

NON-DISCLOSURE AND RESTRICTED USE AGREEMENT FOR EU FP 7 Project – PROPOSAL PREPARATION IN THE CONTEXT OF FUTURE INTERNET

This Agreement dated **1 June 2010** (“*Effective Date*”) by and between the parties, which are listed in Annex A of this AGREEMENT

- hereinafter referred to as “PARTY” or “PARTIES” respectively,

Whereas, the PARTIES intend to engage in exploratory discussions concerning the preparation of individual, but potentially interdependent project proposals within the Framework Program 7, Future Internet PPP Call of the EU provided such interdependency is requested by the European Commission or necessary or desirable from a technical point of view (“PURPOSE”);

Whereas, in the course of such activities it is anticipated that the PARTIES may wish to disclose to each other CONFIDENTIAL INFORMATION for the PURPOSE, which information the PARTIES regard as confidential;

Now therefore, the PARTIES enter into the following agreement (“AGREEMENT”):

1. **Definitions.** “CONFIDENTIAL INFORMATION” shall mean any information (subject to the conditions of “Section 5 – Refusal” and “Section 4 – Exceptions”,) and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed by any one of the PARTIES or its RELATED COMPANY, herein the “disclosing PARTY”, to any other of the PARTIES or its RELATED COMPANY, herein the “receiving PARTY”, in connection with the PURPOSE, irrespective of the medium in which such information or data is embedded. When disclosed in tangible form, CONFIDENTIAL INFORMATION must be marked “Confidential” or similarly by the disclosing PARTY, when disclosed orally or visually, all information shall be CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION includes any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

“RELATED COMPANY” shall mean any corporation, company or other entity, which controls, or is controlled by, or under common control with one PARTY, where control means ownership or control, direct or indirect, of more than fifty (50) percent of such corporation’s, company’s or other entity’s voting capital. However, any such

corporation, company or other entity shall be deemed to be a RELATED COMPANY of one PARTY only so long as such ownership or control exists.

2. **Enforcement of this Agreement**

In the event one or more PARTIES wish to set up a new individual project in the context of the Future Internet Initiative as set forth above for which the terms and conditions of this Agreement shall apply, then

- (i) those companies which are not yet a PARTY to this Agreement shall accept and sign the terms of this Agreement in order to be listed in Annex A; and
- (ii) the proposed coordinator of the new individual project shall notify the contact set forth in Section 17 and provide all requested details on the new individual project and on the PARTIES, which shall amend Annex B. For the sake of clarity, upon receipt of the details by the contact set forth in Section 17, the individual project shall be deemed added to Annex B and the terms and conditions shall correspondingly apply on the respective new individual project, unless an earlier date is expressly indicated by the proposed coordinator.

3. **Confidentiality.**

3.1 All CONFIDENTIAL INFORMATION

- a) shall be used by the receiving PARTY exclusively for the PURPOSE, unless otherwise expressly agreed to in writing by the disclosing PARTY;
- b) shall not be distributed or disclosed in any way or form by the receiving PARTY to anyone except its own, its RELATED COMPANIES' or its legal or fiscal consulting firms' ("Consultant") employees or another PARTY's employees, who reasonably need to know such CONFIDENTIAL INFORMATION for the PURPOSE and who are bound to protect the confidentiality of CONFIDENTIAL INFORMATION in the possession of the receiving PARTY either by their employment agreement or otherwise to an extent not less stringent than the obligations under this AGREEMENT. Prior to any disclosure to its RELATED COMPANIES or to its Consultant, the receiving PARTY must have an appropriate agreement with any such RELATED COMPANY or any such Consultant sufficient to require the RELATED COMPANY or the Consultant to treat CONFIDENTIAL INFORMATION in accordance with this AGREEMENT. Any unauthorized disclosure or use of CONFIDENTIAL INFORMATION by RELATED COMPANIES or by RELATED COMPANIES' employees or by any PARTY's Consultant shall constitute a breach of this AGREEMENT;

- c) shall be kept confidential by the receiving PARTY with the same degree of care as is used with respect to the receiving PARTY's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
- d) where appropriate shall not be reverse engineered, de-compiled or disassembled by the receiving PARTY; and
- e) shall remain the property of the disclosing PARTY.

The extent of disclosure hereunder by the disclosing PARTY to the receiving PARTY of CONFIDENTIAL INFORMATION shall be entirely at the disclosing PARTY'S discretion consistent with the PURPOSE hereunder.

3.2 For the sake of more clarity, a receiving PARTY shall be entitled to forward CONFIDENTIAL INFORMATION to another PARTY on a need to know basis, provided that such PARTY is involved in the preparations of the same individual project as listed in Annex B. However, a receiving PARTY shall not be entitled to forward CONFIDENTIAL INFORMATION to a PARTY which is not involved in the same individual project unless such PARTY is (i) involved in an interdependent project, such interdependency being requested by the European Commission under the Future Internet PPP Call or necessary or desirable from a technical point of view, and (ii) all PARTIES to an individual project have unanimously agreed on interdependency with another individual project (as notified by the concerned proposed coordinators to the contact set forth in Section 17). In any event any exchange shall be limited to CONFIDENTIAL INFORMATION needed for the interdependency of the project proposals.

4. **Exceptions.** The confidentiality obligations shall not apply, however, to any information which:
- a) was in the receiving PARTY's possession without confidentiality obligation prior to receipt from the disclosing PARTY;
 - b) is at the time of disclosure already publicly available or subsequently becomes available to the public through no breach by the receiving PARTY of this AGREEMENT;

- c) is lawfully obtained by the receiving PARTY from a third party without an obligation of confidentiality, provided such third party is not, to the receiving PARTY's knowledge, in breach of any confidentiality obligation relating to such information;
- d) is developed by the receiving PARTY or its RELATED COMPANIES independently from the other PARTIES' CONFIDENTIAL INFORMATION;
- e) is required to be disclosed by law or the rules of any governmental organization, provided that written notice of such judicial action was given to the disclosing PARTY; or
- f) is approved for public release by written agreement of the disclosing PARTY.

The PARTY seeking the benefit of such exception shall bear the burden of proving its existence.

5. **Refusal.** Each PARTY shall have the right to refuse to accept any information under this AGREEMENT prior to any disclosure. Such refusal shall have to be made in a writing sent to the relevant representative of the PARTY willing to disclose. Information disclosed despite such a refusal is not covered by the confidentiality obligation under this AGREEMENT. Nothing herein shall obligate either PARTY to disclose any particular information.
6. **No license.** Licenses or any other rights such as, but not limited to, patents, utility models, trademarks or trade names, are neither granted nor conveyed by this AGREEMENT, nor does this AGREEMENT constitute any obligation of the disclosing PARTY to grant or convey such rights to the receiving PARTY.
7. **No remuneration; warranty/liability.** The PARTIES shall not be obligated to pay any remuneration for disclosure of any information under this AGREEMENT and agree that any information is made available "as is" and no warranties (express or implied) are given or liabilities of any kind are assumed with respect to such information, including, but not limited, to its fitness for any purpose, non-infringement of third party rights, or its correctness.
8. **Termination; other contracts.** Subject to the conditions of "Section 9 – Return", this AGREEMENT shall come into force on the date set forth on the page 1. For PARTIES acceding via the Accession Form, this AGREEMENT shall come into effect upon the

signature by an acceding PARTY of an accession form in accordance with Annex C and receipt thereof by the contact set forth in Section 17. This AGREEMENT automatically terminates 5 (five) years after the effective date set forth on the page 1; A PARTY'S participation in the PURPOSE of this AGREEMENT may be withdrawn from the AGREEMENT with a thirty (30) days' prior written notice to the contact in Section 17. In these cases the AGREEMENT remains in force between the PARTIES, who do not wish to withdraw. The rights and obligations and in particular the obligations of Section 3 of this AGREEMENT of all PARTIES (including that of those PARTIES, who have withdrawn from this AGREEMENT) which have accrued prior to withdrawal and/or automatic termination shall, however, in any case survive the automatic expiry of this AGREEMENT for a period of four (4) years. The PARTIES shall not be legally obligated to conclude any other contract with regard to the PURPOSE.

9. **Return.** All CONFIDENTIAL INFORMATION exchanged between the PARTIES electronically and/or on record-bearing media, as well as any copies thereof, shall, upon respective request of the disclosing PARTY and at the receiving PARTY'S option, either be returned to the disclosing PARTY or be destroyed by the receiving PARTY after termination of this AGREEMENT. Such request shall be made in writing by the disclosing PARTY to the receiving PARTY within ninety (90) days after termination of this AGREEMENT. The receiving PARTY shall confirm in writing such destruction or return to the disclosing PARTY within fourteen (14) days after receipt of the respective request.

This clause shall not apply to routinely made back-up copies of electronically-exchanged CONFIDENTIAL INFORMATION as well as to each PARTY's consulting firms who are bound to keep a copy under the applicable law, provided that any such copy shall be subject to an indefinite confidentiality obligation to the terms and conditions set out herein. The provision of this paragraph will continue to apply, notwithstanding termination of this AGREEMENT.

10. **Arbitration.** All disputes arising out of or in connection with this AGREEMENT, including any question regarding its existence, validity or termination, shall, unless amicably settled between the PARTIES, be finally settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce, Paris ("RULES") by three arbitrators in accordance with said RULES. The seat of arbitration shall be Brussels, Belgium. The procedural law of this place shall apply where the RULES are silent. The arbitration proceedings shall be conducted in English.

Each PARTY shall be entitled to seek necessary and appropriate injunctive relief to maintain the status quo depending on the outcome of the arbitration or any other temporary measures from the courts of competent jurisdiction to enjoin the other PARTY from taking certain actions which allegedly infringe the rights of the PARTY bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with the first paragraph of this Article 10.

11. **Governing law.** This AGREEMENT shall be subject to the substantive law in force in Belgium without reference to any other substantive law.
12. **No assignment.** This AGREEMENT may not be assigned by any PARTY without the prior written consent of the other PARTIES.
13. **Written form.** This AGREEMENT may not be modified or amended except by written amendments duly executed by authorised members of the PARTIES. This requirement of written form can only be waived in writing.
14. **Entire Agreement.** This Agreement is the entire agreement between the PARTIES with respect to the subject matter contained herein and supersedes all prior or contemporaneous oral or written agreements concerning this subject matter. Except for Annex B which may be amended at any time by the concerned PARTIES of the individual or interdependent projects, however only by notification of the designated coordinator of the individual project to the contact set forth in Section 17, this Agreement may only be modified in writing by the PARTIES. Any understanding between the PARTIES beyond the PURPOSE of this AGREEMENT shall be set forth in a separate written agreement containing appropriate terms and conditions.
15. **Regulations.** The PARTIES shall abide by the applicable export license regulations of the respective country(ies) and the disclosing PARTY shall be required to apply for an export license grant, where necessary, prior to any transmission of CONFIDENTIAL INFORMATION and to inform the receiving PARTY sufficiently of any existing limitation.

All of the PARTIES represent hereby and shall ensure that the disclosure of CONFIDENTIAL INFORMATION by and between themselves is not contrary to the laws and regulations of their respective countries.

16. **Third parties.** A person who is not a party to this AGREEMENT may not enforce any of its terms. Each PARTY shall remain liable for the compliance or non-compliance by its RELATED COMPANIES with the terms and conditions of this AGREEMENT.

17. **Contact.** The point of contact referred to in this AGREEMENT and designated by the PARTIES for the submission of information defined in Annex B is:

Eurescom GmbH

Ref.: Future Internet NDA

Wieblinger Weg 19/4,

69123 Heidelberg

Germany

or such other address as notified to all PARTIES by Eurescom GmbH.

18. **Formal notification of the PARTIES.** Any formal communication between the PARTIES shall be made to the address and attention set forth in the accession form which was signed by the relevant Party. Each PARTY may change its address and attention by written notification to the contact designated in Section 17, who shall distribute the information accordingly.

19. **Counterparts:** This AGREEMENT shall be executed in counterparts, two for each signing PARTY listed in Annex A of this AGREEMENT, all of which together shall constitute one and the same instrument. Each PARTY shall send its signed counterparts to the contact designated in Section 17, which has the obligation to send copies of all the signed counterparts to each PARTY within sixty (60) days of receipt of the signed counterparts.

In the event, a PARTY accedes this AGREEMENT via the Accession Form, the contact designated in Section 17 shall send copies of such signed Accession Form to each PARTY within sixty (60) days of receipt of the signed Accession Form. In case the production of an original version of a signature page or an Accession Form signed by a PARTY should become necessary for another PARTY (e.g. in the context of dispute amongst the PARTIES), EURESCOM GmbH shall cooperate in good faith in order to provide the necessary proof of existence of the original (e.g. by depositing the original with a competent body, allowing a notarized copy, testifying on the existence etc).

* * * * *

Authorised to sign on behalf of **Company name, Street and building number, Postal code and city, Country**

Signature

Name
Name and title

Title
Function in organisation

Signature

Name
Name and title

Title
Function in organisation

Received by EURESCOM GmbH

Date: _____

Signature: _____

Name in block letters: _____

Annex A: List of Parties, who signed this AGREEMENT

1. **Organisation name**, having its registered office at **Street and building number, Postal code and city, Country**, hereby represented by **Person name and title, Function in organisation** and **Person name and title, Function in organisation**.

(to be completed with corresponding information on each of the other parties)

Annex B: List of individual Project and interdependent Projects – CONFIDENTIAL

1.

Name and Topic of the Project Proposal	Beginning of the Confidentiality Obligation <i>[insert date of receipt of the project information or a retroactive date if so indicated by the proposed project coordinator]</i>	Name of PARTIES participating in this Project Proposal	Interdependency with the following other Project(s)	Contacts of Proposed Project Coordinator

2.

Name and Topic of the Project Proposal	Beginning of the Confidentiality Obligation <i>[insert date of receipt of the project information or a retroactive date if so indicated by the proposed project coordinator]</i>	Name of PARTIES participating in this Project Proposal	Interdependency with the following other Project(s)	Contacts of Proposed Project Coordinator

3.

Name and Topic of the Project Proposal	Beginning of the Confidentiality Obligation	Name of PARTIES participating in this Project Proposal	Interdependency with the following other Project(s)	Contacts of Proposed Project Coordinator
	<i>Insert date of receipt of the project information or a retroactive date if so indicated by the proposed project coordinator</i>			

4.

Name and Topic of the Project Proposal	Beginning of the Confidentiality Obligation	Name of PARTIES participating in this Project Proposal	Interdependency with the following other Project(s)	Contacts of Proposed Project Coordinator
	<i>Insert date of receipt of the project information or a retroactive date if so indicated by the proposed project coordinator</i>			

ANNEX C

**ACCESSION FORM
FOR LEGAL ENTITIES INVITED TO BECOME AN ADDITIONAL PARTY TO THE
AGREEMENT**

WHEREAS

[insert full name and full official address of the invited Party] has been invited by the proposed coordinator to become a PARTY to the Agreement (the “**NDA**”) and intends to participate in the preparation of a proposal within the Framework Program 7, Future Internet PPP Call of the EU.

In consideration of entering into the NDA and thereby benefiting from its provisions *[insert full name and full official address of the invited Party]* , hereby declares its accession as an Additional Party to the NDA, and its willingness and undertaking to comply with the rules set out in the NDA.

Place, Date: _____

Authorised to sign on behalf of *[insert full name of the invited Party]*

Signature: _____

Name in block letters: _____

Title: _____

Received by EURESCOM GmbH

Date: _____

Signature: _____

Name in block letters: _____