

**OMA INCUBATOR GROUP ("OIG")  
APPLICATION FORM**

To: the Open Mobile Alliance ("the Company")

5703 Oberlin Dr. Suite 209, San Diego, CA 92121 USA

For the attention of the Company Directors; and

To: Each member of the Company as at the date of this application and from time to time

Dear Sirs:

By signing this OIG Application Form the undersigned ("the Applicant") hereby applies to join an incubator group(s) of the Company (the "Incubator Group(s)"). This application is subject to the provisions of the attached Schedule ("the Schedule") and the OIG participation rules ("the OIG Rules"), as these documents may from time to time be revised by the Company (together the "OIG Participation Agreement").

If this application is approved by the Company, in consideration for the mutual rights and obligations set out herein, the OIG Participation Agreement will commence on receipt of the notification from the Company (which will be deemed to occur on dispatch of the email unless an undeliverable notice is received by the Company). From that date, the Applicant will be entitled to participate in meetings of the Incubator Group (an "OIG Participant") and shortly thereafter, the Company will send the Applicant an ID and a confidential login which will enable the Applicant to access the relevant Company portal.

The Applicant hereby makes the following confirmations to the Company:

1. That the information the Applicant has supplied to the Company is accurate and complete in all material respects.
2. If this application is approved, then the Company is entitled to publish the Applicant's registration details in its register for the Incubator Group.
3. The work of the Incubator Group is distinct from the other technical work of the Company. The rules for input and output of Incubator Group meetings will be determined by the OIG Rules.
4. Save as specifically set out in the OIG Rules, participation in an Incubator Group confers no membership rights of any kind as regards the Company.
5. The Applicant will notify the Company in the event that the details of the contact person (set out below) changes.

Please note that in the event of any breach of any of the provisions of the OIG Participation Agreement, the Company may forthwith suspend or terminate the Applicant's right to participate in the Incubator Group(s).

Signed by a director (or other authorised signatory) of the Applicant, for and on behalf of the Applicant:

---

Signature of duly authorised person

---

Print name

---

Company Name

Date: \_\_\_\_\_

REGISTRATION DETAILS

Full name(s) and address of the Applicant:

Name of contact person of the Applicant:

Business address of contact person:

Telephone number of contact person:

Fax number of contact person:

E-mail address of contact person:

Company website address:

## OPEN MOBILE ALLIANCE (the “Company”)

### SCHEDULE TO THE OIG APPLICATION FORM

Each person by whom, or on whose behalf, an Application Form is executed and accepted, irrevocably agrees and undertakes, by such execution, that:

#### 1. Definitions

- 1.1 Words and expressions defined in the Company’s Bylaws (as amended from time to time) shall have the same meanings in this Schedule (as from time to time revised). For the avoidance of doubt, for the duration of the OIG Participation Agreement and thereafter, an OIG Participant shall not acquire any membership rights of any kind in the Company. In the event that an OIG Participant subsequently becomes a member of the Company the provisions of the schedule to the members' agreement shall prevail.
- 1.2 Any reference to an “OIG Participant ” in paragraphs 2 (except in paragraphs 2.4.5, 2.6, 2.7 and 2.8) and 4 shall be deemed to include a reference to an Affiliate of such OIG Participant.
- 1.3 Any reference to the person executing this Application Form in paragraph 4 (except in paragraphs 4.3.2, 4.3.3 and 4.11) shall be deemed to include a reference to an Affiliate of such person.

#### 2. Confidential Information

- 2.1 It shall keep confidential all information of whatever kind and contained in whatever media given, disclosed or supplied within the Company, by any other OIG Participant, any member of the Company or otherwise by or to the Company for the purpose of promoting, assisting or furthering the objects of the Company and all documents or other material produced by or for any such OIG Participant or any member of OMA or the Company which contains or reflects such information (“**Confidential Information**”). However, information shall not be regarded as constituting Confidential Information unless it is clearly designated, labelled or marked as confidential or its equivalent at the time of disclosure or is otherwise disclosed in circumstances or on terms such that there is a clear implication that it is confidential.
- 2.2 It may not disclose any Confidential Information except to:
  - 2.2.1 the directors, officers or employees of it or its Affiliates or any other OIG Participant who or which are directly involved in activities which promote, assist or further the objects of the Company and who need to know the same in connection with such activities;
  - 2.2.2 its or its Affiliates’ professional advisers or those of any other OIG Participant; or
  - 2.2.3 any other party only if the owner of the Confidential Information to be disclosed has given its prior written consent.
- 2.3 It will use the same degree of care for each item of Confidential Information obtained from any other OIG Participant or the Company as it would for its own Confidential Information of like importance and will otherwise use reasonable care in safeguarding against disclosure of any Confidential Information of any other OIG Participant or the Company.

2.4 The obligations of confidentiality in this paragraph 2 shall cease to apply to each item of Confidential Information five years after such item of Confidential Information has been given, disclosed or supplied and in any event shall not apply to Confidential Information:

2.4.1 which ceases to be confidential as a result of disclosure by someone other than it or any other OIG Participant or their Affiliate or any of its directors, officers, employees, agents or advisers (or those of any other OIG Participant or their Affiliate );

2.4.2 to the extent its disclosure is required by law or the rules or regulations of any stock exchange or other regulatory body;

2.4.3 if it otherwise becomes available to the public without its breach of the obligations contained in this paragraph 2;

2.4.4 if it is released in writing by the disclosing OIG Participant or the Company without any restriction;

2.4.5 if it is lawfully obtained from a third party who is neither an OIG Participant nor an Affiliate of such OIG Participant and in the absence of any obligation of confidentiality; or

2.4.6 if the Confidential Information is known to it prior to such disclosure or is at any time developed by it independently of any such disclosure or disclosures from any other OIG Participant or the Company.

2.5 Any Confidential Information received from an OIG Participant or the Company shall at all times remain the property of the disclosing OIG Participant or the Company; and that no grant of any of the disclosing OIG Participant's or the Company's intellectual property rights will be given or intended by such disclosure (including any implied licence).

2.6 Upon it ceasing to be an OIG Participant member (unless an Affiliate of the OIG Participant remains within an Incubator Group), it shall (subject as specified below):

2.6.1 return all Confidential Information and all copies of the whole or any part of the same to the rightful owner of that Confidential Information; or

2.6.2 if so requested by the rightful owner, shall destroy the same and certify in writing to the rightful owner that the Confidential Information has been destroyed;

and shall procure that each of its Affiliates shall do the same.

Notwithstanding the obligations set out in this paragraph 2.6, such OIG Participant shall be entitled to deliver one copy only of any such Confidential Information to its legal advisers from time to time, on condition that all such advisers retain and use such copy solely for the purposes of evidence in any claim or dispute that may arise in relation to such Confidential Information. If any such Confidential Information is given to any such legal advisers, such OIG Participant shall certify in writing to the rightful owner that such step has been taken, that it will procure that all such legal advisers will observe the obligations as to confidentiality set out in this paragraph 2 (excluding this paragraph 2.6) in relation to such Confidential Information and that it has ensured that such legal advisers are aware of the restrictions set out in this paragraph 2.6.

2.7 Upon any of its Affiliates ceasing to be an Affiliate of it, it shall procure that such Affiliate shall return all Confidential Information and all copies of the whole or any part of the same to the

rightful owner of that Confidential Information or, if so requested by the rightful owner, shall destroy the same and certify in writing to the rightful owner that the Confidential Information has been destroyed.

2.8 It authorises the Company to disclose Confidential Information supplied by it or any of its Affiliates to any third party, body or entity for the purpose of, and in connection with, promoting, assisting or furthering the objects of the Company provided that such third party, body or entity agrees in writing with the Company to observe similar obligations as to confidentiality in relation to any such Confidential Information as those set out in paragraphs 2.1 and 2.3 to 2.6 (inclusive) above.

2.9 It will procure that any of its Affiliates from time to time (except any Affiliates who are OIG Participants in their own right) shall abide by each of the rights and obligations set out in paragraphs 2.1 to 2.8 (inclusive) as if they were OIG Participants themselves.

### 3. **Export Licences**

It shall not export, directly or indirectly, any technical data acquired as an OIG Participant or otherwise in connection with promoting, assisting or furthering the objects of the Company or any products utilising any such data to any country for which, at the time of export, an export licence or the approval of any government or governmental agency is required, without first obtaining such licence or approval.

### 4. **Intellectual Property Rights**

4.1 Subject to paragraph 4.3, it agrees that any copyright in a Specification, written, created, designed or developed by it or any of its directors, officers or employees either individually or jointly within an Incubator Group or as a result of any work carried out on behalf of such Incubator Group, (the “**Copyright**”) will belong to and automatically vest in the Company but it shall have the right to a non-exclusive, royalty free licence to use the Copyright (subject always to the provisions of this paragraph 4).

4.2 Subject to paragraph 4.3, it agrees that any copyright in any document written, created, designed or developed by it or any of its directors, officers or employees either individually or jointly within an Incubator Group or as a result of any work carried out on behalf of such Incubator Group and designated as the property of the Company (an “**Open Mobile Alliance Document**”) will belong to and automatically vest in the Company but it shall have the right to a non-exclusive, royalty free licence to use such copyright (subject always to the provisions of this paragraph 4).

#### 4.3

4.3.1 The copyright in all documents, literature and material owned by an OIG Participant which are not Open Mobile Alliance Documents or Specifications or do not form part of a Specification and which are submitted by that OIG Participant to any Incubator Group shall remain vested in that OIG Participant. The Company shall have a non-exclusive, royalty-free licence to use (including the right to sublicense) such copyright material for the purposes of work carried out in the development of a Specification(s) unless the OIG Participant notifies the Company, at the time of submission, that the copyright material is not licensable to the Company;

- 4.3.2 it shall grant a non-exclusive, royalty-free licence to all other OIG Participants and/or OMA members of the Company on request to use such copyright for the purposes of work carried out in the development of a Specification(s); and
- 4.3.3 it agrees to mark all such documents, literature and material clearly with a copyright notice.
- 4.4 It agrees that it shall not denigrate the integrity of the Copyright or the copyright in any Open Mobile Alliance Document by (but without limitation) either removing the copyright notice contained thereon, varying or removing its title, or using all or any part of it as part of a specification or standard not emanating from the Company and in any event it shall not publish nor disclose the Specification to any third party until the Specification is published by the Company by posting the same on the Company's website.
- 4.5 It will promptly notify the Company of any threatened or actual infringement of the Copyright or of the copyright in any Open Mobile Alliance Document which comes to its notice and shall, at the Company's request and expense, do all such things as is reasonably necessary to defend and enforce the Company's rights in the Copyright or such copyright.
- 4.6 It will do all acts and execute all documents or instruments as are necessary to vest the Copyright or the copyright in any Open Mobile Alliance Document in the Company and in the meantime will hold all interest in the same in trust for the Company.
- 4.7 It will grant on request to (i) any OIG Participant, (ii) any OMA member of the Company or (iii) any third party (who is neither a member of the Company nor an OIG Participant nor an Affiliate of either of the foregoing) (hereinafter "**Licensee**"), subject to paragraph 4.8, a non-exclusive licence to use any of its Essential IPR on fair, reasonable and non-discriminatory terms and conditions. Such licence shall allow the Licensee to do at least the following:
- 4.7.1 manufacture Equipment, including the right to make or have made Equipment, customised components and/or sub-systems to the Licensee's own design for use in the manufacture of Equipment;
- 4.7.2 sell, lease, or otherwise dispose of Equipment so manufactured;
- 4.7.3 repair, maintain, use or operate Equipment; and
- 4.7.4 use any method or operation fully conforming to a Specification;
- 4.7.5 OIG Participants required to licence Essential IPR in accordance with this paragraph 4.7 shall not be required to licence nor be obliged to seek the right to sub-licence Essential IPR which such OIG Participant does not own.
- 4.8 Its obligation under paragraph 4.7 is subject to the conditions that any Licensee, any subsidiaries, parent companies or holding companies (and subsidiaries thereof) of the third party Licensee, and those who make Equipment, customised components and/or subsystems for the Licensee agree to grant licences of their Essential IPR, if any, on reciprocal terms and conditions that are fair, reasonable and non-discriminatory and that that portion of the licence that relates to a party to whom the Licensee sells, leases or otherwise disposes of Equipment is terminable if that party refuses to grant a licence of their Essential IPR, if any, on reciprocal terms and conditions that are fair, reasonable and non-discriminatory. For purposes of this paragraph 4.8, the term "Essential IPR" includes Essential IPR held by any party whether or not such party is an OIG Participant or an OMA member.
- 4.9 It will use its reasonable endeavours to inform timely the Company of Essential IPR as it

becomes aware that the Essential IPR is related to the prepared or published Specification. This obligation does not imply an obligation on an OIG Participant to conduct IPR searches.

- 4.10 It will immediately notify the Company if it is not prepared to licence an Essential IPR. Upon request of the Company, it shall provide a written explanation of the reasons for refusing to licence that Essential IPR within three months of its receipt of the request. A valid reason for such a refusal is that such IPR is not an Essential IPR.
- 4.11 It will procure that any of its Affiliates from time to time (except any Affiliates who are also OIG Participants in their own right) shall abide by each of the rights and obligations set out in paragraphs 4.1 to 4.10 (inclusive) as if they were OIG Participants themselves.
- 4.12 For the purposes of this Schedule, as from time to time revised, the following definitions shall apply:
  - 4.12.1 **“Intellectual Property Rights (“IPR”)”** means the patents and pending patent applications, copyrights covering software or firmware, and maskworks on IC mask sets, whether in existence now or created, invented or developed by an OIG Participant of the Company. IPR does not include the copyright defined in paragraph 4.1;
  - 4.12.2 **“Essential IPR”** means IPR without which it is not 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, which comply with a Specification without infringing that IPR;
  - 4.12.3 **“Equipment”** means any product, including hardware and/or software application or other software product, fully conforming to a Specification and fully conforming to at least one of the Standards.

A copy of the current list of Standards is attached in the Bylaws.

## 5. **US National Co-operative Research and Production Act 1993, as amended (the “Act”)**

- 5.1 It consents to the Company notifying, and hereby authorises the Company to notify, if the Company in its sole discretion considers in necessary to do so, the appropriate authorities of the Government of the United States of America of its OIG participation of the Company pursuant to the provisions of the Act.
- 5.2 It authorises the Company to review and approve the draft of the notice disclosing its OIG participation which such Government will subsequently publish pursuant to the Act.

## 6. **English Law**

The obligations contained in the OIG Participation Agreement (of which this Schedule (as from time to time revised) forms part) are legally binding upon it, that they will be construed and interpreted in accordance with English law and that it irrevocably submits to the exclusive jurisdiction of the English courts to settle any disputes which may arise out of or in connection with the Application Form, (including the provisions of this Schedule, as from time to time revised) or otherwise in connection with its involvement in or with the Company.

## 7. **Obligations Enforceable**

7.1 The obligations contained in the application form (of which this Schedule forms part) are intended to be enforceable by and against and therefore between each OIG Participant from time to time, between each OIG Participant and each member of the Company and by the Company against each such OIG Participant.

7.2 It will be bound by and will observe all the obligations set out in this Schedule, as from time to time revised or varied by the Company.

8. **Joint Liability**

If the Application Form is executed by more than one person, such Application Form (including this Schedule, as from time to time revised) shall apply to them jointly and to each of them.

9. **Survival of Rights**

9.1 The obligations contained in this Schedule (as from time to time revised) in respect of confidentiality shall survive termination of any OIG Participation Agreement, howsoever arising.

9.2 All the obligations contained in this Schedule (as from time to time revised) in respect of the licensing of IPR shall survive termination of any OIG Participation Agreement, howsoever arising but only to the extent that such obligations relate to IPR which is in existence during its OIG participation and which is Essential IPR for a Specification or Standard in existence at any time during its OIG participation.