

App Quality Alliance (AQuA)

MEMBERSHIP AGREEMENT

Version 2.1
1st August 2015

This MEMBERSHIP AGREEMENT is entered into between the App Quality Alliance (“AQuA”), App Quality Alliance (AQuA) Ltd, incorporated and registered in England and Wales (9257979), 7 Southernhay West, Exeter, Devon, EX1 1JG, UK, and the undersigned entity (“Member”).

Member agrees to be a Member of AQuA on the terms and conditions stated in this Membership Agreement as well as the terms and conditions stated in the AQuA Bylaws (as defined below) (the entirety of which is incorporated herein by reference). If and to the extent that any provision of this Membership Agreement limits, qualifies, or conflicts with any provision of the AQuA Bylaws, the AQuA Bylaws govern.

1. DEFINITIONS

Board of Directors or **Board** shall have the meaning set forth in Article 1 the Bylaws.

Bylaws means the App Quality Alliance (AQuA) Bylaws, as in effect and as amended from time to time.

Intellectual Property Rights means all patents, trademarks, design rights (registered and unregistered), copyrights, database rights, trade secrets and all rights of an equivalent nature anywhere in the world.

Member means all members of the Organization pursuant to the AQuA Bylaws, including such Members who may join after the undersigned Member joins.

Endorsed Member means a Member who has successfully passed the AQuA assessment as relevant to the type of endorsement and thus has additional rights, benefits and obligations as set out in Appendix 2.

Organization means the App Quality Alliance (“AQuA”), defined as an industry body comprising device manufacturers, carriers, testing companies, developers and others within the mobile application industry.

Trademarks means Members’ corporate logos, name, and word marks.

The foregoing defined terms may be used in the singular or plural; changes in a term's number shall not affect the provided definition except as to number.

2. MEMBERSHIP

2.1 Qualifications. Subject to the terms and conditions of this Agreement, and the AQuA Bylaws, Member agrees to be a Member of the Organization. Member’s acceptance into the Organization is subject to meeting the qualifications for membership as set forth in appendix 1, the AQuA Bylaws, and approval by the Board of Directors.

2.3 Member Benefits. Members shall be entitled to the benefits provided by this Agreement, and the AQuA Bylaws. Members shall be entitled to participate in AQuA Member meetings, to receive materials disseminated to the Members, and to collaborate with other members to produce and benefit from deliverables such as best practices, guidelines, testing and other informative/constructive pieces of work. These deliverables are endorsed, publicized and put in use for the benefit of members and industry alike. Deliverables may be both platform agnostic and platform specific.

3. OBLIGATIONS OF MEMBERS

3.1 Bylaws. The Member has reviewed, hereby approves, and agrees to abide by the AQuA Bylaws. Terms used in this Agreement have the same meaning as when the same terms are used in the Bylaws.

3.2 Dues and Other Fees. The Member shall pay annual AQuA dues. The Board of Directors may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership.

3.3 Expenses. Unless otherwise authorized by the Board of Directors, the Member shall bear its own costs and expenses for its participation in any and all activities conducted pursuant to this Agreement, such as travel, employee compensation, and incidental expenses.

3.4 Antitrust Policy. As more fully provided in the Bylaws, the Member agrees to comply with all applicable antitrust laws pertaining to the Member's participation in the Organization. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law. Member consents to the disclosure of its name and any other required information for the purposes of permitting the Organization to invoke the protection of the National Cooperative Research and Protection Act of 1993 (15 U.S.C. sec. 4301 et seq.).

3.5 Press Releases. Any Member may make public announcements or press releases concerning its own activities as a Member. No Member may make a press or other public announcement regarding the activities of another Member as a Member or use the name of another Member in a press or other public announcement regarding this Agreement without the consent of the Member. However, the Board may issue press or other public announcements regarding the activities of the Organization and will be able to identify Members in a reasonable manner. The Board, however, may not issue press or other public announcements regarding a specific Member or the specific activities of a Member without obtaining permission from the specific Member.

4. INTELLECTUAL PROPERTY

4.1 Ownership. Each Member acknowledges that it will not acquire any Intellectual Property Rights under this Agreement in any other Member's contributions, and all rights therein are strictly reserved. To the extent that any Intellectual Property of the Organization contains any contributions of a Member, such Member shall retain all Intellectual Property Rights to those contributions. Any goodwill arising in the course of this Agreement regarding a Member's Trademarks will inure solely for the benefit of that Member.

4.2 Use of Organization name and logo. The Member may publicly disclose that it is a Member of the Organization. However, unless otherwise authorized by the Board of Directors, the Member may not identify any product or service as being sanctioned by, sponsored by, or associated with the Organization. The Organization shall have the right to include the Member's name in any lists of Members published by the Organization and to announce that the Member has joined the Organization.

4.3 Use of Member name and logo. The Organization may publicly disclose all current Members collectively. When disclosing the name of Members collectively, the Organization may use each Member's company name and logo, subject to the Member's provided specifications regarding use of its logo. The Organization is not authorized to use the Member's name or logo in any other fashion without first having written consent from the Member. Members shall provide specifications regarding the use of their logos with their Membership Agreement.

5. TERM AND TERMINATION

5.1 Term. Unless terminated as provided in Article 15.8 of the AQuA Bylaws, this Agreement shall remain in full force and effect, renewing annually upon the anniversary of the Member's initial joining of the Organization, so long as the Organization is in operation.

5.2 Effect of Termination. In the event that this Agreement is terminated, Sections 1, 4, 5, 6 and 7 shall survive. Additional consequences of termination of this Agreement as to a particular Attachment are set forth in such Attachment.

6. LIMITATION OF LIABILITY

6.1 No Limitation on Certain Categories of Liability. Each Member acknowledges the full extent of its own liability, arising from death or personal injury resulting from its negligent acts or omissions; and the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability) are not affected.

6.2 Limitation on Other Categories of Liability.

(a) Except as otherwise specifically recited herein, each Member's maximum aggregate liability for all claims resulting directly from any action under, or in connection with, this Agreement, whether for breach of contract or in tort, including negligence, will be limited to one hundred thousand US dollars (U.S. \$100,000). With respect to any liability specifically (i) resulting from gross negligence, or (ii) resulting from breach of the Confidential Information provisions of the Operating Procedures, including without limitation any damage to or loss of a Member's Intellectual Property Rights solely originating from such Confidential Information breach; the maximum aggregate liability for all such claims shall be one million US dollars (\$1,000,000). For clarity, any infringement or other damage or loss of any Member's Intellectual Property Rights, not originating from a breach of Confidential Information hereunder, are not limited in any way by this Agreement.

(b) In no event will any Member be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract or in tort, including negligence, and even if that Member has previously been advised of, or could reasonably have foreseen as at the Effective Date or any time thereafter, the possibility of such damages.

7. OTHER PROVISIONS

7.1 Notice. The Member designates the representative identified below as Primary Contact for the purpose of receiving notice under this Agreement. The Member may change the designated representative by written notice to the Organization. If the Member fails to designate a representative, notice may be sent to the Member at its address stated below. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by electronic mail, by facsimile, by express mail or by courier, or three (3) days after being sent first-class mail, postage prepaid, addressed to the Member's designated representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail, courier or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.

7.2 No Joint Venture. Nothing contained in this Agreement and no action taken by the Member shall be deemed to render the Member an employee, agent or representative of the Organization or any other Member, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Members or with the Organization.

7.3 Governing Law. Except where arbitration is designated as the means of resolving a dispute as provided under Section 7.4 (Arbitration) of this Agreement, any action or defense to an action arising out of or related to this Agreement, shall be brought solely and exclusively in the United States State Court of Delaware and such action or defense to an action shall be solely and exclusively governed by Delaware State law and controlling U.S. federal law. No conflict of law rules or statutes of any jurisdiction (either within or outside of the U.S.A.) shall apply. Other than as specified above and in Section 7.4 (Arbitration) below, no Member shall bring any action or defense to an action arising out of or related to Agreement in any other jurisdiction or venue in the U.S.A. or abroad.

7.4 Arbitration.

(a) Scope. Any dispute arising out of or relating to this Agreement (whether in contract, tort or other theory) shall be finally settled by arbitration as set forth herein. Notwithstanding the foregoing, any Member may bring an action (including without limitation, an action for injunctive relief) in a court of competent jurisdiction with respect to any dispute, which may affect any of such Member's trademarks or other Intellectual Property Rights.

(b) Arbitration Administration and Rules. Arbitration arising hereunder shall be administered in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules") in

effect at the time of arbitration and modified herein and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to enforce such awards.

(c) Arbitrator Qualifications. Each Member shall select one arbitrator and be financially responsible for the fees and costs of preparing its case including, without limitation, the costs and fees of its arbitrator. If there are more than two Members to the dispute, adverse to one another, the Members should make a good faith effort to unanimously agree on two arbitrators. If no such agreement can be reached, the arbitration requirements of this Agreement shall not apply. The two arbitrators shall select a third arbitrator and both parties shall share equally the costs and fees of the third arbitrator. Such arbitrators shall be selected in accordance with ICC Rules and, in addition, must be fluent in the English language, either a retired judge or practicing attorney having at least ten (10) years litigation experience and conversant in the technology relative to matters in dispute.

(d) Authority and Decision Standards. The arbitrator shall consider and apply the substantive and procedural Federal laws of the United States and the State Laws of the State of Delaware in deciding any dispute and may only provide such damages and provisional relief available under such controlling law and this Agreement. Discovery shall not be available to the parties with respect to the arbitrated dispute unless the arbitration panel unanimously agrees that certain discovery would serve the interests of justice.

(e) Limitation and Damages. The arbitrator has no authority to award damages in excess of those permitted by this Agreement for any reason and may not fashion any relief that would not otherwise be available under applicable law. Any award not complying with this subparagraph will be void and unenforceable.

(f) Form of Award. Subject to the Limitation of Liability in Section 6 of this Agreement:

i. All awards shall be payable in US dollars free of any tax, levy, deduction or offset (other than income taxes of the recipient); and

ii. The arbitrator may award to the prevailing Member in any dispute (a) pre-award interest at a rate no greater than the maximum allowed by law, and (b) reasonable attorney's fees incurred in connection with the arbitration proceedings, subject to the limit set forth in Section 6.2, above.

7.5 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

7.6 Amendments. This Agreement and any Attachments thereto may be amended on a nondiscriminatory basis in accordance with Article 13 of the Bylaws. The Member shall be given at least sixty (60) days prior written notice, via certified mail at the address provided in such Member's AQuA Membership Application Form or the most recent updated address Member provides to the AQuA of the effective date of an amendment, and amendments shall be prospective only. A Member shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its membership in the Organization.

7.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

7.8 Integration. This Agreement, along with its Attachments, supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in the Organization, except the Bylaws.

7.9 Authority. The Member represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of the Member.

8. EFFECTIVE DATE

8.1 Effective Date. This Agreement shall be effective when it is executed by an authorized representative of the Member and the Organization.

AQuA Membership Application Form

Please complete and submit an original signed copy of this Membership Agreement and Membership Application Form to:

App Quality Alliance (AQuA) Ltd
7 Southernhay West, Exeter, Devon, EX1 1JG, UK
Please scan and email this to: contact@appqualityalliance.org

Upon approval of your membership, remit the appropriate fee or request an invoice or bank wire information. Send checks payable to "AQuA Ltd" to the address above. Membership rights and privileges will commence upon confirmation from AQuA that your membership has been approved and full membership payment has been received. Fees below are annual.

Membership Dues	\$500 (US Dollars)	<input checked="" type="checkbox"/>
AQuA Endorsed Member Dues	\$5,000 (US Dollars)	<input type="checkbox"/>

MEMBER SIGNATURE:

Name: _____
 Title: _____
 Signature: _____
 Date: _____
 Telephone: _____
 E-mail: _____

AQuA Ltd. SIGNATURE:

Name: JMC Wrigley
 Title: Executive Director
 Signature: _____
 Date: _____
 Telephone: +44 797 708 8888
 E-mail: martin@appqualityalliance.org

Member Information:

Company Name: _____
 Mailing Address: _____
 City, (State): _____
 Postal Code: _____
 Country: _____
 VAT Number: _____
 URL: _____

Primary Contact (all notices under this Agreement shall be sent to the Primary Contact):

Primary Contact Name: _____
 Title: _____
 E-mail: _____
 Mailing Address: _____
 City, (State): _____
 Postal Code: _____ Country: _____

Appendix 1 - AQuA Member: Criteria, rights and obligations.

Membership Criteria

The Member must be interested in the development of quality mobile apps and supportive of AQuA's aims and objectives and have a clear and established identity and contact details. This identity must be supported by items such as a website, publisher ID, LinkedIn, Facebook, Twitter etc.

Should a Member fall below these criteria or not meet their obligations, their membership may be terminated along with all rights under this membership.

Member's Rights and Obligations

Branding

The Member:

- May use the AQuA Name and/or Logo and associated text as provided by AQuA in promotional, sales or other material that they choose.
- Will observe Terms and Conditions that may be provided with the AQuA name and logo.
- May provide AQuA with information for AQuA to use in AQuA promotional material (e.g. website, emails, exhibition banners, flyers, case studies, etc.)

AQuA :

- Will confirm the Member's status if any queries are received.
- Will maintain the Member's details on the appropriate website and any other promotional material based on information given by the Member.

Participation in Working Groups

AQuA runs a number of formal and informal working groups on a variety of topics. The formal working groups will usually be focused on delivery of a project or goal; the informal will usually be more of a focused discussion and sharing of information concerning app quality issues.

The Member may take part in such working groups as appropriate.

The AQuA Bylaws contain AQuA's position on Intellectual Property and compliance with Anti-Trust rules. AQuA respects the intellectual property rights of its members and expects the Member to respect that in working group discussions.

Appendix 2 - AQuA Endorsed Member: Criteria, rights and obligations

Endorsed Member Criteria

Prior to Endorsement, the applicant must become an AQuA Member. All of the conditions for a Member continue to apply for an Endorsed member (unless explicitly stated below).

To become an **Endorsed Testing Service, App Developer** or **Quality Commissioner**, applicants must pass a detailed assessment appropriate to the type of endorsement being sought. The assessment will establish that the applicant meets the criteria detailed below for Endorsed status.

Should an applicant fall below these criteria or not meet their obligations, their membership may be terminated along with all rights under this membership.

The Endorsed Testing Service must satisfy the following criteria:

Identity

A clear and established Identity and contact details, supported by items such as a web site, Google search, LinkedIn, Facebook, Twitter.

If the organization runs other activities unrelated to that being Endorsed by AQuA it must be clearly separated so that the scope of the AQuA endorsement is unambiguous.

Client list

If applicable, a list of Clients who could be contacted for references and feedback along with evidence of working together with the clients beyond a listing on the applicants web site.

Portfolio

A portfolio of apps in a publicly available market or otherwise privately available (i.e. not on a public market) including retired apps.

Documented and maintained Testing Process

A documented, maintained and up-to-date demonstrable set of processes for any testing carried out directly by the applicant.

For Endorsed Testing Service applicants that do not directly do the testing themselves there will be documented guidelines, suggested use cases or similar process information for the users of the Testing Service.

Endorsed Member: Rights and Obligations

Commercial Messaging and Approach to Testing

The applicant will ensure that its approach and principles are complimentary or compatible with the AQuA Approach to testing and quality. Commercial messaging should help to clarify how the applicant can aid mobile application quality as promoted by AQuA.

Use of the Endorsement / Accreditation / AQuA's Name and Logo

The applicant:

- May use the AQuA Name and/or Logo as provided with any associated text in any promotional, sales or other material that they choose. This is known as the AQuA Endorsed Accreditation.
- Will observe Terms and Conditions that may be provided with the AQuA Endorsed Accreditation.
- May provide AQuA with information for AQuA to use in AQuA promotional material (e.g. website, emails, exhibition banners, flyers, case studies, etc)

AQuA:

- Will confirm the Endorsed Member's status if any queries are received.
- Will maintain the Endorsed Member's details on the appropriate website and any other promotional material based on information given by the Endorsed Member.
- Will consider involvement alongside the Endorsed Member in events or conferences should the Endorsed Member choose.

Quality App Directory

The Endorsed Member will be expected to upload details of their own (or their clients') suitable apps to the Quality App Directory.

Eligibility to become a QAD-approved Test House

An Endorsed Member may apply to become a **Quality App Directory (QAD) Approved Test House** if they provide testing services equivalent to the QAD verification.

If eligible and successful in becoming a QAD-approved test house the Endorsed Member may test applications against the AQuA Testing Criteria for inclusion with a quality level of 'Test House-Verified' within the AQuA Quality App Directory. Apps in the QAD will be randomly audited for quality.

Eligibility to be invited to be on the AQuA Board of Directors

The Endorsed Member may be invited to take a seat on the AQuA Board of Directors. This may happen at the discretion of the Board of Directors, and if an invitation is made, then the Endorsed Member would be expected to observe the same rights and obligations as the other directors as stated in the AQuA Bylaws.

Trusted status for Endorsed members who develop apps

An Endorsed Member who is a developer of apps and has their own testing facilities may apply for trusted status.

Trusted status allows the Endorsed Member to place details of their own applications within the AQuA Quality App Directory and have them listed as 'Trusted Developer Verified' without having stated that they have had the apps tested via an AQuA-approved test house. Apps in the QAD will be randomly audited for quality.