

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made this ___ day of _____, 20__ by and between Carnegie Mellon University, a Pennsylvania nonprofit corporation having a place of business at 5000 Forbes Avenue, Pittsburgh, Pennsylvania 15213 (referred to as "Carnegie Mellon") and _____, a _____, having a place of business at _____ (referred to as "Recipient").

WHEREAS, Carnegie Mellon owns certain technology described herein; and

WHEREAS, Recipient is interested in evaluating the technology and in working with Carnegie Mellon on various matters related to the technology (the "Purpose"); and Carnegie Mellon is willing to disclose to Recipient certain confidential information related to the technology, but only in strict accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties hereto hereby agree as follows:

1. For purposes of this Agreement, the term "Technology" shall mean all intellectual property described in the following Carnegie Mellon disclosure(s): Carnegie Mellon Docket Number _____, entitled "_____", dated _____, including all or any of the inventions and developments described or disclosed therein, patent applications claiming any of the inventions, any physical embodiments thereof, and know-how and trade secrets related thereto.
2. For purposes of this Agreement, "Confidential Information" shall mean the Technology and any information relating to the Technology, including oral communications relating to the Technology, and information not relating to the Technology that is disclosed to Recipient in the manner set forth hereinafter. All such information shall be Confidential Information, including information disclosed to Recipient prior to the date of this Agreement, unless such information (i) was already in Recipient's possession prior to the disclosure thereof by Carnegie Mellon, (ii) has been published or is published hereafter, unless such publication is a breach of this Agreement, (iii) is received by Recipient from a third party not under any obligation of confidentiality with respect thereto, or (iv) is independently developed by Recipient, without use of or reference to the Confidential Information.
3. (a) With respect to any information not relating to the Technology which is sought by Carnegie Mellon to be Confidential Information subject to this Agreement, Carnegie Mellon shall mark such information as "Confidential" prior to disclosing it to Recipient.

(b) With respect to any oral communication not relating to the Technology which is deemed by Carnegie Mellon to be Confidential Information subject to this Agreement, Carnegie Mellon shall notify Recipient of such fact and within thirty (30) days thereafter Carnegie Mellon shall send a memorandum to Recipient outlining the information deemed to be Confidential Information.
4. Recipient shall maintain in confidence and shall not disclose to any other person or entity not a party hereto nor shall Recipient use or exploit in any way without Carnegie Mellon's written agreement, any Confidential Information for a period of five (5) years from the date of such disclosure, unless such information ceases to be Confidential Information prior to the end of such five-year period through no fault of Recipient, or Recipient and Carnegie Mellon enter into a written agreement authorizing same. The Confidential Information is furnished to Recipient on a non-exclusive basis solely for the Purpose and no other purpose. Recipient shall use the Confidential Information solely for such Purpose.
5. Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of Carnegie Mellon. The Recipient shall keep a record of the location of all tangible Confidential Information of Carnegie Mellon in its possession, and, upon the written request of Carnegie Mellon at any time, shall promptly return or destroy (as directed by Carnegie Mellon) all such tangible Confidential Information in its possession, and no such Confidential Information shall thereafter be retained in any form by the Recipient. In the event the Recipient is directed by Carnegie Mellon to destroy Carnegie Mellon's Confidential Information, the Recipient shall, promptly upon such destruction, certify in writing to Carnegie Mellon that all Carnegie Mellon's Confidential Information has been destroyed. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement.
6. Recipient shall exercise all reasonable precautions to prevent the disclosure of Confidential Information by its employees, and in any event shall maintain with respect to such Confidential Information a standard of care

which is no less than that standard which Recipient maintains to prevent the disclosure of its own confidential information of similar importance, but no less than a reasonable standard of care.

7. Recipient acknowledges that the Confidential Information is a unique and valuable asset of Carnegie Mellon, and that disclosure or use in breach of this Agreement would result in irreparable injury to Carnegie Mellon which could not be remedied by monetary damages. Therefore, the Parties agree that, in the event of a breach or threatened breach of the terms of this Agreement, Carnegie Mellon shall be entitled to an injunction prohibiting any such breach, specific performance and/or any other equitable remedy available to Carnegie Mellon. Any such equitable relief shall be in addition to and not in lieu of any other appropriate relief at law to which Carnegie Mellon may be entitled.
8. This Agreement may not be assigned by either party hereto without the prior consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
9. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding choice of law provisions of that or any other jurisdiction. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provisions shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute the same agreement.
10. All rights of Carnegie Mellon heretofore and hereafter acquired under the patent and copyright laws of the United States and all foreign countries are hereby expressly reserved to Carnegie Mellon.
11. No license or property rights in any Confidential Information or other hardware design, software or intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise. Recipient will not directly or indirectly transmit, by way of trans-shipment, export, diversion or otherwise, any Confidential Information to any location outside of the United States of America, except in accordance with the export control laws and regulations of the U.S. Department of Commerce or other agency or department of the U.S. Government and any amendments to such laws and regulations.
12. For purposes of this Agreement, the term "Carnegie Mellon" shall include inventors of the Technology and those working with or under them.

The parties hereto have duly executed this Agreement by their duly authorized representatives effective the day and year first written above.

Carnegie Mellon University

By: _____

Robert A. Wooldridge
Associate VP for Technology Transfer and Enterprise Creation

Recipient

By: _____

Name: _____

Title: _____