



NGMN PARTICIPANT APPLICATION FORM 2011/2012¹

To: **NGMN Limited** (the "Company")

For the attention of the Directors; and

To: **Each Member and Participant of the Company as at the date of this application and from time to time.**

2011

Dear Sirs

By executing this Participant Application Form, we (the "**Applicant**") hereby apply for admission as a Participant of the Company, on and subject to the Company's Articles of Association and the provisions set out in **Annex 1** and **Annex 2** to this Participant Application Form and we acknowledge and agree that such Annexes shall form part of, and shall accordingly be incorporated in, this Participant Application Form.

PLEASE NOTE THAT BREACH OF ANY OF THE OBLIGATIONS CONTAINED IN THE COMPANY'S ARTICLES OF ASSOCIATION OR THE PARTICIPANT APPLICATION FORM (AS FROM TIME TO TIME REVISED), INCLUDING FAILURE TO PAY ANY APPLICABLE PARTICIPATION FEES, MAY RESULT IN THE SUSPENSION OR TERMINATION OF PARTICIPATION RIGHTS IN ACCORDANCE WITH THE ARTICLES OF ASSOCIATION OF THE COMPANY.

¹ As revised by resolution of the NGMN Board on 14th June 2007



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We request you to enter the following registration details in the Company's register of Participants:

Full name(s) of Applicant:

Registered office or principal
business address of Applicant:

Website address of Applicant:

Name of contact person²:

Position of contact person:

Business address of contact person:

Telephone number of contact person:

Fax number of contact person:

E-mail address of contact person:

² This person should be an authorised representative of the Applicant and must be capable of taking binding decisions concerning the Company on behalf of the Applicant.



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We confirm that we will transfer to you in cleared funds for value, or will otherwise make arrangements with you for the payment of **EURO 30,000/10,000/2,000**³ in respect of an application as Participant (the “Initial Participant Fee”), the full amount of which shall be **payable within 30 days of notification** to us from the Company of its acceptance of this application for participation.

Yours faithfully

Company incorporated in England and Wales

Signed by / acting by:

.....
Name Director signature

.....
Name Director/Secretary signature

Company incorporated outside England and Wales

Signed by⁴:

.....
Name Duly authorised signatory

.....
Name Duly authorised signatory

³ Delete as applicable, depending on whether the Applicant is eligible to join as a Sponsor (30,000 €), New Innovator (e.g. start-up companies, 10,000 €) or Advisor (2,000 €). If the Applicant does not become a Participant at the beginning of the Company’s financial year, the Initial Participant Fee may be pro-rated based on the quarter of the financial year in which the Applicant becomes a Participant to reflect the remaining part of that financial year in which the Applicant becomes a Participant.

⁴ Please ensure this document is duly executed as a deed in accordance with the rules of the jurisdiction applicable to the Applicant.



ANNEX 1

TO THE PARTICIPANT APPLICATION FORM

GENERAL PROVISIONS

1. Definitions

Unless stated below or defined elsewhere in this Participant Application Form, the words and expressions defined in the Company's Articles of Association (as amended from time to time) shall have the same meanings in this Participant Application Form:

- 1.1. "Associates" means, in respect of any Person, any members of that Person's Group or any of that Person's agents, representatives, professional advisers, employees, officers or directors;
- 1.2. "Confidential Information" means all financial, commercial, technical, operational, staff, management and other information, data and know-how relating to Requirement Specifications or Contributions, the Disclosing Party or the activities of the Company, which may be supplied to or may otherwise come into the possession of the Receiving Party, whether orally or in writing or in any other form, and which is confidential or proprietary in nature or otherwise expressed by the Disclosing Party or by any of its Associates to be confidential;
- 1.3. "Contribution" means a written technical submission contributed by the Member or Participant to the development of a Requirement Specification;
- 1.4. "Disclosing Party" means the Company, Member or Participant (including any member of the Company's, Member's or Participant's Group), as the case may be, whose Confidential Information has been disclosed, supplied or has otherwise come into the possession of the Receiving Party;
- 1.5. "Group" means, in relation to any Person, any company which is a direct or indirect subsidiary or holding company of that Person and any company which is a direct or indirect subsidiary of such holding company ("holding company" and "subsidiary company" as defined in sections 736, 736A and 736B of the Companies Act 1985);
- 1.6. "Participation Fee" means each annual participation fee that shall be payable by each Participant, the amount and due date for payment of which shall be determined by the Directors in accordance with the provisions of the Company's Articles of Association;
- 1.7. "Person" shall include any corporation, limited liability company, partnership, limited liability partnership, joint venture, joint stock company, trust estate, company and association, whether organized for profit or otherwise;



- 1.8 "Receiving Party" means the Company, Member or Participant (including any member of the Company's, Member's or Participant's Group) as the case may be, to whom Confidential Information is disclosed, supplied or into whose possession any Confidential Information has come in accordance with this Annex 1; and
- 1.9 "Requirement Specification" means a performance specification developed or in development by the Company which relates to prospective developments of wireless air interface technologies and which is intended to be used by the Company to assess the compatibility of each Standard with such specification (in each case only so far as such potential Standards are approved for publication as Standards by the relevant Standards Body) and only to the extent the Standard is approved after the effective date of the IPR Policy in Annex 2; for the avoidance of doubt, the terms "Standards" and "Standards Body" shall have the same meaning as defined in Annex 2.

2. Fees

The Applicant irrevocably agrees and undertakes, by execution of this Application Form, that:

- 2.1. within 30 days of notification by the Company of the acceptance of this application, it will pay to the Company the Initial Participation Fee and subsequently it will pay each annual Participation Fee at such time during each year of participation as may be determined by the Directors in their absolute discretion from time to time and in accordance with the Company's Articles of Association;
- 2.2. if at any time it ceases to be a Participant, it shall not be entitled to any refund of any fees paid pursuant to paragraph 2.1 above;
- 2.3. if it ceases to be a Participant, it shall nonetheless remain liable for all amounts (including Participation Fees) due to the Company remaining unpaid at the date of cessation of participation; and
- 2.4. except as may otherwise be agreed or determined in accordance with the Company's Articles of Association, it will be responsible for all expenses and other costs incurred by it or by any of its representatives or personnel in connection with the Company and its activities.

3. Confidential Information

- 3.1. Having regard to the considerable commercial value of the Confidential Information, the Receiving Party shall keep confidential and secret and not disclose to any third party the Confidential Information. The Receiving Party shall not use any Confidential Information other than for:
 - 3.1.1. the purpose of promoting, furthering or assisting with the objects and aims of the Company;



- 3.1.2. the benefit of the Company and its Members and Participants collectively; or
 - 3.1.3. for the purpose of participating in the Company.
- 3.2. Notwithstanding paragraph 3.1, the Receiving Party may disclose the Confidential Information to another Member or a Participant or an Associate of the Receiving Party who or which is directly involved in the Company and needs to know such information for the purpose of promoting, furthering or assisting with the objects and aims of the Company, provided that (a) any such Associate to whom Confidential Information is to be disclosed agrees in advance to be bound by the confidentiality provisions contained in this Participant Application Form as if it were a party to it and (b) the Receiving Party shall be responsible to the Disclosing Party for any failure of its Associate to comply with such provisions.
- 3.3. Without prejudice to the above, the Receiving Party agrees to treat the Confidential Information and take all relevant precautions to a standard at least as high as it treats confidential information in its own organisation.
- 3.4. The restrictions on use and disclosure set out in paragraphs 3.1 to 3.3 above shall not apply to any information which:
 - 3.4.1. is already in the possession of the Receiving Party or any of its Associates prior to its disclosure in connection with the Receiving Party's participation (or proposed participation) in the Company, without any obligation of confidentiality or use owed by the Receiving Party to the Disclosing Party in respect of it;
 - 3.4.2. is or comes into the public domain or otherwise ceases to be of a confidential nature other than as a result of wrongful disclosure hereunder by the Receiving Party or any of its Associates;
 - 3.4.3. becomes available to the Receiving Party or any of its Associates on a non-confidential basis from a source other than the Disclosing Party or any of its Associates;
 - 3.4.4. is separately generated by the Receiving Party or any of its Associates who are not privy to the Confidential Information; or
 - 3.4.5. is required to be disclosed by any law or order of a court of competent jurisdiction, recognised stock exchange, governmental department or agency provided that the Receiving Party (where legally permitted to do so) promptly notifies the Disclosing Party of any such requirement, takes full account of any reasonable representations made by the Disclosing Party in connection therewith and uses its best efforts to ensure that confidential treatment is accorded to the Confidential Information disclosed.



- 3.5. Upon termination of this Participant Application Form, the Receiving Party shall on demand:
- 3.5.1. promptly return to the Disclosing Party or destroy all originals of Confidential Information supplied to it or to any of its Associates or which are otherwise in its possession or under its control; and
 - 3.5.2. promptly destroy or have destroyed all copies made of the Confidential Information and all notes, memoranda and other documents or computer files or records prepared by it or any of its Associates to the extent of the Confidential Information contained in them, provided that the Receiving Party may keep one copy of Confidential Information for archiving purposes.
- 3.6. Neither the Applicant nor its Associates shall release any press statement or disclose other information to any person relating to the activities, objects or membership (other than the fact of its own membership) of the Company, without the prior written consent of (a) the Company to the content of such release and (b) any relevant Member or Participant or any member of a Member's or Participant's Group referred to in such release, to the content of the relevant part(s) of such release.
- 3.7. The obligation of any Receiving Party with respect to any Confidential Information disclosed to it hereunder in Annex 1 shall continue in force for a period of two (2) years from the date of such disclosure, irrespective of any termination of this Participant Application Form.
- 3.8. Nothing in this Annex 1 shall restrict the free movement of the Receiving Party's employees throughout its organization. The Receiving Party shall in any event be able to assign its employees to different projects, tasks and activities. Nor shall anything in this Annex 1 prevent the Receiving Party from independently developing, without use of the Disclosing Party's Confidential Information, competing products or technologies, and from using, selling or otherwise supplying to third parties such products or technologies.
- 3.9. Notwithstanding any provision in this section 3, neither the Company nor any Member or Participant may disclose a Report as defined by Annex 2 nor any other information generated in accordance with Annex 2 of this Participant Application Form otherwise than as permitted in Annex 2.
- 4. Copyright**
- 4.1. The Applicant agrees that any technical specification or part thereof, including Requirement Specifications under creation or development within the Company will be treated as Confidential Information until such time it is published, or otherwise publicly disclosed, by or on behalf of the Company Board.
 - 4.2. Members and Participants grant to the Company a worldwide, irrevocable, nonexclusive, nontransferable, royalty-free and sub-licensable copyright license to reproduce, create derivative works, distribute, display and, perform the Contribution(s) of the granting



Member and Participants solely for the purposes of Company developing, publishing and distributing Requirement Specifications incorporating Contribution(s) to which such Contribution(s) was submitted.

- 4.3. The Company shall own the copyright in Requirement Specifications, subject to the underlying copyright rights of the Contributions of their respective Members and Participants. Any publication of a Requirement Specification shall contain an appropriate copyright notice in the name of the Company. The Company may exercise any and all rights of copyright ownership in the Requirement Specification and will be authorized to license such rights.
- 4.4. Any materials in which copyright subsists which the Company places in the public domain shall be published on the basis that everybody may use such material on a non-exclusive, royalty-free basis.

5. Termination

- 5.1. Upon the Applicant ceasing to be a Participant of the Company in accordance with the Company's Articles of Association:
 - 5.1.1. the licences granted to the Company, the Members and the Participants and their respective Associates under section 4.2 above shall continue without limit of time;
 - 5.1.2. the Applicant shall on demand by the Company:
 - 5.1.2.1. promptly return to the Company all originals, whether in paper or in electronic form, of all Company documents and all materials in which Requirement Specification copyright subsists which were supplied to the Applicant or to any of its Associates or which are otherwise in the Applicant's possession or under its request; and
 - 5.1.2.2. promptly destroy or have destroyed all copies made by the Applicant or its Associates of all materials in which Requirement Specification copyright subsists and Company documents and all notes, memoranda and other documents or computer files or records prepared by the Applicant or any of its Associates to the extent of such Requirement Specification copyright or contained in them.
 - 5.1.2.3. promptly return to each Member and Participants all originals, whether in paper or in electronic form, of all materials (if any) in which such Member or Participant owns copyright which were supplied by such Member or Participant to the Applicant or to any of its Associates or which are otherwise in the Applicant's possession or under its request as a result of its participation in the Company; and



- 5.1.2.4. promptly destroy or have destroyed all copies made by the Applicant or its Associates of all materials in which other Members or Participants own copyright and all notes, memoranda and other documents or computer files or records prepared by the Applicant or any of its Associates to the extent of such copyright material contained in them provided that the Applicant may keep one copy of such materials for archiving purposes.

6. English Law/Arbitration

The Applicant agrees and acknowledges that the obligations contained in this Participant Application Form for membership are legally binding upon it and that they will be construed and interpreted in accordance with English law. Subject to the exceptions set forth in Annex 2, the Applicant agrees that any disputes which may rise out of or in connection with this Participant Application Form (including the provisions of this Annex 1, as from time to time revised) or otherwise in connection with its involvement in or with the Company shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The Applicant further agrees that the place of arbitration shall be London and all proceedings in the arbitration shall be in English.

7. Obligations Enforceable

7.1 The Applicant agrees and acknowledges that:

7.1.1 the obligations set out in this Annex 1 are intended to be enforceable by and against and therefore between each Member and by each Participant of the Company from time to time and by the Company against each such Member and Participant (as if and to the extent that such obligations are set out in the Company's Articles of Association); and

7.1.2 it will be bound by and will observe all the obligations set out in this Annex 1, as from time to time revised or varied by the Members of the Company in accordance with the Company's Articles of Association (as may be amended or varied from time to time).

7.2 The Applicant further acknowledges that it has read and understood the Company's Articles of Association and the NGMN Membership and Participation Guidelines (which gives an overview of Participants' rights for the time being) The content or provisions in Annex 1 only may be amended or varied from time to time (thereby amending the rights and obligations of Participants) by an appropriate majority of the Members or the Directors respectively without the formal approval of the participants.



8. Survival of Rights

The obligations in this Annex 1 in respect of confidentiality and licensing of copyright shall survive termination of participation howsoever arising.

9. Withdrawal

Each Member and Participant may withdraw from membership or participation in the Company at any time by providing written notice to the Company, effective as of the date of such written notice. Upon the effectiveness of any such withdrawal, the withdrawing Member or Participant, as the case may be, shall have no obligations (including, but not limited to, those set forth in revised Application Forms or the Company's Articles of Association), except its obligation to maintain the confidentiality and restrictions on use of any Report as defined in Annex 2 and any Confidential Information, and the licences granted in accordance with Section 4 above.



ANNEX 2

TO THE PARTICIPANT APPLICATION FORM

IPR GUIDELINES

Preamble

- I. The Members and Participants of the Company have come together to encourage the development of Next Generation Mobile Networks (NGMN). Each Member and Participant will cooperate in NGMN.
- II. The Members and Participants agree to the following IPR principles as set forth in this Policy:
 - a. Fair, reasonable and non-discriminatory (FRAND);
 - b. Mandatory ex ante notification;
 - c. Aggregated terms.

This Policy aims to help improve transparency and predictability, in particular through the Trusted Party process described below, with respect to the overall terms and conditions for licensing Essential Patent Claims (as defined below) applicable to Standards (as defined below). The Policy is not intended to result in any binding commitments on the part of Members or Participants of whether they would license or as to the actual terms under which they would license their Essential Patents Claims. Each Notification (as defined below) that a Member or Participant provides shall reflect that Member's or Participant's best estimate of the terms on which it would be willing to license its Essential Patent Claims (as defined below) as of the date of the Notification.

1. Definitions Used In This Policy

- a. **"Approved"** and **"Approval"** mean compliance with the process of formally approving and ratifying a Standard or specification, by and in accordance with the rules and regulations of the relevant Standards Body;
- b. **"Company"** means NGMN Ltd.;
- c. **"Essential Patent Claims"** means claims of granted patents which a Member or Participant or any of its Group which is not itself an independent Member or Participant owns or has the right to commercially exploit and license (but not solely the right to sub-license) without incurring a royalty or other financial obligation and without which it would not be possible on technical (but not commercial) grounds, taking account of normal technical practice and the state of the art



generally available, to make, sell, lease, otherwise dispose of, repair, use or operate equipment or methods or provide services, which comply with the relevant Standard as adopted, but shall not include such claims that (i) are not so essential even if contained in the same patent, (ii) are necessarily infringed only by implementing any non-mandatory, reference or informational portion(s) of the Standard, or (iii) cover any enabling technologies that may be necessary to make or use any product/service but are not themselves expressly set forth in the Standards;

- d. **“Main Terms”** means the following terms of a potential license: (i) the royalty terms (for example, the royalty rate and royalty base upon which the royalty rate will apply) and any other fees to be charged by the licensor; (ii) the permitted technical, commercial or other field of use; (iii) the geographic scope; (iii) the grant of rights and scope of license; (iv) the ability to sub-licence, assign or transfer the licence; (v) any reciprocal license grant or covenant not to sue conditions required from the licensee; and (vi) the licensor’s ability to terminate the licence upon the assertion by the licensee against the licensor of patent claims owned or controlled by the licensee;
- e. **“Member”** means a Member of the Company;
- f. **“Participant”** means a Participant of the Company;
- g. **“Policy”** means these IPR Guidelines;
- h. **“Requirement Specification”** means a performance specification developed or in development by the Company which relates to prospective developments of wireless air interface technologies and which is intended to be used by the Company to assess the compatibility of each Standard with such specification (in each case only so far as such potential Standards are approved for publication as Standards by the relevant Standards Body) and only to the extent the Standard is approved after the effective date of this IPR Policy;
- i. **“Standards”** means the following standards or specifications: 3GPP Long Term Evolution , IEEE 802.16m, IEEE 802.20 and 3GPP2 Ultra Mobile Broadband (or any other prospective wireless air interface standards or specifications as agreed in writing by all of the Company, Members and Participants), and **“Standard”** means any one of the Standards. For the avoidance of doubt, "Standards" does not include GSM, GPRS, EDGE, CDMA2000 (including EV-DO), UTRA (e.g., WCDMA, TD-CDMA, TD-SCDMA, HSDPA, HSUPA, HSPA+), IEEE 802.16d and 802.16e;
- j. **“Standards Body”** means an accredited standards setting organization responsible for the Approval of any of the Standards;
- k. **“Standards IPR Policy”** means any intellectual property rights policy and/or rules officially adopted and published by a Standards Body at the relevant time; and



1. “**Trusted Party**” means the independent third party which has been appointed by the Board of the Company upon guidance of the IPR Steering Committee [to be appointed by the Company Board] to fulfil the role set out in this Policy (which third party shall not be a Member or Participant of the Company or an affiliate, consultant, advisor or supplier of the Company or any Member or Participant, which shall be without conflict of interest between any of the Company, its Members and Participants, and which shall be a reputable, trusted entity with the requisite qualifications and credentials to fulfil the role set out in this Policy).

2. Obligation To Notify

- a. For the sole purpose of generating the Report specified in Section 7, all Members and Participants must notify (each, a “**Notification**”) in writing to the Trusted Party the prospective Main Terms for each of the Standards, upon which they would be prepared to license all their Essential Patent Claims to practice such Standard where such prospective licence is to be taken by an implementer of such Standard. Each Notification may also, for the avoidance of doubt, contain any other terms or information which the relevant Member or Participant in its sole discretion chooses to add to such Notification. Subject to section 5, all Notification information is provided on a best estimated basis.
- b. Each Member and each Participant must make a Notification in relation to each one of the Standards.
- c. No Main Terms, other terms and conditions or other information shall be provided in a Notification in respect of a Standard unless the notifying Member or Participant believes that it has or will have Essential Patent Claims to such Standard. Where a Member or Participant does not believe that it has or will have Essential Patent Claims to any Standard, it shall provide a Notification stating such situation and stating that it is not providing any Main Terms, other terms and conditions or other information in its Notification for such Standard at that time and such Notification will be valid. Notwithstanding the above, and for the avoidance of doubt, no patent searches, inquiries or analyses are required to comply with this Policy.
- d. Notwithstanding anything to the contrary in this Policy, i) a Notification shall not be deemed an offer to license or an announcement of licence price or cost, or other terms by the notifying Member or Participant to implementers or adopters of the relevant Standard, ii) a Member or Participant is not obligated to license, or license on such terms provided in a Notification, or modify any pre-existing license by the submission of a Notification or by participation in the Company, and is not stopped from licensing any Essential Patent Claims for a relevant Standard on terms and conditions that are different from the terms and conditions of any Notifications; and iii) a Notification does not mean or represent that a notifying Member or Participant is willing to license claims of patents which are not essential, or license



other technology, in respect of the Standard that is not the subject of the Notification. All notification information is provided on an estimated basis and “as is” without any representation, warranty or condition of any kind, including with respect to accuracy, sufficiency, materiality or completeness, whether express or implied.

- e. Each Member and each Participant agrees to act at all times in good faith in its preparation of the content and submission of Notifications, and otherwise in its compliance with this Policy.
- f. For the avoidance of doubt, this Policy shall not require any Member or Participant to undertake any obligations that would be inconsistent with or in violation of the Standards IPR Policy of the Standards Body adopting the relevant Standard for which it is an existing member, nor shall this Policy or participation in the Company require any Member or Participant to join a Standards Body and/or be bound by a Standards IPR policy when the Member or Participant is not otherwise a member of such Standards Body or bound by such Policy. Members and Participants are required to license Essential Patent Claims on a fair, reasonable, and non-discriminatory (FRAND) basis only under and to the extent of their obligations under Standards IPR Policy.
- g. The provision of a Notification by a Member or Participant shall not be construed as making any representation or providing any warranty or condition (express or implied) to the Company or any other person as to the accuracy, sufficiency, completeness or utility of any Report generated using that Notification.

3. Format Of Notifications and Trusted Party Verification

- a. Members and Participants shall use the list of Main Terms to provide sections for the contents of each Notification and may provide a section for any other terms and conditions or other information.
- b. The Trusted Party will be required to confirm to the Company within fifteen (15) days of a Notification Date whether each Member and each Participant has made a Notification in accordance with and as and when required by this Policy, and will at the same time copy such confirmation to the relevant Member or Participant. Upon the Company receiving a confirmation from the Trusted Party that an applicant to be a Member or Participant has made a Notification, and provided the applicant has submitted a Membership or Participant Application Form, paid any required membership or participation fees, and is compliant with all formal approval processes of the Company, the applicant will be immediately approved as a Member or Participant, as the case may be, and shall be entitled to participate in relevant Company activities, but shall have the right to withdraw its Notification(s) from use if the applicant does not receive written confirmation from the Company



of its status as an approved Member or Participant within fifteen (15) days of such Trusted Party notice to Company.

4. Frequency Of Notifications

- a. Notifications shall take place once every three months on dates set by the Trusted Party (the “**Notification Dates**”). The Trusted Party shall notify each Member and each Participant of the date of the next Notification Date at least one month prior to such date.
- b. Potential new Members and Participants shall be obliged to make their first Notifications:
 - i. if the next Notification Date is at least one month after the date on which they submitted a Member or Participant Application Form (as the case may be), on that next Notification Date; or
 - ii. if the next Notification Date is less than one month after the date on which they submitted a Member or Participant Application Form (as the case may be), on the second Notification Date after the date on which they submitted a Member or Participant Application Form (as the case may be).
- c. No Notification in respect of a Standard shall be required after the date upon which such Standard is Approved by the respective Standard Body. The Company may request the Trusted Party to provide a Report in respect of a Standard in accordance with Section 7 as the Company may require at any point prior to the date of Approval of such Standard.
- d. A Member or Participant has to make a new Notification under section 4a above for each Notification Date. If a Member or Participant fails to make a new Notification with respect to a Standard, then the Trusted Party shall not consider any previous Notification by such Member or Participant with respect to such Standard for the purposes of this Policy.
- e. The Trusted Party shall inform the Company Board if a Member or Participant repeatedly fails to make a Notification, and each Member and Participant agree that the Company Board may terminate such Member’s or Participant’s membership from the Company for such repeated failure.



5. Ability To Amend Notifications

- a. Each Notification is separate, and each Member and each Participant is free to modify, at any time, the Main Terms or any other terms and conditions or information in any of its previously-submitted Notifications relating to a Standard, which revised Main Terms (or any other terms and conditions or information) may be inconsistent (e.g., contain a lower or higher royalty rate) with the Main Terms (or any other terms and conditions or information) it has notified in a previous Notification.
- b. The Notification last submitted by a Member or Participant shall supersede all previous Notifications.

6. Trusted Party Process and Confidentiality

- a. To effect rights, entitlements and benefits of Members and Participants vis a vis the Trusted Party, the Company shall ensure that the Trusted Party enters into an agreement or agreements with binding obligations fully enforceable by each Member or Participant making a Notification of at least Main Terms against such Trusted Party, and shall ensure that the Trusted Party owes to each such Member and Participant any and all rights, entitlements and benefits of any obligations, representations and/or customary professional or legal duties as it does to the Company under its arrangement with the Company to fulfil the role set out in this Policy.
- b. Only instructions corresponding to the Trusted Party process set forth in this Policy shall be provided by the Company to the Trusted Party and the Trusted Party shall be required to strictly abide by this Policy. The IPR Steering Committee may provide additional guidance to Trusted Party in connection with the performance of its obligations under this Policy, provided that such guidance is not inconsistent with the terms of this Policy.
- c. Without prejudice to the provisions of section 2f above, Members and Participants shall not be required by this Policy to notify to any party, other than by the Notification to the Trusted Third Party, the prospective Main Terms for any of the Standards upon which they would be prepared to license their Essential Patent Claims.
- d. The Company shall require the Trusted Party sign an agreement in advance with each individual Member or Participant, in which the Trusted Party at least agrees not to:



- i. Use any information provided to it in its capacity as Trusted Party other than to confirm to the Company the list of Members and Participants making Notification(s) and to generate the Report as specifically set forth in this Policy;
- ii. Disclose, compile or use a Report other than in accordance with Section 7 below; and
- iii. Disclose or use the details of any Notifications other than:
 1. in accordance with generating the Report in accordance with Section 7 below; and
 2. in compliance with a binding request from a court or other regulatory authority with jurisdiction to compel such disclosure, provided that as far as possible:
 - a. the Trusted Party first provides written notice to each Member and Participant whose Notification(s) it intends to disclose of such required disclosure; and
 - b. provides such Members and/or Participants with an opportunity to seek a protective or similar order preventing or limiting such disclosure if they so desire. To this end, the Trusted Party shall include in its agreements with each Member or Participant a recognition by the Trusted Party that damages may not be an adequate remedy for breach and breach may cause irreparable harm to such Member and/or Participant providing the Notification.

7. Use Of Notifications and Reports

- a. The Trusted Party will consolidate the Main Terms (and any other terms and conditions or information) in each Notification into a report (“**Report**”) identifying in respect of each Standard:

the aggregate royalty rate (being the total of royalty rates identified in the Notifications for the relevant Standard), other Main Terms (and any other terms and conditions or information provided by a Member or Participant) for the relevant Standard, but not so as to identify (directly or indirectly):

- (a) any royalty rates notified by any individual Member or Participant; or
- (b) any other Main Terms (or any other terms and conditions or information provided by a Member or Participant) notified by any



individual Member or Participant (except to the extent done so on an anonymous basis).

- b. Each Report shall be compiled on an anonymous, aggregated and confidential basis, and shall be in such form as to prevent any person from identifying the Main Terms, other terms and conditions or any other information of any Member or Participant.
- c. The Trusted Party shall be solely responsible for creation of the Report for the Company, shall have no ownership or rights in such Report, and shall provide each Report to the Company Board, the IPR Steering Committee and each Member, and Participant (unless such Member or Participant requests that the Trusted Party should not provide it with the Report) within one month of the relevant Notification Date or as required under section 4c. The Trusted Party shall keep a record of the Members and Participants which are and are not provided with each such Report.
- d. Each Report shall be marked as strictly confidential to the Company and notifying Members and Participants, and shall contain prominent disclaimers and notice restrictions with the effect that each recipient automatically agrees on receipt of the Report that i) the Company, Members and Participants make no representation, and provide no warranty or condition (express or implied) to any person as to the accuracy, reliability, sufficiency, completeness, utility or fitness for purpose of the Report; ii) use of information in the Report is at the user's own risk and no Member or Participant shall be liable for any direct or consequential damages resulting from such use; iii) access and use of the Report is for the recipient's internal and lawful business purposes only and the Report shall not be disclosed or used for any other purpose; iv) the aggregate royalty rate information is calculated as the total of royalty rate information identified in Notifications of individual notifying NGMN Members and Participants at the time and does not reflect actual or total licensing costs in implementing an applicable Standard nor a cap, limit on or forward-looking projection of actual licensing costs or fees; and v) the information in the Report is compiled from information provided on a best estimate basis and "as is" without any representation, warranty or condition of any kind, whether express or implied.
- e. The Company, Members and Participants each agree to act at all times in good faith in their use of Reports, and otherwise in its compliance with this Policy.
- f. The Company, Members and Participants receiving such Report shall hold the Reports in strict confidence and shall not disclose any part of the Report to any person and shall not use or copy a Report other than for its internal and lawful business purposes or other than in compliance with a binding request from a court or other regulatory authority with jurisdiction to compel such disclosure, provided that as far as possible, the Company, such Member or such Participant first provides written notice to the Company, and all Members and Participants that it intends to disclose such Report and to provide them with an opportunity to seek a protective or similar order preventing or limiting such disclosure if they so desire.



The Company, Members and Participants acknowledge that damages may not be an adequate remedy for breach of confidentiality which may cause irreparable harm. The Company shall remain fully responsible for claims that any disclosure or use of a Report causes harm, damage or injury and shall indemnify and hold harmless any Member or Participant from such claims.

8. Compliance With Applicable Competition Laws

- a. The Company is an association of developers and users of standards-compliant products and technology. The Company is organized to promote the common interests of developers and users of the standards-compliant products and technology. The Company does not intend to and will not become involved, in the competitive business decisions of its Members or Participants, nor will it take any action which would tend to restrain competition among and between such Members or Participants in violation of any competition laws that are applicable to the Company or to its Members or Participants (“**Competition Laws**”). For the avoidance of doubt, the Company will not play any role in or influence the setting of any licensing terms and conditions of any Member or Participant.
- b. The Company unequivocally supports the policy of competition served by the Competition Laws and intends to comply strictly with such laws in all jurisdictions. It shall be the responsibility of the Company, its organs and officers and every Member and Participant to be guided by this policy of strict compliance with the Competition Laws in all of the Company’s activities including operating under or carrying out this Policy or in use of the Report. It shall be the special responsibility of the Company’s officers to ensure that this policy is known and adhered to in the course of activities pursued under their leadership. No party shall seek any redress from another party for such party's unilateral exercise, in its own business judgment, to act, or omit to act, solely in connection with its involvement in any Company activities on the basis of its desire to comply strictly with the Competition Laws.

9. Revision, Modification or Amendment of this Policy

- a. This Policy forms Annex 2 to the Membership Application Form or Participant Application Form (as appropriate) of each Member and Participant. Any revision, modification or amendment of this Policy shall only be binding upon the Members and Participants if:
 - i. set forth in writing; and



- ii. the Member or Participant agrees in writing that it will be bound by, and will observe, all of the obligations set forth in the revised, modified or amended Policy, provided such written agreement is signed after the date of such revision, modification or amendment.

- b. The failure or refusal of a Member or Participant to agree in writing to be bound by the Membership Application Form or Participant Application Form (as the case may be) comprising a revised, modified or amended Policy shall automatically constitute withdrawal from the Company by the relevant Member or Participant as if effected under Clause 10 of this Policy.

10. Withdrawal

Each Member and Participant may withdraw from membership or participation in the Company at any time by providing written notice to the Company, effective as of the date of such written notice. Upon the effectiveness of any such withdrawal, the withdrawing Member or Participant, as the case may be, shall have no obligations under this Policy (including any amended version of this Policy), except its obligation to maintain the confidentiality and restrictions on use of any Reports it has received.

11. Dispute Resolution

Notwithstanding anything to the contrary in Annex 1 to Member Application Form or Participant Application Form, Section 6 of Annex 1 shall not apply to any claims or disputes which may arise out of, in connection with, or relate to this Policy, except for the first sentence of such Section 6.