

## Non-Disclosure Agreement

- Purpose.** The Multiservice Forum ("MSF") invites the undersigned ("Participant") to attend the MSF Interoperability Demonstration ("Demonstration") that will take place in ( ). This Confidentiality Agreement ("Agreement") is by and among MSF, you and all other participants who sign a counterpart copy of this Agreement (the "Other Participants").
- Confidentiality.** Participant agrees to treat all activities of the Demonstration, including but not limited to all test activities and test results, as well as all Other Participants' respective information concerning their research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, business forecasts, sales and marketing plans as confidential information ("Confidential Information"). Participant shall treat all Confidential Information of the Other Participant(s) ("Discloser") with the same degree of care as Participant accords to its own Confidential Information, but in no case less than reasonable care. Participant may internally use the Confidential Information of the Discloser properly obtained hereunder for any lawful purpose, provided that Participant shall maintain the Discloser's Confidential Information in confidence. Participant shall not disclose Confidential Information of the Discloser to any person or entity other than Participant's (a) officers and employees who have entered into written confidentiality agreements with Participant (either as part of employment or otherwise) which protects the Confidential Information of the Discloser to at least the same degree as this Agreement, and (b) consultants who need access to such Confidential Information for the sole purpose of testing the interoperability of Participant's own products with Other Participants' products, who agree to restrict use of such Confidential Information only for such purpose, and who have entered into written confidentiality agreements with Participant which protects the Confidential Information of the Discloser to at least the same degree as this Agreement. Participant shall 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 that Participant becomes aware of. Participant agrees to assist the Discloser in remedying such unauthorized use or disclosure of its Confidential Information. Participant will not be liable for the disclosure of any Confidential Information which is rightfully in the public domain other than by a breach of a duty to the Discloser; rightfully received from a third party without any obligation of confidentiality; rightfully known to Participant without any limitation on use or disclosure prior to its receipt from the Discloser; independently developed by employees of Participant; or generally made available to third parties by the Discloser without restriction on disclosure. A disclosure of any Confidential Information (a) in response to a valid order by a court or other governmental body, or (b) 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 Participant shall provide prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. Participant's obligation not to disclose Confidential Information of the Discloser will terminate three (3) years after it received the Confidential Information. Upon written request by the Discloser, Participant will return all tangible Confidential Information in its possession or control to the Discloser or destroy it and certify such destruction in writing to the Discloser. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED OR OTHERWISE, FOR SUCH CONFIDENTIAL INFORMATION OR ITS ACCURACY OR PERFORMANCE.

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3. **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 or Derivatives 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.
4. **Own Risk.** Participant agrees that the performance of any activities at the Demonstration is solely at its own risk.
5. **No Licenses Granted.** No licenses are granted by Participant or Other 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 Demonstration 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 Demonstration, applicable law or any other contractual or legal obligation, whether by implication, estoppel or otherwise.
6. **No Assignment.** Participant shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of MSF.
7. **Marketing Activities.** Participant may advertise market or promote its products in reference to the GMI demonstration and/or testing activities within the following parameters: a) Participant may describe their equipment deployed during the test event e.g., features, functions, size, power consumption, etc. Under no circumstances can cost or price be mentioned; b) Participant may state that they "successfully participated at the event" and

that they "successfully participated in a specific test case (s)". No single vendor's specific test results may be mentioned nor should any vendor state that they have "passed" the testing; c) Participant 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). Participant also may provide individual quotes for their own press releases. All press releases must be approved by the MSF Marketing Project Manager prior to their release. MSF shall issue press releases for the Demonstration at its own discretion. Participant agrees that press releases issued by MSF may indicate Participant participated in the Demonstration. Any press releases issued by Participant in reference to GMI 2008 will follow guidelines specified by MSF. Participants agree to be listed in all materials related to the event including press releases and collateral without specific notification.

**No Export.** Participant will not export, transfer or otherwise disclose, directly or indirectly, any technical data or technical assistance acquired from the Discloser during the Demonstrations 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 at the time of export, transfer or disclosure requires an export license or other governmental approval without first obtaining such license or approval.

8. **Waiver - Amendment - Modification.** No term or provision hereof will be considered waived by a party, and no breach excused by a party, unless such waiver or consent is in writing and signed by such applicable party. The waiver by any party of, or consent by any party to, a breach, of any provision of this Agreement by another party shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by a party. This Agreement may be amended or

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modified only by mutual agreement of authorized representatives of the parties in writing.

9. **Injunctive Relief.** A breach of any of the promises or agreements contained herein by Participant will result in irreparable and continuing damage to MSF or Other Participants for which there will be no adequate remedy at law, and MSF and such Other Participants shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).
10. **Forum - Legal Fees.** Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, 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 California, such personal jurisdiction shall be nonexclusive. If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive such prevailing party's reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which such prevailing party may be entitled.
11. **General.** If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. This Agreement will be governed by the laws of the State of California, without reference to its conflict of laws principles. This Agreement constitutes the

entire agreement with respect to the Confidential Information and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.



### Non-Disclosure Agreement

I have read this Non-Disclosure Agreement. On behalf of the below-listed company, I understand that the terms and conditions hereunder are necessary for attending the Demonstration and agree to have my company adhere to them. I also certify that I am authorized to execute this Agreement on behalf of my company.

Company: \_\_\_\_\_

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

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

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

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

MSF agrees that if a Participant delivers to MSF any information or data marked or identified as confidential or proprietary ("confidential information"), then MSF shall not, except as otherwise permitted or instructed by the applicable Participant in writing (a) disclose or otherwise make available the confidential information to any third party except to the extent otherwise expressly permitted by this Agreement, (b) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any portion of the confidential information or (c) use the confidential information for any purpose except to test the interoperability of the Participant's own products.

#### MULTISERVICE FORUM

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

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