

Confidentiality Agreement

The Alliance for Telecommunications Industry Solutions (“ATIS”) will be conducting provider-to-provider testing as part of the ATIS Technology and Operations (“TOPS”) Council Testbeds Focus Group (TFG) (“Testing”). These tests will be based on testing criteria developed by the ATIS TOPS Council Testbeds Focus Group. This Confidentiality Agreement (“Agreement”) is entered into by ATIS and the participating organizations (collectively referred to as “Participants”), as of _____ (“Effective Date”). ATIS will maintain a list of Participants that have executed this Agreement on http://www.atis.org/01_topsc/Docs/Testbeds_NDA_Signatories.pdf

- 1. Confidential Information.** “Confidential Information” means all non-public, confidential or proprietary information shared by a Participant (“Discloser”) including, but not limited to the Discloser's Testing results, research, experimental work, design details and specifications, engineering, financial information, procurement requirements, business forecasts, sales and marketing plans, inventions and know-how disclosed by Discloser to another Participant, either directly or indirectly, whether in writing, verbally or otherwise, that: (a) is designated as confidential by the Discloser at the time of disclosure; or (b) would reasonably be understood, given the nature of the information or the circumstances surrounding its disclosure, to be confidential (“Confidential Information”). All Confidential Information disclosed by a Discloser shall be treated with the same degree of care as each Participant accords to its own Confidential Information, but in no case less than reasonable care.
- 2. Limited Use of Confidential Information.** Participants may internally use the Confidential Information of a Discloser properly obtained hereunder for lawful purposes in connection with the Testing, provided that the Participant shall maintain the Discloser’s Confidential Information in confidence. Participants shall not disclose Confidential Information of the Discloser to any person or entity other than Participant’s: (a) officers and employees on a need to know basis and who are informed of the confidential nature of the Confidential Information, and who shall agree to act in accordance with the terms and conditions of this Agreement; and (b) consultants who need access to such Confidential Information for the sole purpose of testing the interoperability of that Participant’s products with other Participants’ products in connection with the Testing, who agree to restrict use of such Confidential Information only for such purpose, and who are informed of the confidential nature of the Confidential Information, and who shall agree to act in accordance with the terms and conditions of this Agreement. Participants agree not to reverse engineer, de-compile or disassemble any Confidential Information. Notwithstanding the foregoing, ATIS anticipates that information regarding the results of the Testing may be used by ATIS and its Testbeds Focus Group to inform the development of technical or operational standards. Without the prior written approval of Discloser, no data will be disclosed in any ATIS standard that identifies an individual Participant’s results by Participant name or other Confidential Information. Participants are not required to restrict work assignments of authorized representatives who have had access to the Confidential Information.

Notwithstanding the forgoing, this section shall not be deemed to grant Participants any express or implied license under the Discloser's trademarks, copyrights or patents.

- 3. Unauthorized Use.** Participants must immediately give notice to the Discloser of any unauthorized disclosure of Discloser's Confidential Information or any unauthorized use by a consultant of such Confidential Information of which they become aware. Participants agree to assist the Discloser in remedying such unauthorized use or disclosure of its Confidential Information. Participants will not be liable for the disclosure of any Confidential Information that is: (a) rightfully in the public domain other than by a breach of a duty to the Discloser; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to Participants without any limitation on use or disclosure prior to its receipt from the Discloser; (d) independently developed by employees of Participants without the use of any of the Discloser's Confidential Information or any breach of this Agreement; or (e) generally made available to third parties by the Discloser without restriction on disclosure.
- 4. Court Order.** The disclosure of any Confidential Information in response to a valid order by a court or other governmental body or as otherwise required by law shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Participants shall provide prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. If, in the absence of a protective order, the Participant determines, upon the advice of counsel, that it is required to disclose such information, it may disclose only Confidential Information specifically required and only to the extent required to do so.
- 5. Return of Confidential Information.** Upon completion of the Testing, Participants will return all tangible Confidential Information in their possession or control to the Discloser or destroy it and certify such destruction in writing to the Discloser. However, Participant may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. Notwithstanding the forgoing, Participants will not be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with such Participant's security and/or disaster recovery procedures, provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of such Participant's data processing procedures and (ii) will remain fully subject to the obligations of confidentiality stated herein.
- 6. Ownership of Confidential Information and Other Materials.** All Confidential Information, and any derivatives thereof, remain the property of the Discloser and no license or other rights to Confidential Information is granted or implied hereby. "Derivatives" shall mean, for copyrightable or copyrighted material, any translation, abridgment, summary, abstract, revision or other form in which an existing work may be recast, transformed or adapted.

- 7. No Licenses Granted.** No licenses are granted by Participants, by implication, estoppel or otherwise, to any party's intellectual property, including without limitation trademarks, copyrights, patents, and mask works and trade secrets, as a result of their participation in the Testing except as expressly authorized herein. Nothing herein shall be construed to grant any rights to use information obtained in violation of the policies and procedures of the Testing, applicable law or any other contractual or legal obligation, whether by implication, estoppel or otherwise.
- 8. Own Risk/Disclaimer of Warranty.** Participants agree that the performance of any activities at the Testing is solely at their own risk. ALL INFORMATION IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED OR OTHERWISE, FOR SUCH CONFIDENTIAL INFORMATION OR ITS ACCURACY OR PERFORMANCE. Except for a Participant's willful misconduct or gross negligence, no Participant shall be liable for any indirect, incidental, or consequential damages of any nature or kind resulting from or arising in connection with this Agreement.
- 9. Marketing Activities.** Participants may advertise market or promote their products in reference to the ATIS Testing within the following parameters: (a) Participants may describe their equipment deployed during the Testing (e.g., features, functions, size, power consumption, etc.); (b) Under no circumstances can cost or price be mentioned in any marketing materials; (c) Participants may state that they "successfully participated" in the Testing but no specific test results may be mentioned nor should any Participant state that they have "passed" the testing; (e) Participants may issue their own press releases, which may contain information on who they are partnering with at the event as long as they obtain express written approval from their partner (s). All press releases must be approved by ATIS and all named Participants prior to their release. ATIS shall issue press releases for the Testing at its own discretion; such releases may include a description of the Testing, but will not list Participants or specify Participant test results without the prior written approval of that Participant.
- 10. No Assignment.** Participants shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of ATIS, which shall not be unreasonably withheld, conditioned or delayed
- 11. No Export.** Participants will not export, transfer or otherwise disclose, directly or indirectly, any technical data or technical assistance acquired from the Discloser during the Testing or pursuant to this Agreement, or any item that is the direct product of such technical data or technical assistance, to any country or person for which the U.S. Government or any other applicable government at the time of export, transfer or disclosure requires an export license or other governmental approval without first obtaining such license or approval.

- 12. Waiver.** No term or provision hereof will be considered waived by a Participant, and no breach excused by a Participant, unless such waiver or consent is in writing and signed by such Participant. The waiver by any party of, or consent by any Participant to, a breach, of any provision of this Agreement by another Participant shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by a Participant.
- 13. Term.** This Agreement commences on the Effective Date and continues until three (3) years from the Effective Date. Any Participant may terminate this Agreement for any reason by giving thirty (30) days' written notice to the other Participants. Each Participant's obligations regarding Confidential Information will survive the expiration or termination of this Agreement for a period of two (2) years.
- 14. Amendment.** This Agreement may be amended or modified only by mutual agreement of authorized representatives of all of the parties in writing.
- 15. Injunctive Relief.** A breach of any of the promises or agreements contained herein by a Participant may result in irreparable and continuing damage to the other Participants for which there may be no adequate remedy at law, and Participants shall be entitled to seek injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).
- 16. Forum/Legal Fees.** This Agreement will be governed by the laws of the State of New York, without reference to its conflict of laws principles. Each Participant irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in New York, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in New York, such personal jurisdiction shall be nonexclusive.
- 17. Unenforceability.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable: (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision; and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. Failure to enforce any provision of this Agreement shall not constitute a waiver of any future enforcement of that provision or any other term hereof.
- 18. Entire Agreement.** This Agreement constitutes the entire agreement.
- 19. General.** No Participant has any authority to bind any other Participant by contract or otherwise to any obligation. The terms and conditions in this Agreement constitute the entire agreement between the Participants with respect to the Confidential Information and supersede all prior or contemporaneous oral or written agreements concerning such Confidential Information. No alteration, amendment, waiver,

cancellation or any other change in any provision of this Agreement shall be valid or binding on any Participant unless mutually assented to in writing by all Participants.

The Participants have executed this Agreement in counterparts through duly authorized representatives whose signatures appear below.

PARTICIPANT

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____