

Application SDK Partner Agreement Particulars

Date:	[]
Mondago:	Mondago Limited (company number 04093676) whose registered office address is Camrascan House, Isis Way, Peterborough, PE2 6QR (email: <i>[complete email address if formal notice can be served by email]</i>)
The Development Partner:	<i>[full corporate name]</i> of <i>[registered office]</i> (email: <i>[complete email address if formal notice can be served by email]</i>)
Definitions:	
The following words shall have the following meanings:	
“Commencement Date”	[insert date on which agreement is to start]
“Development Partner Application(s)”	<i>[description of the relevant development partner Development Partner Application to be inserted]</i>
“Mondago Software Solution(s)”	<i>[description of the relevant Mondago Software Solutions]</i>
Other words commencing with capital letters are defined in the terms and conditions attached to these Particulars.	
Agreement:	
Mondago and the Development Partner agree to comply with, the terms and conditions attached to these Particulars.	
Signed by Mondago	Signed by the Development Partner

Application SDK Partner Agreement

Terms and Conditions

BACKGROUND

- (A) Mondago has developed and is the owner of various computer telephony software products which are typically licensed and distributed to various end users using OEM and distributor level distribution contracts.
- (B) The Development Partner is the developer and owner of the Development Partner Application(s).
- (C) Mondago has accepted the Development Partner onto Mondago's Development Partner Program which will enable the Development Partner to:
- a. use the API Specification(s) and the API(s) for the purpose of making such modifications as are required to the Development Partner Application(s) to enable the Development Partner Application(s) to interoperate, via the API(s), with the Mondago Software Solution(s); and
 - b. ship the Components and/or Libraries to End Users, along with the Development Partner Application(s) and to enable the End Users to use the API(s); and
 - c. utilise Mondago support services; and
 - d. jointly promote and market each party's related solutions.

in each case subject to and in accordance with these terms and conditions.

AGREED TERMS

1. Definitions and Interpretation

1.1. In these terms and conditions, the following words shall have the following meanings:

"API(s)"	means the application programming interface(s) which allow(s) access to the Mondago Software Solution(s).
"API Specification(s)"	means the specification(s) to which the API(s) has/have been developed.
"Commencement Date"	is as set out in the Particulars.
"Components and/or Libraries"	means the Mondago software components and/or libraries provided by Mondago to the Development Partner which are required for the API(s) to operate.

“Confidential Information”	means information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as confidential information.
“Development Partner Application(s)”	means the software application(s), as described in the Particulars, in respect of which the Feature Enhancements are to be developed.
“Development Partner”	means the software developer described as the “Development Partner” in the Particulars.
“End Users”	means the end users of the Development Partner Application(s) whom have purchased a licence to use the API(s) and, where applicable, the Components and/or Libraries, via the standard Mondago OEM distribution channels.
“Feature Enhancements”	means the modifications required to the Development Partner Application(s) to enable the Development Partner Application(s) to interoperate with the Mondago Software Solution(s) through use of the API(s).
“Intellectual Property Rights”	means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.
“Mondago”	is as defined in the Particulars.
“Mondago Software Solution(s)”	means the Mondago computer telephony software solution(s) described in the Particulars.
“Particulars”	means the “Application SDK Partner Agreement Particulars” to which these terms and conditions are attached.

1.2. The following rules of interpretation apply to these terms and conditions:

- 1.2.1. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.2. any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.3. a reference to “this agreement” is a reference to these terms and conditions together with the Particulars.
- 1.2.4. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. Right to use the API(s)

- 2.1. Mondago offers the API and the API Specification(s) under the following non-exclusive open source license:

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

- 2.2. Mondago shall have the right, at any time, to amend, modify, enhance or change the API(s) and shall provide the Development Partner with advance notice of any such amendment, modification, enhancement or change. The Development Partner acknowledges that it may be required to modify the Development Partner Application(s) as a result of the foregoing and shall, upon receipt of any notice received by Mondago of an amendment, modification, enhancement or change to the API(s), make all such modifications to the Development Partner Application(s) as are necessary to ensure that the interoperability of the Development Partner Application(s) and the Mondago Software Solution(s) is not impaired.

3. Restrictions

- 3.1. Without prejudice to the scope of use granted in clause 2.1 the Development Partner shall not and shall not permit any third party to:
- 3.1.1. use the API(s) or the API Specification(s) to create any product, software program or service (other than the Feature Enhancements) including, but not limited to, any product, software program or service which competes with, or is similar to, or would infringe upon the copyright (or any part thereof) of the Mondago Software Solution(s) or any other Mondago product or service offering;
 - 3.1.2. permit any application or program to access the API(s) except for the Development Partner Application(s);
 - 3.1.3. introduce software that behave like viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful onto any Mondago or third-party system;
 - 3.1.4. use the API(s) for any purpose which or might overburden, impair or disrupt the Mondago Software Solution(s) or related servers, systems or networks;

4. Testing and Development Support

- 4.1. Following the development of the Feature Enhancements the Development Partner shall demonstrate the Feature Enhancements to Mondago in an end user scenario. This may be documented and recorded, and a description of the Feature Enhancements may be published on Mondago's customer facing web site/s.
- 4.2. The Development partner shall be able to directly raise technical questions with respect to the API through a restricted partner portal. Should the partner require additional access to Mondago technical resources in connection with this agreement, then such support may be subject to separate charges.

5. Marketing

- 5.1. The End Users licence to the Mondago Software Solution shall be distributed solely through Mondago approved sales channels and the Development Partner shall not be entitled to sell, distribute, sub-licence, rent, assign or lease or otherwise transfer or grant any rights to any third party in respect of the API(s).
- 5.2. The Development Partner hereby grants to Mondago a non-exclusive, royalty free, worldwide licence to use the Development Partner's trading name, company name, logo(s) and trade mark(s) for the purpose of marketing the collaboration between Mondago and the Development Partner including, but not limited to performing its obligations in clause 5.3 below.
- 5.3. Following completion of the Feature Enhancements in accordance with clause 4.1 above, Mondago may choose to market the collaboration between Mondago and the Development Partner by carrying out the following activities:
 - 5.3.1. displaying the Development Partner as an "Application Partner" on Mondago's web site; and
 - 5.3.2. listing the Development Partner Application as a "Partner Integration" on those Mondago Software Solution(s) web site(s) which are managed and maintained by Mondago from time to time as Mondago considers appropriate.
- 5.4. The Development Partner shall be permitted to describe itself as a "Mondago Partner".

6. Intellectual Property Rights

- 6.1. All rights, title and interest, including Intellectual Property Rights, in the Mondago Software Solution(s) including any developments, adaptations, modifications and copies thereof shall belong, in law and equity, to Mondago. No licence or any other right is granted to the Development Partner, by virtue of these terms and conditions, in respect of any Intellectual Property Rights or other rights in the Mondago Software Solution(s) (including any developments, adaptations, modifications and/or copies thereof) save as expressly set out in these terms and conditions.
- 6.2. All rights, title and interest, including Intellectual Property Rights, in and to Development Partner Application(s) including any developments, adaptations, modifications (including the Feature Enhancements) and copies thereof shall belong, in law and equity, to the Development Partner. No licence or any other right is granted to the Mondago, by virtue of

these terms and conditions, in respect of any Intellectual Property Rights or other rights in the Development Partner Application(s) (including any developments, adaptations, modifications (including the Feature Enhancements) and/or copies thereof) save as expressly set out in these terms and conditions.

- 6.3. The Development Partner shall defend Mondago, its officers, directors and employees against any claims that the Development Partner Application(s) and/or the trading name, company name, logo(s) and trade mark(s) or any other software, technology or documentation given or otherwise made available by the Development Partner to Mondago infringes any Intellectual Property Right and shall indemnify Mondago for and against any damages, losses, costs and expenses (including legal costs and expenses) or other liabilities incurred by Mondago as a result of such claim.
- 6.4. The Development Partner shall provide all reasonable assistance to Mondago (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by Mondago in connection with any claim referred to in clause 6.3 above.

7. Confidentiality

- 7.1. Each party may have access to Confidential Information of the other party under this agreement. A party's Confidential Information shall not include information that:
 - 7.1.1. is or becomes publicly known through no act or omission of the receiving party; or
 - 7.1.2. was in the other party's lawful possession prior to the disclosure; or
 - 7.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 7.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 7.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 7.3. Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 7.4. This clause 7 shall survive termination of this agreement, however arising.

8. Commencement, duration and termination

- 8.1. This agreement shall commence on the Commencement Date and shall continue until terminated in accordance with this clause 9.

- 8.2. Without affecting any other right or remedy available to it, a party may terminate this agreement on giving no less than 12 months' written notice to the other party.
- 8.3. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party:
 - 8.3.1. if the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - 8.3.2. if the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 8.3.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - 8.3.4. if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.3.5. if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.3.6. if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 8.3.7. if the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 8.3.8. if a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 8.3.9. if a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 8.3.10. if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
 - 8.3.11. if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9. Effects of termination

On termination of this agreement for any reason:

- 9.1. Mondago shall be entitled to:
 - 9.1.1. cease to use the company name, trade mark(s) and logo(s) of the Development Partner including removing reference to the Development Partner being an “Application Partner” on any web site or marketing material; and
 - 9.1.2. cease to list the Development Partner Application(s) as a “Partner Integration” on Mondago Software Solution(s) web site(s)
- 9.2. The Development Partner shall cease to refer to itself as an “Application Partner” of Mondago and/or a “Mondago Partner”;
- 9.3. each party shall return to the other party or, at the discretion of the other party destroy, all Confidential Information of the other party that is in the possession of that party;
- 9.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination and, in respect of clauses which survive termination, obligations or liabilities which accrue after termination, shall not be affected or prejudiced;
- 9.5. any clause expressly stated to survive termination or implicitly surviving termination shall continue to survive including, but not limited to, clauses 1, 6, 7, 8, 10 and 11 to 21.

10. Force majeure

Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

11. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

13. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

14. Entire agreement

- 14.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 14.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 14.4. Nothing in this clause shall limit or exclude any liability for fraud.

15. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. Assignment

Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

17. No partnership or agency

- 17.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Third party rights

No one other than a party to this agreement shall have any right to enforce any of its terms.

19. Notices

- 19.1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or by email to the email address provided in the Particulars.
- 19.2. Any notice shall be deemed to have been received:
- 19.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 19.2.2. if sent by email at 9:00 am on the next Business Day after transmission; and
 - 19.2.3. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 19.3. For the purpose of this clause a "Business Day" means a day, other than a Saturday, Sunday or public holiday in England, when banks are open for business.

20. Governing law

This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

21. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).