

CONFIDENTIAL DISCLOSURE AGREEMENT FOR PLUGTESTS™ EVENTS

AGREEMENT made as of 28 August 2008 (hereafter "EFFECTIVE DATE"), by and between

1. the European Telecommunications Standards Institute, 650, route des Lucioles, 06921 Sophia-Antipolis Cedex, France,
(hereafter "ETSI")

and

2.,
(hereafter "PARTICIPANT")

hereinafter referred together as the "PARTIES".

WHEREAS,

1. ETSI is an independent, non-profit organization, whose mission is to produce standards for Information and Communication Technologies. The members of ETSI have established Plugtests as a unit of ETSI ("PLUGTESTS"). PLUGTESTS is not a separate legal entity and has no own legal personality apart from ETSI. ETSI through its PLUGTESTS unit provides services in running interoperability test events for a wide range of telecommunications, Internet, broadcasting and multimedia converging standards.
2. the PARTICIPANT is invited by ETSI to attend a remote interoperability test event organised by ETSI (hereafter "EVENT"), which will take place from the 8th to the 14th September 2008 in Sophia Antipolis, and will concern issues related to a technical evaluation of XAdES.
3. in order to place all the companies taking part at the EVENT in a fair and non-discriminatory situation, every company participating at the EVENT must execute and abide by the terms and conditions of this Agreement by signing an identical copy of this form.
4. 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.

5. it is further anticipated that in the course of the EVENT, ETSI may also receive or otherwise gain knowledge of confidential information, in what case ETSI shall also be viewed as a "RECEIVING PARTICIPANT".

NOW, THEREFORE, in consideration of mutual covenants and understandings hereinafter 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

As used in this Agreement, "CONFIDENTIAL INFORMATION" shall mean non-public information, such as but not limited to, data, materials, samples, technical and economic information, commercialisation, research and testing strategies, trade secrets and know-how, provided by DISCLOSING PARTICIPANT on or after the EFFECTIVE DATE and relating to the EVENT, which is either communicated in writing or other tangible form and marked confidential, or communicated in any other manner, provided its confidential nature is confirmed within 30 days after the disclosure by the disclosing party in a letter summarizing the information considered confidential.

2. EXCEPTIONS

Information shall not qualify as CONFIDENTIAL INFORMATION if such information:

- (a) is or becomes publicly available without breach of this agreement (including disclosure by the disclosing party to a third party without a duty of confidentiality); or
- (b) was already in the RECEIVING PARTICIPANT's possession prior to receipt from the DISCLOSING PARTICIPANT; or
- (c) is rightfully received by the RECEIVING PARTICIPANT from a third party without a duty of confidentiality; or
- (d) is independently developed or ascertained by RECEIVING PARTICIPANT without the use of CONFIDENTIAL INFORMATION as demonstrated by evidence; or
- (e) is required to be disclose by the RECEIVING PARTICIPANT pursuant to a valid order issued by a competent court or an administrative or government agency, provided that the RECEIVING PARTICIPANT shall give the DISCLOSING PARTICIPANT prompt written notice of such order 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.

3. OBLIGATIONS

- 3.1 RECEIVING PARTICIPANT agrees to receive and hold any CONFIDENTIAL INFORMATION in confidence and to use the CONFIDENTIAL INFORMATION only for the purpose of the EVENT.
- 3.2 Without limiting the generality of the foregoing, RECEIVING PARTICIPANT further promises and agrees:
 - (a) not to, directly or indirectly, in any way, reveal, report, publish, disclose, disseminate, transfer or otherwise use any of the CONFIDENTIAL INFORMATION without prior written authorization of the DISCLOSING PARTICIPANT.
 - (b) not to reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody CONFIDENTIAL INFORMATION.
 - (c) to restrict access to CONFIDENTIAL INFORMATION to those of its employees, agents or consultants 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.
 - (d) 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.

4. RETURN OF CONFIDENTIAL INFORMATION, COPIES

- 4.1 Upon termination of the EVENT or upon the written request of the DISCLOSING PARTICIPANT, whichever is earlier, the RECEIVING PARTICIPANT shall return, or certify in writing the destruction of all, tangible items of CONFIDENTIAL INFORMATION furnished by the DISCLOSING PARTICIPANT, and all copies thereof.
- 4.2 The RECEIVING PARTICIPANT shall not make copies or reproductions of the DISCLOSING PARTICIPANT's CONFIDENTIAL INFORMATION except to the extent reasonably necessary for the Purpose of this Agreement.

5. UNAUTHORIZED DISCLOSURE

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

- (a) 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.
- (b) 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.

6. NO RIGHT TO CONFIDENTIAL INFORMATION

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.

7. REMEDIES AND LIABILITY

- 7.1 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.
- 7.2 Notwithstanding, neither PARTY shall be liable for any incidental, indirect, special, remote, exemplary, punitive or consequential damages including, but not limited to, loss of revenue or profits and attorney's fees, arising from or caused directly or indirectly by the use of CONFIDENTIAL INFORMATION however provided under this Agreement.
- 7.3 Upon each and every breach of a contractual duty hereunder, a RECEIVING PARTICIPANT agrees to pay stipulated damages in the amount of € 5.000,- to the DISCLOSING PARTICIPANT without prejudice to recovery of further damages. Payment of such stipulated damages shall not relieve the receiving party from observing its duties under this Agreement.
- 7.4 ETSI shall not be liable for any breach of another PARTICIPANT's obligations hereunder.

PARTICIPANT agrees that ETSI will not be liable for any disclosure of CONFIDENTIAL INFORMATION by ETSI, except where CONFIDENTIAL INFORMATION has been disclosed by ETSI intentionally or by gross negligence.

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).

8. TERM

The obligations of confidentiality 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 is occurring first.

9. PUBLIC NOTICE

- 9.1 Each PARTY may at its own discretion issue articles, advertising, press releases or other public notice of the EVENT (PUBLIC NOTICE).
- 9.2 ETSI may use in a PUBLIC NOTICE the name of the PARTICIPANT and the PARTICIPANT is authorized to use in a PUBLIC NOTICE the name of ETSI as well as its trade mark PLUGTESTSTM provided that it uses the mark in a proper manner and gives due acknowledgement concerning the ownership of the mark by ETSI.
- 9.3 The PARTICIPANT shall not issue a PUBLIC NOTICE using or implying the name of any other company participating at the EVENT, without the prior written consent of that company.

In case that the PARTICIPANT is requested by another company participating at the EVENT to give its written consent to the use of its name in a PUBLIC NOTICE, the PARTICIPANT shall not unreasonably withhold its consent.

- 9.4 Under no circumstance is any PARTY authorized to disclose in a PUBLIC NOTICE neither any test results of the EVENT nor any CONFIDENTIAL INFORMATION.

10. APPLICABLE LAW AND JURISDICTION

- 10.1 This Agreement is made under and governed by the laws of France without regard to the conflict of laws provisions thereof.
- 10.2 Exclusive venue for any action or proceeding arising under or relating to this Agreement shall lie with the Court of Grasse in France. 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.

11. GENERAL PROVISIONS

- 11.1 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.
- 11.2 No warranties of any kind are given with respect to CONFIDENTIAL INFORMATION as well any use thereof including, but not limited to, warranties of merchantability, fitness for purpose, of accuracy or completeness of any disclosed CONFIDENTIAL INFORMATION, or that such CONFIDENTIAL INFORMATION is free of third party intellectual property rights.

- 11.3 Neither PARTICIPANT nor ETSI acquires any rights in intellectual property rights under this Agreement other than the limited right to use the CONFIDENTIAL INFORMATION as specifically set forth herein.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 Neither party may assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 11.8 This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument.
- 11.9 ETSI may provide a copy of this agreement to another PARTICIPANT of the EVENT upon written request of that PARTICIPANT.

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
