy petition; become the subject of any involuntary bankruptcy petition; become adjudicated bankrupt; or ceases to do business; or
 - b) the User makes any attempt to assign, delegate, sub-license, lease, rent or otherwise transfer any of its rights or obligations hereunder, or

c) if there is a change in the management, control or ownership of the User which could, in Ericsson's sole discretion, adversely affect Ericsson.

16.4 On termination of this Agreement, neither Party shall be entitled to any compensation or damages for or on account of such termination, except where such claim is based on a breach of this Agreement.

16 Miscellaneous

16.1 This Agreement constitute the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior agreements, understandings, promises and representations made by any of the parties concerning the subject matter: testing of IMS applications in the Ericsson IMS Expert Center lab in Montreal, Canada.

16.2 If any provision contained in this Agreement is or becomes ineffective or is held to be invalid by a competent authority or court having final jurisdiction thereover, all other provisions of this Agreement shall remain in full force and effect and there shall be substituted for said invalid provision a valid provision having an economic effect as similar as possible to the original provision.

16.3 Changes and additions to this Agreement shall be made in writing in order to be legally binding between the parties.

16.4 The rights and obligations of the User under this Agreement may only be assigned with the prior written approval of Ericsson.

17 The User's Representative

The following person is duly authorised by the user to act as representative of the User towards Ericsson in all matters connected with the Agreement:

Name: _____

Address: _____

Telephone: _____

Email: _____

18 Governing Law and Arbitration

- 18.1 This Agreement shall be governed by and construed in accordance with the laws of Sweden, without regard to its conflict of law rules.
- 18.2 Any dispute arising out of or in connection with the present Agreement shall be finally settled by arbitration under the expedited Rules of the Arbitration Institute of the Stockholm Chamber of Commerce by one arbitrator appointed in accordance with the said rules. The place of arbitration shall be Stockholm, Sweden, and the proceedings shall be conducted in the English language.

Place and date: _____

[Insert User's company name]

[Sign above and insert name clarification of duly authorised signatories here]

Appendix 2

Technical consultation

Technical consultation on a “reasonable effort” basis is included in the IMS Expert Center Test Lab service, during Montreal business hours (9:00 – 17:00, GMT – 5.00), Monday to Friday, and excluding legal holidays in the province of Quebec, Canada. This is up to a maximum of 2 hours during the pre-booked timeslot. The time-slot is to be booked at least 1 week in advance. IMS technical experts provide the technical consultation service, which is available by phone or email. Maximum delay in response time is 2 hours. This service provides assistance to connect to Ericsson’s IMS core and enablers via VPN. No assistance for 3rd party lab elements is offered.