



CERTIFICATION PROGRAM PARTICIPATION AGREEMENT

This Certification Program Participation Agreement (the “*Agreement*”) is entered into effective as of the effective date stated on the signature page hereto by and between MulteFire Alliance, a California nonprofit mutual benefit corporation (“*MFA*”) and the undersigned member in good standing of MFA (the “*Participant*”).

WHEREAS, MFA developed its certification program (the “*MFA Certification Program*”) under which various products built to comply with MFA specifications are tested and certified for compliance, using certain methods to meet the MFA testing requirements, as described in more detail in the MFA Certification Program Management Document (“*PMD*”) which may be updated by MFA from time to time.

WHEREAS, the Participant desires to participate in the MFA Certification Program and MFA desires to accept Participant’s participation in the Program on the terms and conditions as further described in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Definitions. As used in this Agreement, the following capitalized terms will have the following meanings.

(a) The term “*Authorized Test Labs*” means those companies, entities, laboratories and their designated facilities authorized by MFA in writing to conduct testing of devices for compliance with Specifications (as defined below) and other requirements established by MFA from time to time, including, without limitation, those requirements described in PMD.

(b) The term “*Program*” means the MFA Certification Program as defined above.

(c) The term “*Specifications*” means MFA final adopted and approved specifications.

2. Program Management. MFA established, manages and agrees to administer the Program in compliance with PMD, described therein processes and other requirements established by MFA from time to time and allows the Participant to participate in the Program subject to the terms and conditions described herein. Subject to the Participant’s compliance with this Agreement and other requirements of the Program, MFA will issue certification of the products submitted for certification by the Participant after such products undergo independent third-party testing by Authorized Test Labs followed by review and approval from MFA certification authority, as further described in PMD.

3. Participation. As a condition of participation in the Program, Participant represents,

warrants, acknowledges and agrees that:

(a) Participant is a member of MFA in good standing and shall remain a member in good standing at all times while participating in the Program.

(b) Participant is a design manufacturer, equipment manufacturer or has other valid and legal rights with respect to a device or product that Participant is submitting for certification under the Program.

(c) Participant shall abide by all then-current test and certification policies and procedures and other requirements pertaining to the Program that MFA makes available under this Agreement to Participant from time to time. Participant is responsible for reviewing and keeping up to date with the then-current test and certification policies and procedures and other requirements of MFA for the Program within 60 calendar days of MFA making them available to Participant.

(d) Participant shall be responsible for creation and maintenance of the compliance folder and its content and shall comply with other applicable requirements as further described in the PMD.

(e) MFA shall not be liable for any errors, acts or omissions in or relating to the Program or this Agreement. Participant's sole remedy in the event it is dissatisfied with the outcome of its participation in the Program is to pursue and abide by the outcome of MFA's policies and procedures regarding disputed results. MFA makes no representation or warranty and disclaims any and all liability with respect to the tested or certified devices, the Program, the Specifications, or any Authorized Test Labs, and Participant participates at its own risk.

(f) Certain certification fees, costs and/or charges (e.g. listing or registration fees) (collectively, the "**Fees**") may be established by MFA from time to time and shall apply to Participant. Such Fees are non-returnable and non-refundable and may be changed by MFA at any time in its sole discretion. Participant shall pay such Fees as a condition of participation in the Program and on the terms and conditions established by MFA.

(g) MFA reserves the right to amend, expand, or terminate the Program in its sole discretion at any time for any reason without any liability to the Participant.

4. Intellectual Property. Nothing in this Agreement grants any license, right, or permission to Participant under any patent, copyright, trademark, or other intellectual-property or proprietary right to use any of MFA's information, materials, or intellectual property, except and only to the extent inherent in and for the limited purpose of participating in the Program. Any use of MFA's trademarks by Participant must be subject to a separate written trademark license agreement established by MFA. Participant further acknowledges and agrees that all testing collateral and related information and materials regarding the testing processes of the Program are confidential and proprietary to MFA; Participant agrees to keep such information in strict confidence, and, without MFA's prior written consent, Participant shall not disclose such information to third parties, and shall not do anything inconsistent with such ownership by MFA.

5. No Warranties; Limitation of Liability.

(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, MFA PROVIDES THE PROGRAM AND ANY ASSOCIATED OR RELATED INFORMATION, MATERIALS, SPECIFICATIONS, GOODS, OR SERVICES "AS IS," WITH NO WARRANTIES WHATSOEVER, AND MFA HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, MFA DISCLAIMS ALL LIABILITY, INCLUDING WITHOUT LIMITATION FOR INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL-PROPERTY OR PROPRIETARY RIGHTS, ARISING OUT OF RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR PARTICIPANT'S PARTICIPATION IN THE PROGRAM; AND WITHOUT LIMITATION TO THE GENERALITY OF THE FOREGOING, MFA WILL NOT BE LIABLE TO PARTICIPANT FOR THE COST OF SUBSTITUTE GOODS OR SERVICES OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, REGARDLESS OF THE FORM OF ACTION, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, INFRINGEMENT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON WILLFULNESS, LOSS OF PROFITS, LOST REVENUES, OR LOSS OF DATA, FILES, OR BUSINESS OPPORTUNITY), AND WHETHER OR NOT MFA HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT OR PARTICIPANT'S PARTICIPATION IN THE PROGRAM.

(c) Participant agrees that it assumes the full risk and responsibility of damage to or loss of its equipment while at, in shipment to, or in shipment from any MFA facilities (if applicable) or events in connection with the Program, regardless of the cause.

(d) THE LIMITATIONS IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

6. Indemnity. Participant agrees that it shall defend, indemnify, and hold harmless MFA and its directors, officers, representatives, employees, agents, successors and assigns from and against all claims, losses, liabilities, damages, suits, actions, government procedures, taxes, penalties, and other costs and expenses (including without limitation reasonable attorneys' fees and costs), whether or not involving a third party claim, which directly and solely arise out of, relate to or result from: (i) any of Participant's products, including without limitation, any user or customer claims alleging any such products' defect, failure, malfunction, lack of compliance with any applicable law, rule, regulation or specification; (ii) any act, omission, negligence or willful misconduct by Participant, its respective directors, officers, representatives, employees, agents, successors, assigns, subsidiaries or affiliates and their personnel; (iii) any claim by any party that such party was injured, harmed, or damaged in any way to the extent due or related to performance of the Participant's products; (iv) infringement of any intellectual property right or other right of any third party by the Participant; or (v) any breach or nonfulfillment of any provision, warranty, representation, obligation, duty, condition or covenant of this Agreement or the Program. As a condition for any and all promises to MFA in this paragraph, MFA agrees to give prompt written notice of any such claim (although failure to promptly notify the Participant shall not relieve Participant from its obligations under this Section 6 unless its ability to to defend, indemnify, and hold harmless MFA was materially prejudiced by such failure), and to provide Participant with reasonable assistance in the defense or settlement of any such claim at Participant's expense; and that Participant will have sole control over defense and settlement of any such claims, provided, however, that Participant will not, without the written consent of MFA, consent to the entry of any judgment or enter into any settlement of a claim that (i) provides for any admission of liability or any other binding admission on the part of MFA, or its respective directors, officers, employees or agents, as the case may be, or relief other than the payment of monetary damages for which Participant shall be solely liable or (ii) does not release MFA and its respective directors, officers, employees and agents, as the case may be, from all liability in respect thereof. Participant shall not admit fault on behalf of MFA without the written approval of MFA. In no event shall liability under this indemnification clause exceed the amount of Five Hundred Thousand United States Dollars (\$500,000.00). The foregoing limitation on liability shall not apply to a liability arising directly from Participant's breach of confidentiality; fraud; intentional misconduct and in such event, liability shall be limited to 1.5 Million United States Dollars (\$1,500,000.00).

7. Term and Termination.

(a) This Agreement will continue until the termination of the Program or until it is terminated as permitted under this Agreement.

(b) If either party breaches any provision of this Agreement, the other party may terminate this Agreement immediately, provided that the non-breaching party has first given the breaching party notice of the breach, and the breaching party has failed to remedy such breach within thirty (30) calendar days of the date of such notice. MFA also may terminate this Agreement, for convenience, at any time, with or without cause, upon 90 days written notice.

(c) The following provisions survive any termination or expiration of this Agreement: Sections 4, 5, 7(c) and 8.

8. General

(a) ***Governing Law and Jurisdiction.*** This Agreement shall be governed by the internal laws of the State of California, without regard to its choice of law provisions, as such laws are applied to agreements entered into and fully performed in the State of California. Any dispute hereunder or related hereto shall be subject to the exclusive jurisdiction of the state and federal courts for the county and city of San Francisco, the State of California, USA. The prevailing party in any such litigation or dispute shall be entitled to recover from the other party its costs and fees, including attorneys' fees, associated with such litigation or dispute. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PROPRIETARY INFORMATION, INTELLECTUAL PROPERTY RIGHTS, OR THE PROGRAM THAT ARE THE SUBJECT OF THIS AGREEMENT.

(b) ***Entire Agreement; Modifications; Waivers.*** This Agreement, together with any policies and procedures established by MFA with respect to the Program, represent the parties' entire agreement with respect to the matters addressed by this Agreement, superseding all prior written or other agreements pertained thereto. Except as otherwise provided in this Agreement, no changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

(c) ***Assignment.*** This Agreement may not be assigned by Participant, without MFA's prior written consent, which consent may be withheld for any or no reason.

(d) ***Notices.*** All notices or other written communications required or permitted to be given under this Agreement must be in writing and will be considered given when delivered (or when delivery thereof is refused) via personal service; Certified or Registered Mail, Return Receipt Requested; e-mail, provided that the sender does not know or have reason to know that the recipient did not receive the e-mail, addressed to the parties at the below addresses (or at such other addresses as a party may specify by notice to the other party).

(e) ***Headings.*** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

(f) ***Counterparts and Electronic Signatures.*** This Agreement may be executed in identical counterparts all of which taken together shall constitute one single agreement between the parties. This Agreement may be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

(g) **Severability.** In the event that any provision of this Agreement is determined to be illegal or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement; and in any event the remaining provisions of this Agreement will remain in full force and effect and enforceable.

(h) **Authority.** Each party represents and warrants that it has the requisite power and authority to execute, deliver and perform this Agreement, and that such execution, delivery and performance will not constitute a violation or breach of any charter or by-law or any other provision of any other agreement to which MFA or Participant is a party or by which it may be bound.

(i) **Construction.** Each party represents that it has been represented by separate and independent counsel in the preparation and negotiation of this Agreement. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against any party. Any ambiguity will not be interpreted against the drafting party.

(j) **English.** This Agreement is prepared and executed in the English language only and any translations of this Agreement into any other language shall have no effect. All proceedings related to this Agreement shall be conducted in the English language.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, sign below.

EFFECTIVE DATE: _____, 20__

MFA
MULTEFIRE ALLIANCE

PARTICIPANT
Name of Participant:

By: _____

By: _____

Printed Name: Mazen Chmaytelli

Printed Name: _____

Title: President

Title (if applicable): _____

Email: mchmayte@qti.qualcomm.com

Email: _____

Address: 5177 Brandin Court
Fremont, CA 94538

Address: _____
