

Open Mobile Alliance

Interoperability Testing Non-Disclosure Agreement

This Interoperability Testing Non-Disclosure Agreement (“Agreement”) is made by and among the Open Mobile Alliance (“Open Mobile Alliance”), the registered mailing address of which is 2907 Shelter Island Drive, Suite 105-273, San Diego, CA 92106 USA, and the participant company, and its Affiliates, listed below having a principal place of business at the address listed below and each party who enters into this Agreement by signing this form (individually and collectively referred to as “Participant”).

1. DEFINITIONS

- A. “Events” shall mean all interoperability testing events, TestFests, “Specification Validation Event” (SVE), and Bi-Lateral Test Sessions, occurring after the date of signing this Agreement which are administered by the Open Mobile Alliance and attended by Participants.
- B. “OMA Interoperability Policy and Process Document” shall mean the document found on the Open Mobile Alliance Web site, as modified from time to time, which sets forth the interoperability process.
- C. “Disclosing Participant” shall be the Participant and its Representatives that disclose or otherwise make available the Confidential Information, as defined below. As used in this Agreement, the “Representatives” stated above shall mean such party’s officers, employees, agents, consultants or other representatives.
- D. “Receiving Participant” shall be the Participant and its Representatives that receive or otherwise gain knowledge of the Confidential Information, as defined below. As used in this Agreement, the “Representatives” stated above shall mean

such party's officers, employees, agents, consultants or other representatives.

- E. "Confidential Information" shall mean all information provided at, pursuant to, for the purposes of, or discovered or generated during (a) the Events and (b) the process set forth in the OMA Interoperability Policy and Process Document, including, but not limited to, the implementation conformance statements, test results, test reports, and the operator network configuration information, which:
- (i) is identified in written or oral format by the Disclosing Participant as confidential, trade secret or proprietary information at the time of disclosure, (provided that such information, if disclosed orally, must be summarized and designated as confidential in written format to the Receiving Participant within thirty (30) days of disclosure),
 - (ii) is identified in this Agreement as Confidential Information, or
 - (iii) a reasonable person in the same circumstances as the Receiving Participant should have known or has reason to know is confidential, trade secret or proprietary information of the Disclosing Participant.

Techniques and concepts which are commonly known in the industry shall not be considered to be Confidential Information.

- F. "Application Form" shall mean the Open Mobile Alliance membership application form, including the schedule to the application form.
- G. "TestFest" or "Specification Validation Event" shall mean an interoperability testing event open to all Open Mobile Alliance members and the public, organized by the Open Mobile Alliance staff, to permit the testing of one or more enablers.
- H. "Bi-Lateral Test Session" shall mean an interoperability testing event organized by an Open Mobile Alliance member who has

invited one or more Open Mobile Alliance members to conduct individual test sessions at the Open Mobile Alliance member's location.

2. EXISTING OBLIGATIONS

The Participant acknowledges and agrees that its confidentiality obligations under the Application Form include any information which the Participant receives or which is discovered or generated during or as a result of its participation in the Events and which fall under the definition of Confidential Information. The Participant acknowledges and agrees that in the event of a conflict between the terms of this Agreement and of the Application Form that the terms and obligations of the Application Form shall control, provided, however, in all situations the terms which provide the most extensive protection of the Participants' results and information shall apply regardless of whether such reside in the Application Form or this Agreement.

3. PURPOSE AND USE

The purpose of this Agreement is to permit a Disclosing Participant to disclose and a Receiving Participant to receive information relating to technologies of the Participants at the Events. All Participants at the Events must execute and abide by the terms and conditions of this Agreement. The Participant agrees that Confidential Information may only be used for purposes of participating in the Events, performing interoperability testing, generating test reports and modifying the Participant's own technology or product (without restricting the Participant's right to sell or market) to address identified interoperability problems. The Receiving Participant also agrees that the Confidential Information may only be disclosed subject to the terms of this Agreement internally to the Receiving Participant's representatives who:

- (i) need to know the Confidential Information;
- (ii) understand that they are bound by this Agreement; and
- (iii) agree to fulfill the obligations of this Agreement.

Notwithstanding anything herein to the contrary, a Participant may use Residuals for any purpose, including use in the development, manufacture, promotion, sale and maintenance of its products and services. This right to use Residuals does not represent a license to any of Disclosing Participant's patents, copyrights, trademarks, and/or mask work rights. The term "Residuals" means information contained in the Confidential Information disclosed at the Events such as general knowledge, ideas, concepts, know-how, professional skills, work experience and/or techniques (not information such as exact implementations, Test Results, or Individual Results) that is retained in the unaided memories of Receiving Participant's Representatives who have had access to Disclosing Participant's Confidential Information pursuant to the terms of this Agreement. A Representative's memory is unaided if the Representative has not intentionally memorized, or referred to records of, such Confidential Information of Disclosing Participant, for the purpose of retaining and subsequently using or disclosing it.

4. DUTIES OF THE OPEN MOBILE ALLIANCE

For purposes of this Agreement, the Open Mobile Alliance shall be viewed as a Participant, provided that the Open Mobile Alliance's use of Confidential Information shall be limited to the performance of its duties as set forth in this Section 4 of the Agreement. The Open Mobile Alliance's duties under this Agreement will be planning, organizing, and administering the Events. In addition, the Open Mobile Alliance will aggregate and disseminate information in the form of enabler test reports and problem reports pursuant to the terms of the OMA Interoperability Policy and Process Document.

5. DISCLOSURE

The Receiving Participant shall hold in confidence the Confidential Information, not disclose the Confidential Information except to Receiving Participant's Representatives in accordance with this Agreement, and will exercise the same amount of diligence in preserving the secrecy of that information as the diligence used in preserving the secrecy of the

Receiving Participant's Confidential Information of like importance, but in no event less than reasonable diligence.

6. JOINT OWNERSHIP

The Participants engaged in testing the interoperability of their respective products ("Test Objects") will have joint and several ownership of the results of the interoperability testing insofar as they relate specifically to the interoperability of the Test Objects (the "Test Results"), information concerning which will constitute Confidential Information of the Participants.

Notwithstanding the foregoing paragraph, each Participant will be the owner of any results of the interoperability testing insofar as they relate specifically to the performance of its own Test Object, regardless of the source, ("Individual Results"), information concerning which will constitute Confidential Information of that Participant and may not be disclosed or used by the other Participant other than as permitted for Confidential Information received under this Agreement.

Subject to the foregoing paragraph, the Participants will have joint and several ownership of any copyright in and to any test reports that describe the Test Results (the "Test Reports").

Without the prior written consent of the other Participants, no Participant may use or disclose the Test Results or the content of the Test Reports, in whole or in part, other than as permitted for Confidential Information received from the other Participant or as agreed between or among the testing Participants.

The Participants will ensure that a suitable copyright and confidentiality notice is appended to each copy of any Test Report and, when applicable, a liability disclaimer.

7. LIABILITY AND LIMITATION OF LIABILITY

The Receiving Participant shall be liable for:

- (i) any breach of this Agreement by the Receiving Participant, and
- (ii) any unauthorized disclosure or use of Confidential Information by persons or entities to whom the Receiving Participant has the right to disclose Confidential Information under this Agreement,

EXCEPT THAT, TO THE FULL EXTENT PERMITTED BY LAW, THE RECEIVING PARTICIPANT SHALL NOT BE LIABLE FOR, AND HEREBY DISCLAIMS ANY LIABILITY FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN CONNECTION WITH INADVERTENT OR SUCH UNAUTHORIZED DISCLOSURE IF IT HAS EXERCISED THE SAME AMOUNT OF DILIGENCE IN PRESERVING THE SECRECY OF THAT INFORMATION AS THE DILIGENCE USED IN PRESERVING THE SECRECY OF THE RECEIVING PARTICIPANT'S OWN CONFIDENTIAL INFORMATION OF LIKE IMPORTANCE, BUT IN NO EVENT LESS THAN REASONABLE DILIGENCE, AND, UPON BECOMING AWARE OF SUCH DISCLOSURE, NOTIFIED THE DISCLOSING PARTICIPANT THEREOF AND TAKEN REASONABLE MEASURES TO MITIGATE THE EFFECTS OF SUCH DISCLOSURE AND TO PREVENT ANY FURTHER DISCLOSURE.

In the event of a breach of this Agreement, the Disclosing Participant may take any and all actions under law against the Receiving Participant. The Participant acknowledges and agrees that the Open Mobile Alliance is not responsible for any actions of its members, including, but not limited to, any breach of the terms of this Agreement.

8. EXCEPTIONS TO CONFIDENTIAL INFORMATION

The Receiving Participant shall have no obligation with respect to information which:

- (i) was lawfully in the possession of or known to the Receiving Participant without any obligation of confidentiality prior to receiving it from the Disclosing Participant;
- (ii) is, or subsequently becomes, legally and publicly available other than by the Receiving Participant's breach of this Agreement;
- (iii) becomes publicly available by action of the Disclosing Participant;
- (iv) is lawfully obtained by the Receiving Participant from a source other than the Disclosing Participant not under any obligation of confidentiality to the Disclosing Participant;
- (v) is developed by or for the Receiving Participant without use of the Confidential Information, provided such independent development can be shown by documentary evidence; or
- (vi) is disclosed by the Receiving Participant pursuant to a valid order issued by a court or government agency, provided that the Receiving Participant provides to the Disclosing Participant
 - (a) prior written notice of such obligation, and
 - (b) reasonable cooperation with Disclosing Participant's efforts to limit or oppose such disclosure or obtain a protective order.

The terms of confidentiality under this Agreement shall not be construed to limit the Participant's right to develop independently or acquire products without use of the Confidential Information or to reassign Participant's own Representatives within Participant's own organization.

9. DISCLAIMER

Each Participant provides such Participant's Confidential Information "as is" without warranties, express or implied, of any kind, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement. The Participant does not warrant that

the Confidential Information is error free or technically or commercially exploitable.

Each Participant shall retain all right, title and interest to such Participant's Confidential Information and all intellectual property rights fixed, embodied, or otherwise subsisting therein or arising therefrom, and in all works, inventions, discoveries, know-how, techniques, processes, methods, systems, ideas and other elements thereof. No license under any trademark, patent or copyright, or other recognized intellectual property rights, or applications for the same which are now or thereafter may be obtained by such Participant is either granted or implied by this Agreement or the disclosure of Confidential Information hereunder, except for the limited purposes contemplated hereby and as otherwise provided herein. Subject to the foregoing, the Participants will have joint ownership of the Test Results and/or Test Reports as set forth in Section 6 of this Agreement.

10. LIMITATION OF LIABILITY OF THE OPEN MOBILE ALLIANCE

The Open Mobile Alliance will exercise reasonable efforts regarding its duties as set forth in Section 4 of this Agreement, provided, however that the Open Mobile Alliance shall not be liable for any breach of another Participant's obligations hereunder. Participant agrees that the Open Mobile Alliance will not be liable for any inadvertent disclosure by the Open Mobile Alliance of any information, including Confidential Information, under this Agreement. If any action is brought against the Open Mobile Alliance for any breach of its obligations hereunder, Participant agrees that the sole and exclusive remedy for any and all such actions brought by Participant against the Open Mobile Alliance shall not exceed in the aggregate ten thousand US dollars (\$10,000 USD).

11. TERM

This Agreement shall continue from the date last written below until 18:00 GMT on December 31, 2028 or until superseded by another non-disclosure

agreement between the Open Mobile Alliance and Participant, provided, however, the obligations of confidentiality under this Agreement shall cease to apply to each item of Confidential Information five (5) years after such item of Confidential Information has been given, disclosed, required or supplied at or for the purposes of an Event.

12. GOVERNING LAW

This agreement, and the rights of the parties hereunder, shall be construed pursuant to the laws of the State of California (without regard to conflict of laws principles). The state and federal courts of California, U.S.A. shall have jurisdiction and the parties waive any other jurisdiction.

13. SURVIVAL OF TERMS

If any term or provision of this Agreement shall be found to be invalid, illegal or otherwise unenforceable, such finding shall not effect the other terms or provisions of this Agreement, or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties set forth in this Agreement.

14. WAIVER

Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

15. ENTIRE AGREEMENT

This Agreement and the Application Form constitute the entire agreement between the parties relating to the subject matter, and cancels and

supersedes any prior versions of the Agreement. No modification to the Agreement will be binding, unless in writing and signed by both parties.

16. ASSIGNMENT

Participant may not assign or otherwise transfer the Agreement or any right granted hereunder.

IN WITNESS WHEREOF, the duly authorized representatives of the Participant have executed this Agreement.

PARTICIPANT COMPANY		OPEN MOBILE ALLIANCE	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Company:		Company:	
Email Address:		Email Address:	
Address:		Address:	
Date:		Date:	