



**NGMN APPLICATION FORM 2018/2019**

To: **NGMN e.V.** ("NGMN")

2018

Dear Sirs,

By executing this Member Application Form, we (the "**Applicant**") hereby apply for admission as a Member of NGMN, on and subject to the NGMN Constitution and the provisions set out in the **Annex** to this Member Application Form and we acknowledge and agree that such Annex shall form part of and shall accordingly be incorporated in this Application Form.

**WE NOTE THAT BREACH OF ANY OF THE OBLIGATIONS CONTAINED IN THE NGMN CONSTITUTION OR THE MEMBER APPLICATION FORM (AS FROM TIME TO TIME REVISED), INCLUDING FAILURE TO PAY ANY APPLICABLE MEMBERSHIP FEES, MAY RESULT IN THE SUSPENSION OR TERMINATION OF OUR MEMBERSHIP RIGHTS IN ACCORDANCE WITH THE NGMN CONSTITUTION.**

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<sup>1</sup>** (VAT to be added as appropriate) in respect of an application as Member (the "Member Fee"), the full amount of which shall be payable **within 30 days of notification** to us from NGMN of its acceptance of this application for membership.

Yours faithfully

Signed by<sup>2</sup>:

.....  
Name

.....  
Duly authorised signatory

<sup>1</sup> If the Applicant does not become a Member at the beginning of NGMN's financial year, the Member Fee may be pro-rated based on the quarter of the financial year in which the Applicant becomes a Member to reflect the remaining part of that financial year in which the Applicant becomes a Member.

<sup>2</sup> Please ensure this document is duly executed in accordance with the rules of the jurisdiction applicable to the Applicant.



We request you to enter the following registration details in the register of Members:

1. Full name(s) of Applicant:
2. Registered office or principal business address of Applicant:
3. Website address of Applicant:
4. Name of contact person<sup>3</sup>:
5. Position of contact person:
6. Business address of contact person:
7. Telephone number of contact person:
8. Fax number of contact person:
9. E-mail address of contact person:
10. Financial Contact (name and email):

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<sup>3</sup> This person should be an authorised representative of the Applicant and must be capable of taking binding decisions concerning NGMN on behalf of the Applicant.



## **ANNEX TO THE MEMBER APPLICATION FORM - GENERAL PROVISIONS**

### **1. Definitions**

Unless stated below or defined elsewhere in this Member Application Form, the words and expressions defined in the NGMN Constitution (as amended from time to time) shall have the same meanings in this Member 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 NGMN, 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 NGMN, Member or Participant (including any member of NGMN, 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 Section 271 Commercial Code Germany ("Handelsgesetzbuch");
- 1.6. "Member Fee" means each annual participation fee that shall be payable by each Member, the amount and due date for payment of which shall be determined by the Directors in accordance with the provisions of the NGMN Constitution;
- 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 NGMN, Member or Participant (including any member of NGMN, 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.



## **2. Fees**

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

- 2.1. within 30 days of notification by NGMN of the acceptance of this application, it will pay to NGMN the Membership Fee and subsequently it will pay each annual Member Fee at such time during each year of membership as may be determined by the Directors in their absolute discretion from time to time and in accordance with the NGMN Constitution;
- 2.2. if at any time it ceases to be a Member, 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 Member, it shall nonetheless remain liable for all amounts (including Membership Fees) due to NGMN remaining unpaid at the date of cessation of participation; and
- 2.4. except as may otherwise be agreed or determined in accordance with the NGMN Constitution, it will be responsible for all expenses and other costs incurred by it or by any of its representatives or personnel in connection with NGMN 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 NGMN;
  - 3.1.2. the benefit of the NGMN and its Members and Contributors collectively; or
  - 3.1.3. for the purpose of participating in NGMN.
- 3.2. Notwithstanding paragraph 3.1, the Receiving Party may disclose the Confidential Information to another Member or a Contributor or an Associate of the Receiving Party who or which is directly involved in NGMN and needs to know such information for the purpose of promoting, furthering or assisting with the objects and aims of NGMN, 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 Member 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 NGMN, 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 Member 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 NGMN, without the prior written consent of (a) NGMN 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 shall continue in force for a period of two (2) years from the date of such disclosure, irrespective of any termination of this Member Application Form.
- 3.8. Nothing in this Annex 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 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.



#### **4. Copyright**

- 4.1. The Applicant agrees that any technical specification or part thereof under creation or development within the NGMN will be treated as Confidential Information until such time it is published, or otherwise publicly disclosed, by or on behalf of the NGMN Board.
- 4.2. Members and Contributors grant to the NGMN a worldwide, irrevocable, nonexclusive, non-transferable, royalty-free and sub-licensable copyright license to reproduce, create derivative works, distribute, display and perform the Contribution(s) of the granting Members and Contributors solely for the purposes of NGMN developing, publishing and distributing specifications incorporating Contribution(s) to which such Contribution(s) was submitted.
- 4.3. NGMN shall own the copyright in specifications, subject to the underlying copyright rights of the Contributions of their respective Members and Contributors. Any publication of a specification shall contain an appropriate copyright notice in the name of NGMN. The NGMN may exercise any and all rights of copyright ownership in the specification and will be authorized to license such rights.
- 4.4. Any materials in which copyright subsists which NGMN 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 Member of NGMN in accordance with NGMN's Constitution:

5.1.1. the licences granted to NGMN, the Members and the Contributors and their respective Associates under section 4.2 above shall continue without limit of time;

5.1.2. the Applicant shall on demand by NGMN:

5.1.2.1. promptly return to NGMN all originals, whether in paper or in electronic form, of all NGMN documents and all materials in which 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 NGMN 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 Contributor all originals, whether in paper or in electronic form, of all materials (if any) in which such Member or Contributor owns copyright which were supplied by such Member or Contributor 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 NGMN; 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 Contributors 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. German Law/Arbitration**

The Applicant agrees and acknowledges that the obligations contained in this Member Application Form for membership are legally binding upon it and that they will be construed and interpreted in accordance with German 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 Member Application Form (including the provisions of this Annex, as from time to time revised) or otherwise in connection with its involvement in or with NGMN 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 are intended to be enforceable by and against and therefore between each Member and by each Contributor of NGMN from to time and by NGMN against each such Member and Contributor (as if and to the extent that such obligations are set out in NGMN's Constitution); and

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

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

## **8. Survival of Rights**

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

## **9. Withdrawal**

Each Member and Contributor may withdraw from membership or participation in NGMN at any time by providing written notice to NGMN, effective as of the date of such written notice. Upon the effectiveness of any such withdrawal, the withdrawing Member or Contributor, as the case may be, shall have no obligations (including, but not limited to, those set forth in revised Application Forms or NGMN's Constitution), except its obligation to maintain the confidentiality and the licences granted in accordance with Section 4 above.