



## NON-DISCLOSURE AGREEMENT (NDA) FOR PLUGTESTS™ EVENTS

AGREEMENT made as of 11 March 2008 (hereafter "EFFECTIVE DATE"), by and between

1. the European Telecommunications Standards Institute, an association organized and existing under the laws of France, 650, route des Lucioles, 06921 Sophia-Antipolis Cedex, France,  
(hereafter "ETSI")

and

2. .....(Company name) .....(Address).....,  
(hereafter "PARTICIPANT")

hereafter referred together as the "PARTIES".

WHEREAS,

1. ETSI is organising an interoperability test event, FMCA Interoperability Week (hereafter "EVENT"), which will take place on 23 - 26 June in ETSI Headquarters, Sophia Antipolis, France, and will concern issues related to a technical evaluation of the FMCA PRD 3.0 Requirements. The PARTICIPANT is invited by ETSI to attend the EVENT.
2. In order to place all the companies taking part at the EVENT in a fair and non-discriminatory situation, every company taking part at the EVENT must execute and abide by the terms and conditions of this Agreement by signing an identical copy of this form.
3. It is anticipated that in the course of the EVENT, PARTICIPANT will as the case may be
  - a) disclose, provide or otherwise make available CONFIDENTIAL INFORMATION (hereafter "DISCLOSING PARTICIPANT") to other companies taking part at the EVENT and/or
  - b) receive or otherwise gain knowledge of CONFIDENTIAL INFORMATION (hereafter "RECEIVING PARTICIPANT") from other companies taking part at the EVENT.

4. The companies taking part at the EVENT are referred together as the "PARTICIPANTS. ETSI is organising the EVENT and therefore no PARTICIPANT. However, it is anticipated that in the course of the EVENT, ETSI may receive or otherwise gain knowledge of confidential information, in what case ETSI shall be exceptionally viewed as a "RECEIVING PARTICIPANT".

NOW, THEREFORE, in consideration of mutual covenants and understandings hereafter set forth, the PARTIES hereby agree as follow:

PARTICIPANT is willing to disclose confidential information ("DISCLOSING PARTICIPANT") and agrees to receive confidential information ("RECEIVING PARTICIPANT") as the case may be in the course of the EVENT under the following conditions:

## **1. CONFIDENTIAL INFORMATION**

- 1.1 As used in this Agreement, "CONFIDENTIAL INFORMATION" shall mean any information such as, but not limited to, any and all data, computer programs, materials, samples, technical and economic information, commercialisation, research and testing strategies and results, trade secrets and know-how provided by DISCLOSING PARTICIPANT and other materials made therefrom, disclosed, provided, made available or discovered or generated during the EVENT, directly or indirectly, (i.) in writing, computer readable form or other tangible form and marked confidential or (ii.) communicated orally, visually or in any other manner, provided it is identified as confidential at the time of such disclosure, or (iii.) its confidential nature is confirmed within thirty (30) days after the disclosure by the DISCLOSING PARTICIPANT in written form summarizing the information considered confidential.
- 1.2 Not to be considered as CONFIDENTIAL INFORMATION is such information which
  - (a) at the time of disclosure hereunder is, or thereafter becomes, through no fault of RECEIVING PARTICIPANT, part of the public domain by publication or otherwise; or
  - (b) can be verifiably proven by RECEIVING PARTICIPANT to have been in its possession prior to disclosure to it by DISCLOSING PARTICIPANT; or
  - (c) can be verifiably proven by RECEIVING PARTICIPANT to have been rightfully obtained from a third party not under any obligation of confidentiality to DISCLOSING PARTICIPANT; or
  - (d) can be verifiably proven by RECEIVING PARTICIPANT to have been independently developed by RECEIVING PARTICIPANT without the use of CONFIDENTIAL INFORMATION; or
  - (e) RECEIVING PARTICIPANT is required to disclose pursuant to a valid order issued by a court or government agency, provided that the RECEIVING PARTICIPANT gives the DISCLOSING PARTICIPANT prior written notice of such obligation and enters into reasonable cooperation with DISCLOSING PARTICIPANT's efforts to limit or oppose such disclosure or obtain a protective order; or
  - (f) is clearly marked and/or specifically represented as "not confidential" at the time of disclosure.

## **2. NON-DISCLOSURE OBLIGATIONS/RESTRICTIONS**

RECEIVING PARTICIPANT agrees to receive and hold any CONFIDENTIAL INFORMATION in confidence. Without limiting the generality of the foregoing, RECEIVING PARTICIPANT further promises and agrees:

- 2.1 Not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the CONFIDENTIAL INFORMATION without prior written authorization of the DISCLOSING PARTICIPANT.
- 2.2 Not to use any CONFIDENTIAL INFORMATION without the prior written authorization of DISCLOSING PARTICIPANT for any purpose other than participating in the EVENT, performing interoperability testing, generating test reports and modifying the RECEIVING PARTICIPANT's own technology or product to address identified interoperability problems.
- 2.3 Not to make any copies of the CONFIDENTIAL INFORMATION, in whole or in part.
- 2.4 Not to reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody CONFIDENTIAL INFORMATION.
- 2.5 To restrict access to CONFIDENTIAL INFORMATION to only and strictly those of its employees, agents, consultants or other representatives who clearly need such access to carry out the EVENT, subject to having ensured that each of them employees, agents, consultants or other representatives have beforehand signed confidentiality agreements with terms and conditions substantially similar to those contained in this Agreement.
- 2.6 To take reasonable precautions to prevent disclosure of CONFIDENTIAL INFORMATION, which shall be in any event as great as the precautions and the degree of care used with RECEIVING PARTICIPANT's own information of a proprietary nature of like character to prevent disclosure, but in no event less than reasonable diligence.
- 2.7 Upon termination of the EVENT or upon the written request of the DISCLOSING PARTICIPANT, whichever is earlier, to promptly deliver to the DISCLOSING PARTICIPANT all tangible materials including, but not limited to, all records, notes, and other written or printed materials to the DISCLOSING PARTICIPANT including any copies thereof or materials made therefrom, or at the DISCLOSING PARTICIPANT option, certify destruction of the same in the possession of RECEIVING PARTICIPANT, embodying or pertaining to the CONFIDENTIAL INFORMATION.

## **3. UNAUTHORIZED DISCLOSURE**

Without derogating from DISCLOSING PARTICIPANT's rights under law or under this Agreement, RECEIVING PARTICIPANT promises and agrees:

- 3.1 To immediately notify DISCLOSING PARTICIPANT upon discovery of loss or unauthorized disclosure or use of CONFIDENTIAL INFORMATION, or any other breach of this Agreement by RECEIVING PARTICIPANT.

- 3.2 To cooperate with DISCLOSING PARTICIPANT in every reasonable way to help DISCLOSING PARTICIPANT regain possession of the CONFIDENTIAL INFORMATION and prevent further unauthorized use or disclosure.

#### **4. NO RIGHT TO CONFIDENTIAL INFORMATION**

- 4.1 All CONFIDENTIAL INFORMATION are and shall remain DISCLOSING PARTICIPANT's ownership and no right or license under any trade secret or other proprietary right, including, but not limited to, patent, utility model, trademark, design, copyright and their applications is granted hereunder by implication or otherwise.
- 4.2 Test results of the interoperability test produced at the EVENT are jointly owned by all PARTICIPANTS except such test results which have been independently developed by a PARTICIPANT and are relating exclusively to the performance of the own equipment or products of a PARTICIPANT, in which case the test results shall be owned by that PARTICIPANT.

#### **5. REMEDIES AND LIABILITY**

- 5.1 PARTICIPANT recognises and agrees that remedies at law for breach of the provisions of this Agreement will be inadequate and that the DISCLOSING PARTICIPANT shall, in addition to any other rights which it might have, be entitled to injunctive relief.
- 5.2 ETSI shall not be liable for any breach of another PARTICIPANT's obligations hereunder. PARTICIPANT agrees that ETSI will not be liable for any inadvertent disclosure of CONFIDENTIAL INFORMATION which has been brought to the attention of ETSI provided it has fulfilled its obligations set out above in Article 2 and 3.
- 5.3 If any action is brought against ETSI 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 ETSI shall not exceed in the aggregate ten thousand EURO (€ 10.000,00).

#### **6. TERM**

The obligations under this Agreement shall terminate after five (5) years from the EFFECTIVE DATE or until such time as the information no longer qualifies as confidential whichever occurs earlier.

#### **7. PUBLIC NOTICE**

- 7.1 Each PARTY may issue at its own discretion, prior or after of the EVENT, articles, advertising, press releases or other public notice such as, but not limited to reports that summarize the overall test results of the EVENT (PUBLIC NOTICE).
- 7.2 However, no PARTY shall issue a PUBLIC NOTICE using or implying the name of any other natural or legal person participating at the EVENT, without the prior written consent of this natural or legal person.



- 7.3 The PARTICIPANT is authorized to use in a PUBLIC NOTICE the name of ETSI as well as ETSI's trade mark on the ETSI logo provided that PARTICIPANT uses the trade mark in a proper manner and gives due acknowledgement concerning the ownership of the trade mark by ETSI.
- 7.4 Under no circumstance is any RECEIVING PARTICIPANT authorized to disclose in a PUBLIC NOTICE any CONFIDENTIAL INFORMATION disclosed to it hereunder.

## **8. APPLICABLE LAW AND JURISDICTION**

- 8.1 This Agreement is made under and governed by the laws of France without regard to the conflict of laws provisions thereof.
- 8.2 Should ETSI be respondent in a suit under or relating to this Agreement then the exclusive venue for such action or proceeding shall lie with the Court of Grasse in France and in such case PARTICIPANT submits to the personal jurisdiction of that Court and waives any objections to that Court's jurisdiction over any dispute arising under this Agreement.

For disputes between other PARTICIPANTS any and all disputes, differences or questions between such PARTICIPANTS with respect to any matter arising out of or relating to this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by three (3) arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Paris, France. The English language shall be used in the proceedings. All arbitral proceedings conducted under this Article 8.2 shall be kept strictly confidential, and all information, documentation, materials in whatever form disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings. The award shall be final and binding and enforceable in by any court or authority having competent jurisdiction.

## **9. GENERAL PROVISIONS**

- 9.1 Nothing in this Agreement shall be interpreted to obligate PARTICIPANT and/or ETSI to disclose any information, to purchase any goods or services, to offer for sale any goods or services, to negotiate, or to enter into any business relationship or agreement.
- 9.2 No warranties of any kind including, but not limited to, warranties of merchantability, fitness for purpose, and non-infringement are given with respect to CONFIDENTIAL INFORMATION as well any use thereof.
- 9.3 In the event that any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court.
- 9.4 This Agreement constitutes the complete and final agreement between the PARTIES with respect to the subject matter hereof, and shall supersede all previous



communications, representations, understandings and agreement, whether oral or written, between the PARTIES or any official or representative thereof. It shall not be modified except by a written agreement, dated subsequent to the EFFECTIVE DATE hereof, signed by duly authorized representatives of both PARTIES, and including a copy of this Agreement as attachment.

9.5 This agreement may not be changed or modified or released, discharged, abandoned or otherwise terminated in whole or in part, except by an instrument in writing signed by duly authorised representatives of both PARTIES.

9.6 Neither PARTY shall assign any of its rights or obligations hereunder, except to a successor in interest, without the prior written consent of the other.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement, into two originals, as of the EFFECTIVE DATE.

**ETSI**

**PARTICIPANT**

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_