

SOFTWARE DISTRIBUTION AGREEMENT

This Software Distribution Agreement ("Agreement") is a legal contract between: You the software developer ("Software Owner"); and Opera Software ASA, including its wholly owned subsidiary Handster, Inc. (collectively, "Opera"). This Agreement sets forth the terms and conditions applicable to the distribution of the computer programs, graphical images, ringtones, music, user manuals and other mobile content ("Software") that the Software Owner provides to Opera for distribution hereunder.

1. LICENSE GRANT.

- 1.1 **Software License.** Software Owner grants Opera a non-exclusive right and license to use, distribute, copy (in connection with electronic distribution only), market and license in any media throughout the world (including CDs, gift cards, CompactFlash cards, SD cards, the world wide web, on-device clients, and other commercially acceptable means) the Software and to accept payments for the Software from customers throughout the world.
- 1.2 **Trademark License.** Software Owner grants Opera a nonexclusive, worldwide, royalty-free right and license to use, in connection with the Software, Software Owner's trademarks, trade names, service marks, logos or other identifying or distinctive marks (collectively, "**Marks**"), provided that Opera will comply with the Software Owner's trademark usage guidelines provided to Opera.
- 1.3 **Distribution.** Opera, at its sole discretion and at any time, may refuse to distribute or indefinitely suspend the distribution of any piece of Software for any reason. In addition, Opera, at its sole discretion and at any time, reserves the right to choose which distribution methods, if any, will be used to distribute the Software.
- 1.4 **Demonstration License.** Software Owner grants Opera a royalty-free, nonexclusive right and license to use, publicly display, publicly perform, and duplicate the Software for the purpose of marketing or demonstrating the Software to prospective Partners, customers and end users. Such marketing or demonstration efforts may include demonstrating the Software online via an Internet accessible emulation device, webcasting, or other means.
- 1.5 **Opera's Partners.** Opera may assign and/or sub-license any of the foregoing rights to its distribution partners, including original equipment manufacturers, mobile network operators, and other authorized sales agents ("**Partners**").
- 1.6 **Marketing.** Opera will bear all expenses for its operations and staff. Opera may advertise and promote the Software at Opera's sole discretion and expense.

2. OBLIGATIONS OF SOFTWARE OWNER.

- 2.1 **Safety and Compliance.** Software Owner shall be solely responsible for ensuring that its Software is safe, free of defects in design and operation, and that it complies with applicable laws and regulations.
- 2.2 **End User Information.** Software Owner agrees that it shall be solely responsible for protecting the privacy and legal rights of end users of its Software and, at a minimum, Software Owner shall do as follows:
 - (a) If end users provide Software Owner with, or the Software gathers or accesses, usernames, passwords or other log-in information, or any personally identifiable information about end users ("End User Information"), Software Owner must make the end users aware that the End User Information will be available to Software Owner, and Software Owner must provide legally adequate privacy notice and protection of that information for those end users.

- (b) The Software may only use End User Information for the limited purposes for which the end user has given Software Owner permission to do so, and in no case may the information be used in any manner that would violate Software Owner's privacy policy or Opera's posted privacy policy (<http://www.opera.com/privacy/>).
- (c) If Software Owner or the Software stores End User Information or other sensitive information provided by end users, it must do so securely and only for as long as it is needed.

2.3 Support and Maintenance. Software Owner shall be solely responsible for the content, quality, and performance of the Software, for any warranty, support, maintenance, or other obligations related to the Software, for communicating with end users regarding the Software, and for addressing any end user complaints about the Software. Software Owner agrees to provide end users with support by email or phone, state Software Owner's support email address or phone number at an appropriate place within the Software, and respond to end user related issues pertaining to the Software within five (5) business days. The level of support must, at a minimum, be in accordance with Software Owner's support policies then in effect. Software Owner further agrees to provide a link to any support materials for the Software when submitting the Software to Opera.

- 2.4 Responsibilities to Opera:** Software Owner will provide, at no charge, to Opera or, where applicable, the Partner, customer or end user, the following:
- (a) **Promotional Material.** Marketing materials and user manuals in all reasonably available media for use, at the Opera's sole discretion, in marketing, installing or using the Software.
 - (b) **Software Distribution.** The Software in a form suitable for electronic reproduction and distribution. Before delivering any computer program to Opera, Software Owner must first test the computer program to ensure it is, to a reasonable extent, free of defects.
 - (c) **Bug Fixes.** Bug fixes or software patches as are reasonably required to ensure proper operation of the Software.
 - (d) **Suggested retail price.** Software Owner will provide the suggested retail price ("SRP") for all Software being distributed pursuant to this Agreement. The actual retail price of the Software to be determined by Opera may differ from the SRP provided by Software Owner. For Software distributed within North American and Western Europe, Opera may discount any or all Software up to 25% off the SRP to match mobile carrier billing points or for time-limited promotions. To maximize gross receipts in light of local market conditions, Opera may discount Software distributed outside of North American and Western Europe as determined by Opera in its sole discretion.
 - (e) **Volume Pricing.** Software Owner will provide Opera with a volume pricing model for sales of Software in multiple quantities and, if Software Owner fails to do so, it will be deemed to have accepted Opera's standard volume pricing model. Software Owner may view Opera's standard volume pricing model through its online account accessible via the Opera developer portal, and Opera may update the standard volume pricing model at its sole discretion and at any time.

3. REPORTING AND PAYMENT.

- 3.1 Reporting.** Within 30 days after the end of each month, Opera will issue to Software Owner a Summary Report of amounts payable pursuant to this Agreement.

- 3.2 **Payment.** Provided that Software Owner is not in material breach of any of its obligations under this Agreement, within 30 days after the end of each month Opera will pay Software Owner an amount equal to Net Receipts, less Opera's retained Fee. The following shall apply to the calculation of amounts payable pursuant to this Section 3.2:
- (a) "**Gross Receipts**" for each month shall be comprised of amounts actually collected with respect to the Software during such month. Gross Receipts shall be reduced by any amounts respecting the Software that are charged back or otherwise returned during such month due to customer refunds processed by Opera or contested credit card transactions, and any fees or penalties associated therewith ("Chargebacks").
 - (b) "**Net Receipts**" for each month shall be comprised of Gross Receipts less Transaction Costs.
 - (c) "**Transaction Costs**" means all costs associated with Gross Receipts, including but not limited to: (i) credit card and other transactional fees; (ii) fees payable to Opera's distribution Partners; and (ii) sales, VAT and other applicable taxes.
 - (b) "**Fee**" means Opera's retained fee of: (i) 30% of Net Receipts from Software for the Android, Blackberry and Symbian platforms; and (ii) 50% of Net Receipts from Software for Java platforms.
- 3.3 **Minimum Payment Amount.** Opera shall have no obligation to effect payment in any month in which the total amount Software Owner is owed is less than \$200 USD. Amounts under \$200 USD will be retained and accumulated with amounts accruing in subsequent months until 30 days after the end of the month in which the total amount payable comes to exceed \$200 USD. Accumulated amounts shall not accrue any interest.
- 3.4 **Chargebacks.** If Chargebacks result in a negative amount of Gross Receipts for a particular month, Opera shall at its discretion either: (i) offset such negative amount against future payments Software Owner is owed under this Agreement; or (ii) invoice this amount. Software Owner agrees to pay within thirty (30) days of the date of invoicing any amounts invoiced by Opera as a result of such Chargebacks. Opera reserves the right to de-list the Software or to increase Opera's Fee for the Software if Opera determines, at its sole discretion, that the Software quality or related customer support is causing excessive Chargebacks. Opera will notify Software Owner in advance of taking such action to give Software Owner a chance to correct the problem.
- 3.5 **Verification.** Software Owner may, once every twelve (12) months and at its sole expense, hire an independent certified public accountant to audit Opera's financial records to the extent reasonably necessary to verify Opera's compliance with its payment obligations under this Agreement. The certified public accountant will execute a reasonable confidentiality agreement prior to commencing any such inspection. Notwithstanding the foregoing, any financial records not audited within a twelve (12) month period will be deemed accurate and not subject to review. Should such audit discover a discrepancy of ten percent (10%) or more in Software Owner's favor, Software Owner will be reimbursed for the reasonable cost of such audit, in addition to receiving the adjusted payment.

4. **LIMITATION OF LIABILITY.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS) IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE FURNISHING, FUNCTIONING, USE, DISTRIBUTION OR MARKETING OF THE SOFTWARE OR ANY RELATED ITEM OR SERVICE PROVIDED BY SOFTWARE OWNER OR OPERA. IN NO EVENT SHALL OPERA'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR

RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES OPERA RECEIVES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH CLAIM.

5. TERM AND TERMINATION.

- 5.1 **Term.** This Agreement commences on the date of the last signature or, if made electronically, the date of Software Owner's online or email acceptance, and shall remain in effect until terminated as provided in this Section 5.
- 5.2 **Termination.** For Cause: This Agreement may be terminated by either Party if the other Party is in material breach of any term or condition of this Agreement and such breach is not remedied for a period of thirty (30) calendar days after the Party in breach has been notified of the breach by the other Party. Without Cause: Either Party may terminate this Agreement for any reason and at any time by giving the other Party ninety (90) days prior written notice.
- 5.3 **Rights and Duties Upon Termination.** In the event of expiration or termination of this Agreement: (i) within thirty (30) days of termination, Opera shall provide Software Owner with a statement of all sums due to Software Owner under this Agreement; (ii) Opera shall not license, sell or otherwise dispose of the Software to any third party after the effective date of such expiration or termination; and (iii) the Software Owner shall be responsible for continued support of past and future sales of the Software. Software Owner acknowledges and agrees that the termination or expiration of this Agreement does not terminate the rights or licenses of an end user to continue to use the Software, if the Software was subscribed to or downloaded by the end user prior to the effective date of expiration or termination.
- 5.4 **Return of Software.** Upon termination or expiration of this Agreement, Opera shall return to Software Owner or destroy all Software, including code and documentation, covered by this Agreement. Notwithstanding the foregoing, Opera may retain one copy of the Software and documentation solely for archival purposes.

6. INTELLECTUAL PROPERTY RIGHTS.

- 6.1 **Ownership by Software Owner.** The parties agree that Software Owner owns all intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in and to the Software and that this Agreement does not transfer ownership of any of these rights.
- 6.2 **Ownership by Opera.** The parties agree that Opera owns all intellectual property rights, including copyrights or trademarks, in any marketing materials created, modified or otherwise prepared by Opera which may contain Software Owner's proprietary materials, including copyrights or trademarks.

7. WARRANTIES AND INDEMNIFICATION.

- 7.1 **General Warranties.** Each party warrants that it has the full power, legal right and authority to enter into this Agreement and perform its obligations hereunder.

- 7.2 **Warranties by Software Owner.** Software Owner represents and warrants that: (a) the Software, as submitted and as subsequently updated or upgraded, will be free from code that: (i) might disrupt, disable, harm, or otherwise impede the operation of any software, firmware, hardware, television, computer system, or network; (ii) would enable Company or anyone else to gain unauthorized access to an end user's device or private information for any reason; (iii) gathers information in a manner that leads to exploitation of an end-user's data or a loss of privacy; and/or (iv) would otherwise enable the misappropriation of private information; (b) the Software will comply with all applicable laws; (c) Software Owner has all necessary rights to grant the licenses provided in Section 1 of this Agreement, and neither Opera's exercise of the license granted nor the Software will infringe or otherwise violate any third-party rights including but not limited to copyrights, trademarks, patents, or other intellectual property rights; and (d) the Software does not and will not contain any material (or advertising promoting material) that is unlawful, harmful, threatening, defamatory, pornographic, harassing, private, or racially, ethically, or similarly objectionable, facilitates illegal activity, promotes violence, discrimination, or illegal activities, or incorporates any materials that infringe or assist others to infringe on any copyright, trademark, or other intellectual property rights.
- 7.3 **Disclaimer of Warranties.** Except for the express representation and warranties set forth in this Agreement, neither Software Owner nor Opera make any other representations or warranties. Each party expressly disclaims all other representations or warranties.
- 7.4 **Duty to Indemnify.** Software Owner hereby agrees to indemnify and defend Opera, its Partners, successors and assigns from and against all claims, demands, actions, proceedings, liabilities, costs, and expenses based on any claim that: (i) arises from an alleged breach of Software Owner's obligations, representations or warranties under this Agreement; (ii) arises from Software Owner's actions or Software allegedly infringing the intellectual property rights of any third party; (iii) arises as a result of Software Owner's alleged breach of any warranty, representation, or support, maintenance, or other obligation to end users.

8. GENERAL PROVISIONS.

- 8.1 **General.** Opera will not be liable for any delay or failure to fulfill its obligations hereunder that results from acts of God, war, civil disturbance, court order, legislative or regulatory action, catastrophic weather condition, failure or fluctuation in electrical power or other utility services or other cause beyond its control. This Agreement will not be construed to create a joint venture or partnership between the parties and neither will have the right, power, or authority at any time to act on behalf of, or impose any obligation on or to represent the other, except as expressly set forth herein. Software Owner understands that Opera may subcontract certain of its obligations under this Agreement, including credit card processing and the operation of the restricted server.
- 8.2 **Notices. Entire Agreement.** All notices under or relating to this Agreement may be sent by e-mail or by registered mail to the address below or to any other address the party may designate in writing. This Agreement and its exhibit(s), attachments, and/or addenda, if any, set forth the entire understanding of the Parties with respect to the

subject matter of this Agreement and supersede all prior agreements, understandings and negotiations with respect to the subject matter hereof.

- 8.3 **Amendment.** Opera may, from time to time, modify the terms of this Agreement by: (i) posting the revised agreement on Opera's website and notifying Software Owner of the change by e-mail; (ii) forwarding a copy of the revised Agreement to Software Owner, whether electronically or through a postal service; or (iii) any other means reasonably calculated to inform Software Owner of the terms of the revised agreement. Unless Software Owner objects to the revised agreement in writing to Opera within thirty (30) days of receiving notice of the change, in which case no revision will take effect, Software Owner will be deemed to have accepted the terms of the revised Agreement and the as-revised Agreement will take effect and be binding on both parties at the end of Software Owner's thirty (30) day objection period. No modification, amendment, supplement to or waiver of any provision of this Agreement shall be binding upon the Parties unless in writing and accepted by Software Owner in the manner described above or signed by both Parties.
- 8.4 **Governing law. Arbitration of disputes.** This Agreement (and any question about its subsistence, effect or termination) is to be interpreted in accordance with the laws of Norway, except that body of laws controlling conflict of laws. In the event of a dispute arising out of or relating to this Agreement (including non-contractual disputes or claims), the parties shall first seek settlement of that dispute by negotiation between senior executives of the parties. If they are unable to settle the dispute within thirty (30) days, or such other period as the parties shall agree in writing, the dispute including any question regarding the subject matter of this Agreement, its existence, its validity or termination, and any non-contractual disputes or claims relating thereto shall exclusively be referred to and finally be resolved by arbitration pursuant to the Norwegian Act on Arbitration of 2004, which hereby is incorporated into this Agreement. The place of arbitration shall be Oslo, Norway, and the proceedings shall take place in English. The initiation of arbitration proceedings, the proceedings and the award(s) shall be treated as Confidential Information. Nothing in this Agreement will be deemed as preventing either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as is necessary to protect either Party's name, proprietary information, trade secrets, know-how, or any other intellectual property rights.
- 8.5 **Assignment.** Except as otherwise provided herein, neither party may assign this Agreement, or sublicense, assign or delegate any right or duty hereunder, without the prior written consent of the other.
- 8.6 **Legal Effect.** A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 8.7 **Counterparts/Facsimiles.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. For the purposes hereof, a facsimile copy of this Agreement including the signature pages hereto, shall be deemed an original.

DATE: 30.12.2011

BY COMPLETING THE INFORMATION OR REPLYING "I AGREE" TO THE EMAIL WITH THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT THE INFORMATION PROVIDED IS TRUE AND ACCURATE, YOU ARE AT LEAST 18 YEARS OLD, AN AUTHORIZED REPRESENTATIVE OF THE SOFTWARE OWNER AND HAVE THE POWER AND AUTHORITY TO ENTER INTO AND BIND SOFTWARE OWNER TO THIS AGREEMENT. YOU AND THE SOFTWARE OWNER, ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT (WHICH INCLUDES ANY EXHIBITS), UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.