

## IMS FORUM<sup>®</sup> PLUGFEST AGREEMENT

1. **Purpose:** The IMS Forum<sup>®</sup> (“IMS Forum”) invites the undersigned (“Guest”) to attend the IMS Forum Plugfests (each an “Event”, and collectively, the “Events”), which are planned to take place at various times starting on January 1, 2007. This Agreement shall remain in effect regarding all Events to which the Guest participates. This Agreement (“Agreement”) is made by and among you and all other guests who sign a counterpart copy of this Agreement.

Guest as defined in this Agreement shall include but shall not be limited to the Guest participant and its officers, agents, partners, employees, independent contractors or any other representative individual or company or invitee that participates in the Event on behalf of or with the authority of the Guest participant.

2. **Confidentiality:** Guest agrees to treat as confidential all information concerning activities taking place at the Events, including, but not limited to, the test plan, all test activities and test results for each Event, and all other guests’ respective information disclosed at the Event to Guest concerning their research, experimental work, development, design details and specifications, engineering information, financial information, procurement requirements, business forecasts, sales and marketing plans and any other information that although not directly related to the event is disclosed as a result of Guests attending the Event as confidential information (“Confidential Information”). Guest shall treat all Confidential Information of the other guest(s) (each a “Discloser”) with the same degree of care as Guest accords to its own confidential or proprietary information, but in no case less than reasonable care. Guest shall use such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products. Guest shall not reverse-engineer, decompile, or disassemble any hardware or software provided or disclosed to it by Discloser and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the Discloser. Guest shall restrict the possession, knowledge, develop and use of Confidential Information and shall not disclose Confidential Information of the Discloser to any person or entity other than Guest’s officers, employees and consultants who need access to such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products and who have entered into written confidentiality agreements with Guest which protects the Confidential Information of the Discloser sufficient to enable Guest to comply with the provisions of this Agreement. Guest shall immediately give notice to the applicable Discloser of any unauthorized use or disclosure of that Discloser’s Confidential Information that Guest becomes aware of. Guest agrees to assist the Discloser in remedying such unauthorized use or disclosure of its Confidential Information. The obligations set forth in this Agreement shall not apply to any Confidential Information which 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 Guest without any limitation on use or disclosure prior to its receipt from the Discloser; (d) independently developed by employees of Guest; or (e) generally made available to third parties by the Discloser without restriction on disclosure. Nothing in this Agreement shall prevent Guest from disclosing Confidential Information to the extent Guest is legally compelled to do so by any governmental or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, Guest shall (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Discloser in writing of the agency’s order or request to disclose; and (iii) cooperate fully with the Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. Guest’s obligation not to use or disclose Confidential Information of the Discloser will terminate three (3) years after the date Guest initially receives the Confidential Information. Upon written request by a particular Discloser, Guest will destroy all tangible Confidential Information of that Discloser in Guest’s possession or control 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.

3. **Compliance with Laws:** Guest agrees to comply with all applicable laws while attending each Event, including antitrust laws. Without limitation, Guest agrees not to disclose or exchange information relating to Guest’s current or projected product pricing (including price changes, price differentials, markups, discounts, allowances and terms and conditions of sale (including credit terms, etc.)) or data that bear on prices (including profits, margins or cost), expected purchasing requirements, sales plans, marketing plans, business forecasts or any other topic that relates to a party’s ability or plans to compete.

4. **Ownership of Confidential Information and Other Materials:** All Confidential Information disclosed, and any Derivatives thereof, remains the property of the Discloser and no license or other rights to Confidential Information is granted

or implied hereby. Confidential Information includes all summaries and abstracts of the same. "Derivatives" shall mean, for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted. Guest will own its own test data and results. However, IMSF will own the aggregate test results, summary results and reports compiled or developed based upon the Event. The test plan and all derivatives of the Event are the exclusive proprietary property of IMSF and are Confidential Information as defined in Section Two (2).

5. **Terms and Conditions:** Notwithstanding the provisions of this Agreement, Guest agrees that participation in any activities at the Events is solely at Guest's own risk.

**DISCLAIMER OF WARRANTIES:** THE TESTING EVENTS AND ALL OTHER SERVICES PROVIDED UNDER THIS EVENT AGREEMENT ARE PROVIDED "AS IS". THE IMSF DOES NOT HAVE ANY CONTROL OVER THE TESTING EVENTS; ACCORDINGLY, THE IMSF DOES NOT MAKE AND DISCLAIMS, ON BEHALF OF ITSELF, ITS SUPPLIERS, AGENTS AND SUBCONTRACTORS, ANY AND ALL REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**INDEMNITY:** THE GUEST PARTICIPANT SHALL INDEMNIFY, DEFEND PROTECT AND HOLD HARMLESS, IMSF AND ITS OFFICERS, DIRECTORS, AGENTS MEMBERS OR OTHER REPRESENTATIVES FROM ANY AND ALL CLAIMS, DEMANDS, SUITS LIABILITY, DAMAGES, LOSSES COSTS, ATTORNEY'S FEES AND EXPENSES OF ANY KIND WHICH MIGHT RESULT OR ARISE FROM ANY ACTION OR FAILURE TO ACT ON THE PART OF THE GUEST PARTICIPANT OR ITS OFFICERS, AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES IN RESPECT TO PARTICIPATION IN THE EVENT.

**LIMITATION OF LIABILITY:** THE IMSF DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM, OR RELATED TO THE TESTING EVENTS. EVERY GUEST OR INDIVIDUAL PARTICIPATING IN OR ATTENDING THE EVENT DOES SO AT HIS OR HER OWN RISK. THE IMSF ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO ANY PERSON OR COMPANY, AND FOR ANY DAMAGE OR LOSS OF ANY EQUIPMENT, DATA, OR ANY OTHER LOSS RELATING TO ANY COMPANY'S BUSINESS RESULTING FROM ANY CAUSE WHATSOEVER RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE IMSF RESULTING IN PERSONAL INJURY TO ANY GUEST OR PERSON IN PREPARATION FOR, DURING OR IN CONNECTION WITH THE TESTING EVENT.

EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH, IN NO EVENT SHALL THE IMSF BE RESPONSIBLE OR LIABLE TO ANY GUEST OR PERSON THAT PARTICIPATES IN OR ATTENDS THE EVENT OR TO ANY PERSON THAT PROVIDES SERVICES TO ANY PERSON OR COMPANY THAT PARTICIPATES IN, OR ATTENDS THE EVENT, FOR ANY CLAIMS ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SUCH PERSON OR COMPANY'S BUSINESS, OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH, IN NO EVENT SHALL THE IMSF BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, NONCOMPENSATORY, CONSEQUENTIAL, INDIRECT, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES OR ANY KIND INCLUDING, WITHOUT LIMITATION, FOR ANY LOST REVENUES, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY OR OTHERWISE.

NEITHER IMSF, NOR ITS OFFICERS, DIRECTORS, AGENTS, ADVISORS, EMPLOYEES, OR OTHER REPRESENTATIVES OR ASSIGNS SHALL BE HELD LIABLE FOR, AND THEY ARE HEREBY RELEASED FROM, ANY DAMAGE, LOSS, HARM, OR INJURY TO THE GUEST OR GUEST'S PROPERTY OR ANY OF ITS VISITORS, OFFICERS, AGENTS, EMPLOYEES, OR OTHER REPRESENTATIVES, INCLUDING WITHOUT LIMITATION, DAMAGE, LOSS HARM, OR INJURY RESULTING FROM THEFT, FIRE, EARTHQUAKE, INCLEMENT WEATHER, WATER, UNAVAILABILITY OF THE FACILITIES, INJURY IN CONNECTION WITH THE TESTING EVENT, PLANNING MEETINGS, OR STAGING, FOR REASONS BEYOND THE IMSF'S CONTROL, ACCIDENT, OR ANY OTHER CAUSE. THE IMSF SHALL NOT BE RESPONSIBLE FOR THE SECURITY OF THE GUEST PARTICIPANT'S EQUIPMENT OR ITS PROPRIETARY SOFTWARE OR HARDWARE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF THE IMSF TO ANY GUEST PARTICIPANT, OR THEIR EMPLOYEES, OFFICERS, DIRECTORS OR

SUBCONTRACTORS RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, WILL BE LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY THE GUEST PARTICIPANT TO THE IMSF IN CONNECTION WITH THE TEST EVENT.

THE LIMITATIONS SET FORTH ABOVE SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATIONS OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN UNDERLYING THIS AGREEMENT.

**FINANCIAL RESPONSIBILITY:** SUBMISSION OF THIS AGREEMENT AND/OR ONLINE IMS FORUM PLUGFEST APPLICATION/REGISTRATION INDICATES GUEST'S INTENTION TO PARTICIPATE IN IMS FORUM PLUGFEST EVENT(S) AND AS SUCH AS THE GUEST HAS RECEIVED ACCESS TO VALUABLE INTELLECTUAL PROPERTY, PR/MARKETING AND OTHERS, INCLUDING BUT NOT LIMITED TO THE IMS FORUM PLUGFEST TEST PLAN, IOL WORKING GROUP PARTICIPATION AND CALLS, NO REFUND WILL BE GIVEN UNDER ANY CIRCUMSTANCES IF GUEST CANCELS PRIOR TO ANY PLUGFEST EVENT OR FAILS TO ATTEND ANY PLUGFEST EVENT.

IN ADDITION, GUEST PARTICIPATION IN ANY PRE-PLUGFEST ACTIVITIES PRIOR TO ANY PLUGFEST EVENT CONSTITUTES PARTICIPATION AT A PLUGFEST EVENT FOR WHICH APPLICABLE FEES SHALL BE OWED AND DUE TO THE IMS FORUM.

IMS FORUM RESERVES THE RIGHT TO CANCEL OR RESCHEDULE THIS EVENT WITHOUT PRIOR NOTICE AND WITHOUT LIABILITY TO ANY GUEST, PARTICIPANT OR ATTENDEE.

6. **Insurance:** Participation in this Event is expressly conditioned on the Guest participant carrying and maintaining adequate insurance protection against all liabilities, claims and risks against which may arise in connection with participation in the Event including but not limited to equipment damage to facility and lab, and liability insurance for any accidents that occur in the lab before during or after the test Event, and no less than is customary for entities engaged in Guest's line of business. Guest represents and warrants that it will maintain adequate insurance protection for all activities associated with the Event. Guest agrees that it shall furnish the IMSF, upon request, with a certificate of insurance verifying its compliance with the requirements of this section.

7. **No Licenses Granted:** No licenses are granted by Guest to any other party to any of Guest's intellectual property, and no licenses are granted by any other party to Guest for such other party's intellectual property, as a result of their signing this Agreement and/or their participation in the Events, by implication, estoppel, or otherwise. Intellectual property shall include, without limitation, trademarks, copyrights, patents, mask works and trade secrets.

8. **Written and all other multimedia communications:** Guest shall not advertise market or promote including blogging and website promotions its products by referencing the Event and/or the results of any testing activities conducted there under. IMSF may issue written, verbal or multimedia communications, including but not limited to video, audio, blogs, press release(s) and other type of communications for each Event at its own discretion. Guest agrees that the any communications may include Guest's name and its company logo, indicate Guest participated in the Event and discuss test results. By participating in this event Guest authorize IMS Forum to use their company name, logo and individual likeness in marketing and promotional media.

By participating in the Event I authorize IMSF and those acting pursuant to its authority to: Record Guest participation and appearance on video tape, audio tape, film, photograph, press releases, website, interviews and other speaking arrangements or any other medium; Use of participant's name, company name, logo, likeness, voice and biographical material in connection with these recordings; and Exhibit or distribute such recording in whole or in part without restrictions or limitation for any educational or promotional purpose which IMSF, and those acting pursuant to its authority, deem appropriate.

9. **No Export:** Guest will not export, directly or indirectly, any technical data acquired from the Discloser during the Events or pursuant to this Agreement, or any product utilizing any such technical data, to any country for which the U.S.



Government or any agency thereof at the time of export requires an export license or other governmental approval (nor disclose such technical data to any citizen of such country) without first obtaining such license or approval.

10. **General:** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. 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 between the parties and/or Discloser and Guest. Each party shall act as an independent contractor and not as an agent of the other for any purpose, and neither shall have the authority to bind the other. 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 Colorado as applied to agreements entered into and performed entirely within Colorado between Colorado residents. The Guest acknowledges that Confidential Information is unique and valuable, and that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Discloser for which monetary damages may be difficult to ascertain or be an inadequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Discloser may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach as may be deemed proper by a court of competent jurisdiction. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages. This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not limit in any manner the construction of this Agreement, which shall be considered a whole.

Guest participation is expressly conditioned upon completion of the IMS Forum Plugfest Application and payment of applicable fees as stated on the Plugfest information page on the IMS Forum website [www.IMSForum.org](http://www.IMSForum.org).

I acknowledge that I have read this Agreement. On behalf of the below-listed company, I understand that the execution of this Agreement is necessary for attending an Event and agree to have my company adhere to the provisions of this Agreement. I also certify that I am authorized to execute this Agreement on behalf of my company.

**Please Fax / and send the signed copy of this agreement to:**

**IMS Forum**  
**211 Summit Place, #292, Box 10,000**  
**Silverthorne, Colorado 80498, USA**  
[www.imsforum.org](http://www.imsforum.org)  
**Fax: +1 (407) 641-9595**  
**Office: +1 (970) 262-6100**  
[info@IMSForum.org](mailto:info@IMSForum.org)

**Guest Participant Company**

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

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

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

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

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