

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is dated this ____ day of _____, 2006 and is delivered to IMS Forum (hereafter “IMS”), a California Business Association, with offices at 39355 California Street, Suite 307, Fremont, CA 94538 (“IMS”) by _____, a [] individual [] corporation, located at _____ (“Recipient”). IMS and the Recipient sometimes are collectively referred to herein as the “Parties” and individually as a “Party”.

RECITALS

Recipient acknowledges and agrees that IMS may disclose valuable proprietary and confidential information (as defined below) relating to its respective operation and business technology, products, members, potential members, competitors, Intellectual Property, and business and marketing strategies for the purpose of evaluating and pursuing a mutually beneficial business and service business relationship including without limitation the plugfest, interoperability, testing information discussions, recruiting of new members, consulting services, or other potential business and commercial opportunities between the Parties and entering into and negotiation for a final agreement referred thereto as (the “Project”). In addition, other persons and entities, such as controlled affiliates, agents or independent contractors of IMS may disclose valuable proprietary and confidential information to the Recipient with respect to the Project. As a material inducement for IMS disclosing such information to the Recipient, Recipient has agreed to execute and deliver this Agreement.

AGREEMENT

The Parties agree that the following terms and conditions will govern the disclosure or transfer by IMS to the Recipient of Confidential Information described below. This Agreement becomes effective upon the date indicated in this Agreement (the “Effective Date”).

As a condition to the information being furnished to Recipient and its directors, officers, employees, agents or advisers (collectively, “Representatives”), Recipient agrees to treat, and to cause its Representatives to treat, any information which is furnished to Recipient or its Representatives by or on behalf of IMS (collectively, the “Confidential Information”) in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.

Confidential Information and Materials. For purposes of this Agreement, “Confidential Information” shall mean information not generally known to the public, and maintained by IMS as confidential, whether of a technical, business or other nature that relates to the Project stated above or that, although not related to such Project, is nevertheless disclosed as a result of the Parties’ discussions in that regard, and that should reasonably have been understood by the Recipient, because of, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to IMS. Confidential Information shall include without limitation, plugfest, interoperability validation proposals, test strategy discussions, the existence and content of the negotiations and discussions regarding the contemplated business arrangement between the parties, financial information and records, sales, cost and profit data, pricing information, member and potential member lists, market information and all analyses, compilations, studies or other documents prepared by IMS or its representatives containing or based in whole or in part on any Confidential Information obtained from IMS or its representatives. Confidential Information may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. Confidential Information shall include, but is not limited to, marketing and business strategies, proposals, Forum RFIs, RFPs, RFQs, all notes, analysis, compilations, studies, interpretations, member lists and information, potential member lists and information, vendor lists, products, technical papers, documents, analysis, protocols, plugfests, test plans, test results, descriptions, drawings, computer software, source codes, patent applications, programming, hardware configurations, systems, or other documents prepared by IMS or its Representatives which contain, reflect or are based upon any information furnished to Recipient or its Representatives pursuant to this

Agreement: including materials and all other trade secrets of IMS as defined by the laws of the State of California or the United States; whether written, oral, magnetic or other machine-readable format.

Exclusions. Confidential Information shall not include information, knowledge or factual data which (i) Was within Recipient's possession prior to its being furnished to Recipient by or on behalf of IMS pursuant hereto, provided that the source of such information was not known by Recipient to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligations of confidentiality to IMS or any other party with respect to such information; or (ii) Becomes part of the public knowledge or literature other than by reason of any action or inaction of Recipient or its Representative, or (iii) Becomes available to Recipient on a non-confidential basis from a source other than IMS or any of its representatives having the right to disclose same; or (iv) Is approved for release by IMS, in writing; or (v) Is independently developed by Recipient without the use of any information received from IMS as documented in writing.

Disclosure. Notwithstanding the foregoing, Recipient may (1) Make any disclosure of such information to which IMS gives prior written consent, and (2) Disclose any such information to your Representatives who need to know such information for the purpose of evaluating a possible transaction with IMS and who agree to treat such information as confidential and in accordance with the Agreement.

Use of Confidential Information. In consideration of the disclosure of the Confidential Information to Recipient, Recipient hereby covenants and agrees:

- (i) to not use any Confidential Information for Recipient's own use or for any purpose other than for the purpose set forth above;
- (ii) to not disclose any Confidential Information to any person or entity, including but not limited to any parent company of Recipient, and/or any affiliate or subsidiary of Recipient, except as approved in advance in writing by IMS;
- (iii) to take all reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those third parties authorized hereunder to have any such information, which measures shall at a minimum include the highest degree of care that Recipient utilizes to protect its own information of a similar nature but no less than a reasonable degree of care;
- (iv) to keep a Valid Confidentiality and Non-Disclosure Agreement on file at all times for each of its employees and officers, and upon request, provide the foregoing to IMS for review;
- (v) to ensure the terms of this Agreement are binding on all of Recipient's owners, officers, employees, agents and Representatives and to not disclose any Confidential Information to any owner, officer, employee, agent or Representative unless such third party is subject to a written confidentiality and non-disclosure agreement the terms of which are at least as restrictive as the terms hereof (upon request, Recipient shall provide the foregoing to IMS for review);
- (vi) to notify IMS in writing of any misuse or misappropriation of the Confidential Information which may come to Recipient's attention, followed by a detailed written explanation of the facts and circumstances of the misuse or appropriation;
- (vii) to take all immediate steps to recover and/or secure the Confidential Information if it is misused or misappropriated;
- (viii) to cooperate with IMS, its officers, employees and attorneys in any efforts to recover and protect from further compromise any Confidential Information.

Ownership of Confidential Information. Nothing in this Agreement is intended to grant any rights to Recipient under any patent, copyright or trademark; nor shall this Agreement grant Recipient any rights in or to the Confidential Information other than the express limited rights set forth herein. The Confidential Information is owned solely by IMS.

No Warranty or Obligation to Proceed. The IMS gives no warranties of any kind with respect to the accuracy, appropriateness or completeness of Confidential Information. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or performance. The Recipient accepts the Confidential Information in "As-Is" condition. The Recipient

agrees to reimburse, indemnify and hold harmless IMS and its respective affiliates, employees, investment bankers, legal counsel and other agents and representatives from any damage, loss or expense incurred as a result of the use of the Confidential Information by the Recipient, its affiliates, agents or representatives. The Parties agree that, unless and until a definitive written agreement with respect to any transaction relating to disclosures under this Agreement is completed, neither Party shall be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement or any written or oral expression with respect to such a transaction by any of their respective directors, officers, employees, agents, representatives or advisors thereof, except, in the case of this Agreement, for the matters specifically agreed to herein.

Disclosure to Governmental Entities. In the event that Recipient or any of its representatives are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar processes) to disclose any of the Confidential Information, Recipient shall provide IMS with prompt written notice of any such request or requirement so that IMS may seek a protective order or other appropriate remedy. If, in the absence of a protective order or other remedy, Recipient or its Representatives are nonetheless legally compelled to disclose Confidential Information, Recipient or its Representatives may, without liability hereunder, disclose only that portion of the Confidential Information which is legally required to be disclosed, provided that you exercise reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with IMS to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

Return of Confidential Information. Upon request of IMS, or upon termination of the business relationship between Recipient and IMS without request, Recipient agrees to promptly return to IMS any and all documents, drawings, specifications, data, film, tape, disks and any other tangible material of any description containing Confidential Information, including all copies thereof.

Scope; Termination; Non-Solicitation. This Agreement shall govern all communications from and to Recipient that are made from the Effective Date to the date on which either party receives from the other party written notice that subsequent communications shall not be so governed; provided, however, that Recipient's obligation to keep Confidential Information in confidence as required hereunder shall continue in perpetuity unless superseded by a subsequent written agreement between the parties. The Recipient shall not solicit nor entice nor approach any IMS employee, member, affiliate, agent or independent contractor to leave the employment of IMS or form other relationship with Recipient without the prior written consent of IMS.

Limited Relationship. This Agreement shall not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each Party shall act as an independent contractor and not as an agent of the other Party for any purpose, and neither shall have the authority to bind the other.

Publicity. Recipient shall not use the name of IMS in any advertising or publicity material or make any form of representation or statement which would constitute an express or implied endorsement of any commercial product or service, and that it shall authorize others to do so, without first having obtained written permission from IMS.

Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, regardless of the laws that otherwise may be applicable under principles of conflicts of law. In the event of any litigation, regarding or arising from this Agreement, the prevailing party shall be entitled to recover its reasonable expenses, attorney's fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein. Each of the parties irrevocably consents to the personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement.

Nonwaiver. Any failure of IMS to enforce the Recipient's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

Headings. The headings used in this Agreement are inserted to convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Assignment. The terms, conditions and covenants of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto; however Recipient shall not assign this Agreement, in whole or part, without IMS's prior written approval. It is understood and agreed that no failure or delay by IMS in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or in the exercise of any right, power or privilege hereunder, at any time in the future. IMS reserves the right to assign all of its rights, powers and privileges under this Agreement, including, without limitation, the right to enforce all of the terms of this letter Agreement. This Agreement may be executed by facsimile with original signatures following by mail.

Remedies. It is understood and agreed that money damages alone would not be a sufficient remedy for any breach of this Agreement by Recipient and that IMS shall be entitled to equitable relief, including but not limited to an injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

Severability. If a provision of this Agreement is held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all others provisions hereof shall continue in full force and effect. Further, all terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law, and when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

Export Control. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from IMS pursuant to this Agreement. Additionally, Recipient shall not export any Confidential Information outside of the U.S. without IMS's prior written approval.

Entire Agreement; Amendment. This Agreement shall become effective and binding upon Recipient's execution hereof without the necessity of execution by IMS. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, relating to the subject matter hereof are superseded. No modification of or amendment to this Agreement shall be binding unless in writing and executed by Recipient and IMS.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THEIR DULY AUTHORIZED AND EMPOWERED AGENTS TO EXECUTE THIS NDA ON AND OF THE DATE FIRST HEREIN ABOVE WRITTEN.

ACCEPTED BY:
IMS Forum

RECIPIENT

Sign:

Sign:

Name:
Title:
Date:

Name:
Title:
Date: