

RESTRICTED USE NON-DISCLOSURE AGREEMENT

This Restricted Use Non-Disclosure Agreement ("Agreement"), effective _____, 2012, is entered into by and among the following parties:

_____: _____ (and all divisions and subsidiaries)

WHEREAS, the parties desire to conduct some testing of their products in order to utilize the results and information collected from the testing to promote **Data Center Bridging, 10GBASE-T, 40GB Ethernet, 100Gb Ethernet, Energy Efficient Ethernet and related Ethernet Technologies.**

WHEREAS, the parties desire to keep confidential and limit the use and disclosure of the results of such testing as more fully described below and in Exhibit A (which is attached to this Agreement and incorporated herein by reference).

NOW THEREFORE, the parties agree to the following terms and conditions under this Agreement which shall govern the disclosure and use of Confidential Information.

1. Confidential Information described in Exhibit "A" shall be disclosed and used solely pursuant to this Agreement. Each Exhibit "A" is subject to the terms of this Agreement and will be completed by the parties prior to the further disclosure or use of Confidential Information.
2. Except as provided in this Agreement, the parties shall maintain the Confidential Information, including but not limited to the existence and content of this Agreement, in confidence and shall not disclose Confidential Information (which shall include any notes, extracts, analyses, and materials which would disclose Confidential Information) to any third parties, except a parent or subsidiary of a party to this agreement. Each party shall protect Confidential Information by using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of Confidential Information that each party uses to protect its own confidential information of a like nature. At a minimum, each party shall limit disclosure of Confidential Information to only those of its employees who: (a) have a need to know such information for the purpose specified in Exhibit "A"; and (b) have agreed to be bound by non-disclosure terms at least as comprehensive as those set forth herein.
3. Each party understands and acknowledges that no license under any of the other party's trade secret (except as expressly provided in Exhibit "A") and no license whatsoever under any of the other party's patent, copyright, mask work right, or other intellectual property right is granted to or conferred upon any party in this Agreement or by the disclosure of any Confidential Information by one party to the other party as contemplated hereunder, either expressly, by implication, inducement, estoppel or otherwise, and that any license under such intellectual property rights must be express and in writing.
4. Except for the use and disclosure specifically described in Exhibit A, Confidential Information shall remain confidential until it becomes: (a) rightfully in the public domain other than by breach of a duty to a party; or (b) rightfully received from a third party without any limitation on disclosure; or (c) rightfully known to a party without any limitation on disclosure prior to the Effective Date; or (d) independently developed by a party's employees who have not had access to the Confidential Information, or guidance from those who have had access; or (e) generally made available to third parties by a party without restriction on disclosure.
5. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY

- AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY REGARDING THE CONFIDENTIAL INFORMATION.
6. The Confidential Information may be controlled by U.S. Export Regulations. The export, re-export or disclosure to foreign employees, subsidiaries, branches (and employees of those companies) may require U.S. Government approval. Each party shall insure that all activities involving distribution and export/re-export of Confidential Information are in compliance with all laws, regulations, orders or other restrictions of the U.S. Export Regulations. Each party agrees that neither it nor its parent nor any of its subsidiaries will use, export, transfer, make available or otherwise disclose any Confidential Information in violation of any U.S. Export Regulations, including any use or development in nuclear, missile, and chemical or biological weapons activities.
 7. IN NO EVENT SHALL A PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, IRRESPECTIVE OF WHETHER IT HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
 8. The parties are NOT obligated to provide comments or suggestions regarding the Confidential Information to each other. However, should a party ("Suggesting Party") provide to another party comments or suggestions for the modification, correction, improvement or enhancement of: (a) the Confidential Information; or (b) the other party's products which may embody the Confidential Information, then the Suggesting Party grants to the other party a non-exclusive, irrevocable, worldwide, royalty-free license, including the right to sublicense the other party's licensees and customers, under the Suggesting Party's intellectual property rights, the rights to use and disclose such comments and suggestions in any manner the other party chooses and to display, perform, copy, have copied, make, have made, use, sell, offer to sell, and otherwise dispose of the other party's and its sublicensees' products embodying such comments or suggestions in any manner and via any media the other party chooses, but without reference to the source of such comments and/or suggestions.
 9. A party may terminate this Agreement at any time without cause upon written notice to the other party; however, all obligations of confidentiality and restrictions on use and Sections 4, 5, 7, and 8 shall survive the termination of this Agreement.
 10. (a) This Agreement is neither intended to nor shall it be construed as creating a joint venture, partnership or other form of business association between the parties, nor an obligation to buy or sell products or services using or incorporating the Confidential Information.
(b) This Agreement constitutes the entire agreement, written or verbal, between the parties with respect to the

use and disclosure of Confidential Information. This Agreement may not be amended except in writing signed by a duly authorized representative of the respective parties. Any other agreements between the parties, including non-disclosure agreements, shall not be affected by this Agreement.

(c) All rights and remedies conferred by any instrument or law shall be cumulative and may be exercised singularly or concurrently. The failure of either party to enforce any right resulting from a breach of any provision of this Agreement by the other party shall not be deemed a waiver of any right relating to the subsequent breach of such provision or of any other right hereunder. The terms and conditions stated herein are declared to be severable.

(d) This Agreement shall be governed by, subject to, and construed in accordance with the laws of the state of California, without reference to conflict of laws principles.

(e) The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile machine, electronic scanner, or similar device is effective as legally binding originals. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties.

Signature

Printed Name

Title

Date

EXHIBIT "A"

CONFIDENTIAL INFORMATION DESCRIPTION, USE AND DISCLOSURE

1. **CONFIDENTIAL INFORMATION:**
Information shared by the parties, verbally or in writing, for the purpose of testing interoperability of devices design to comply with Ethernet technologies including, but not limited to Data Center Bridging, 40Gb modular interfaces, 10GBASE-T, and Energy Efficient Ethernet as well as any collections, discoveries, or discussions regarding the testing (and the results thereof) of the TeraFabric plugfest.

2. **RESTRICTED USE AND DISCLOSURE:**
CONFIDENTIAL INFORMATION PROVIDED PURSUANT TO THIS AGREEMENT IS FOR THE EXPRESS PURPOSES OF: planning and executing a plugfest of devices and systems implementing a variety of Ethernet technologies including, but not limited to Data Center Bridging, 40Gb modular interfaces, 10GBASE-T, and energy efficient Ethernet.

For a period of five (5) years from the date of disclosure, Confidential Information shall be kept confidential in accordance with this Agreement, except that the Parties can use the Confidential Information to collaboratively work on a presentation, report, and/or press release to be presented to the general public. This presentation or report will discuss the testing and final results. Any disclosure of Confidential Information must be fully agreed to by the parties prior to any such disclosure.

3. **TERM:**
This Agreement shall become effective on the Effective Date and shall continue in effect for a period of one (1) year unless otherwise terminated in accordance with Section 9 of this Agreement.