

STICHTING GREENTOUCH NON-DISCLOSURE AGREEMENT

This NON DISCLOSURE AGREEMENT (“NDA”) is made by and between [NAME_____], a [TYPE OF ENTITY_____], established under the laws of [COUNTRY, STATE_____], having its principal place of business at [ADDRESS_____] (the “Applicant”), and Stichting GreenTouch, a foundation (*stichting*) established under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) at Amsterdam, the Netherlands (the “Foundation”).

In this NDA, the Applicant and the Foundation are referred to collectively as the “Parties”, and each of them individually is referred to as a “Party”.

Background: The Applicant is considering applying for membership in the GreenTouch Consortium (the “Consortium”), a group of companies that have entered into a Consortium Agreement with the Foundation for the purpose of conducting research aimed at reducing the energy consumption of telecommunication networks and related equipment (the “Project”). In order to assist it in making that decision, the Applicant desires to attend certain meetings relating to the Project and to otherwise receive information confidential to the Foundation, the Consortium, and/or members of the Consortium. The Foundation is willing to permit the Applicant to attend such meetings and to receive such information for such purpose (the “Purpose”), conditional upon the Applicant agreeing to maintain all Confidential Information (as defined in Section 1 below) in compliance with the terms of this NDA.

NOW THEREFORE, in consideration of the disclosures to be made by the Foundation to the Applicant, the applicant agrees to the terms and conditions set forth below.

1. Definitions

“Affiliate” in relation to a Party or Disclosing Party means any legal entity which, directly or indirectly, Controls, is Controlled by, or is under common Control with that entity, but any such legal entity shall be deemed to be an Affiliate of such entity only as long as such Control exists. For the above purposes, “Control” of any entity means ownership or control of (i) at least fifty percent (50%) of the nominal value of the issued share capital of the entity or (ii) at least fifty percent (50%) of the issued share capital entitling the holders to vote for the election of directors (or other managing authority), or (iii) the right by any other means to elect or appoint directors of the entity (or other managing authority) who have a majority vote or to manage such entity.

“Confidential Information” means all information of whatever nature or form disclosed or provided by the Foundation or any member of the Consortium (the “Disclosing Party”) to Applicant in writing, including but not limited to specifications, designs plans, drawings, software, data, prototypes, or other business and/or technical information, which is labeled or legended with the word “confidential,” or with words to similar effect (and all copies thereof made pursuant to Section 2A) in connection with the Project.

2. The Applicant agrees that for a “Confidentiality Period” beginning on the date of this NDA (“Effective Date”) and ending five (5) years after the date of the disclosure:

- A. The Applicant shall use Confidential Information solely for the Purpose; hold Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, but not less than reasonable care taking into account the nature of the Confidential Information; grant access to Confidential Information only to employees (including employees of Affiliates) who have a need to know; cause such employees to comply with this NDA; reproduce Confidential Information only to the extent necessary to fulfill the Purpose; not reverse engineer, de-compile or disassemble any Confidential Information; and prevent disclosure of Confidential Information to third parties. Any copies made by Applicant of any Confidential Information shall be labeled or identified as confidential, proprietary or the like and shall be subject to all terms and provisions of this NDA.
- B. Upon a Disclosing Party’s request, the Applicant shall either return all Confidential Information or certify that all media containing Confidential Information have been destroyed. However, Applicant’s legal counsel may retain an archival copy of the Confidential Information, solely for the purpose of proving the contents of the Confidential Information.

3. The foregoing restrictions shall not apply to Confidential Information that Applicant can demonstrate:

- A. was independently developed by or for the Applicant or one of its Affiliates without use of the Disclosing Party’s Confidential Information or breach of this NDA;
- B. was lawfully obtained by Applicant or one of its Affiliates from a third party without an obligation of confidentiality;
- C. has become generally available to the public without breach of this NDA;
- D. was already known to or in the possession of Applicant or one of its Affiliates without restriction; or
- E. which the Disclosing Party agrees in writing is free of such restrictions.

If Applicant becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is able to do so, prior to any such disclosure, (i) notify the Disclosing Party, (ii) comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information, and (iii) only disclose Confidential Information specifically required and only to the extent compelled to do so.

4. An individual who has seen Confidential Information under this NDA shall not be precluded from working on projects for the Applicant that relate to similar subject matters, provided that the individual does not use or make reference to the Confidential Information.

5. As between the Parties, all Confidential Information shall remain the property of the Disclosing Party. Applicant acknowledges and agrees that:

- A. except for the right to use Confidential Information for the Purpose and the limited right to reproduce as specified in Section 2A, by disclosing Confidential Information a Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret, or any other intellectual property right to Applicant;
- B. each Disclosing Party shall be deemed to have disclaimed all warranties, express and implied, regarding its Confidential Information, including, without limitation, all warranties of merchantability and fitness for a particular purpose and with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such Confidential Information;
- C. each Disclosing Party shall be deemed to have disclaimed all responsibility and liability for any actions taken by Applicant on the basis of its analysis or other use of Confidential Information.

6. Applicant acknowledges and agrees that each Disclosing Party that is not a Party to this NDA shall be deemed to be a third party beneficiary of Applicant's obligations, undertakings, acknowledgements and agreements under this NDA, and shall have the independent right to legally enforce all disclaimers made on its behalf and exercise all such rights to the same extent as if it were a Party and a signatory to this NDA.

7. Any Disclosing Party's failure to enforce any provision, right, or remedy under this NDA shall not constitute a waiver of such provision, right, or remedy.

8. The Applicant acknowledges and agrees that any Disclosing Party shall be free to seek immediate injunctive relief or any other temporary measures before any applicable competent court or tribunal, wherever located, in order to seek to prevent or restrain any (i) infringement of its intellectual property rights and/or (ii) unauthorised disclosure of Confidential Information.

9. This NDA constitutes the entire agreement of the Parties with respect to Confidential Information disclosed hereunder and supersedes all prior oral and written agreements and discussions with respect thereto.

10. Any notice to be given under this NDA shall be in writing to the appropriate address as set forth above, or to such other address and recipient as a Party may designate in respect of itself by written notice to the other Party. Notices are deemed effective upon delivery via hand delivery or fax to, or, if sent via receipted courier or certified (or its equivalent) mail return receipt requested, the earlier of five (5) days after the date of sending to or the date of receipt by, the person(s) designated as recipient for the Party receiving the notice.

11. Amendments or changes to this NDA shall be valid only if made in writing and signed by an authorized signatory of each of the Parties. Any understanding between the Parties, or between Applicant and any Disclosing Party or Parties, beyond the Purpose of this NDA will be set forth in a separate written agreement containing appropriate terms and conditions.

12. If one or more of the provisions contained in this NDA or any documents executed in connection herewith are found by a competent court or authority to be invalid, illegal, or unenforceable in any respect under any applicable law, including competition law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that in such case the Parties oblige themselves to use all commercially reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation that causes the same (or substantially similar) economic benefit or burden.

13. Either Party may terminate its participation in this NDA for any reason by giving thirty (30) days written notice to the other Party. Applicant's obligations regarding Confidential Information disclosed during the term of this NDA will survive the expiration or termination thereof.

IN WITNESS whereof this Agreement has been signed on behalf of the Applicant as of the date that this NDA is accepted by the Foundation.

Date: _____, 2013

Authorised to sign on behalf of [*insert full name of Applicant*_____]

Signature: _____

Name: _____

Title: _____

[When signing by two individuals is required]

Signature: _____

Name: _____

Title: _____

ACCEPTED:

Date: _____, 2013