

# Non-Disclosure Agreement

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) by and between \_\_\_\_\_, having offices at \_\_\_\_\_ and Carnegie Mellon University, having offices at 5000 Forbes Avenue, Pittsburgh, PA 15213 (“Carnegie Mellon”).

WHEREAS, for the purpose of furthering a potential research relationship between them, \_\_\_\_\_ and Carnegie Mellon (collectively referred to as the “Parties,” and each individually referred to as a “Party”) have determined to establish terms governing the use and protection of certain Confidential Information (as defined below) that one Party (“Disclosing Party”) may disclose to the other Party (“Recipient”), which information in the case of \_\_\_\_\_ relates generally to \_\_\_\_\_ and in the case of Carnegie Mellon relates generally to \_\_\_\_\_.

NOW THEREFORE, intending to be legally bound, the Parties agree as follows:

1. Confidential Information.

- a) “Confidential Information” means all information both tangible and intangible of a Disclosing Party which relates, respectively, to the above identified subject matter, including, but not limited to, trade secrets, business and technical information and data, disclosed orally, visually, in writing, electronic media or by any other means, and that is marked in accordance with this Section 1.
- b) With respect to any tangible information that a Disclosing Party would like to be treated as Confidential Information under this Agreement, the Disclosing Party shall mark such information as “Confidential” prior to disclosing it to the Recipient.
- c) With respect to any oral or visual communication or other intangible information which a Disclosing Party would like to be treated as Confidential Information under this Agreement, the Disclosing Party shall notify Recipient of such fact at the time of disclosure and within fifteen (15) days thereafter, Disclosing Party shall send Recipient a written memorandum outlining the information deemed to be Confidential Information. Such memorandum shall be marked “Confidential.”

2. Non-Disclosure. A Recipient of Confidential Information under this Agreement shall use the Confidential Information only for the purpose of evaluating a research relationship between the Parties and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidentiality or proprietary information of like importance. If necessary to effectuate the furthering of a potential research relationship, Recipient may disclose Confidential Information received under this Agreement to employees and/or consultants with a need to know, provided that any consultants are bound to protect such Confidential Information from unauthorized use and disclosure under the terms of a written agreement. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the Disclosing Party. Neither Party shall use the Confidential Information of the other, in whole or in part, except as permitted under this Agreement.

3. Exclusions.

- a) “Confidential Information” shall not include information that:
  - i. was publicly known at the time of the Disclosing Party’s communication thereof;

- ii. becomes publicly known through no fault of Recipient subsequent to the time of Disclosing Party's communication thereof to Recipient;
    - iii. was in Recipient's possession free of any obligation of confidence at the time of Disclosing Party's communication thereof to Recipient;
    - iv. is developed by Recipient independently of this Agreement without use or reference to the Disclosing Party's Confidential Information;
    - v. is rightfully obtained by Recipient from a third party, provided the Recipient has no reason to believe that such third party was under an obligation of confidentiality to the Disclosing Party.
  - b) In the event Confidential Information of the other party is lawfully required to be disclosed by any governmental agency or otherwise required to be disclosed by law, it may be so disclosed without violation of this Agreement, but only to the extent required; provided however that before making such disclosure, Recipient shall give Disclosing Party reasonable prior written notice of such required disclosure so that Disclosing Party has an opportunity to interpose an objection and/or take action to ensure confidential handling of such information.
4. Return of Information. All Confidential Information disclosed under this Agreement (including without limitation information in computer software or held in electronic storage media) shall be and remain in the property of Disclosing Party. All such information in tangible form shall be returned to Disclosing Party promptly upon written request by Disclosing Party or the termination or expiration of this Agreement, whichever occurs first, and shall not thereafter be retained in any form by Recipient. In lieu of return, such information may be destroyed by the Recipient provided any such destruction shall be certified in writing to the Disclosing Party by one of Recipient's duly authorized officers. No intellectual property rights, including but not limited to, licenses or rights under any patent, copyright, trademark or trade secret, are granted or are to be implied by this Agreement. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product or enter into any agreement.
  5. Duration of Confidentiality. The Recipient shall maintain in confidence and shall not disclose to any person not a party hereto, unless permitted to do so under Section 2, or use or exploit in any way, without the Disclosing Party's written agreement, any Confidential Information for a period of five (5) years from the date of disclosure of such information, 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 Disclosing Party enter into a written agreement authorizing same.
  6. No Warranty. Disclosing Party makes no representation or warranty to Recipient as to the accuracy or completeness of any Confidential Information provided by it and shall not have any liability or responsibility for errors or omissions in any Confidential Information disclosed under this Agreement. Disclosing Party shall not have any liability to Recipient relating to or resulting from the use of Confidential Information by Recipient or any decisions made by Recipient relating to or resulting from the use of any Confidential Information.
  7. No Relationship. This Agreement is intended to provide only for the handling and protection of Confidential Information. It shall not be construed as a teaming, joint venture, partnership or other similar arrangement.
  8. Injunctive Relief. The Parties acknowledge that the Confidential Information is a unique and valuable asset of Disclosing Party, and that disclosure in breach of this Agreement may result in irreparable injury to Disclosing Party for which monetary damages alone would not be an

adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality and/or of this agreement, the Disclosing Party shall be entitled to seek an injunction prohibiting any such breach or to specific performance or other equitable relief as a remedy available to Disclosing Party. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

9. No Assignment. Neither Party shall assign any of its rights or obligations hereunder, without the prior written consent of the other Party. Any attempted assignment in violation of this section will be void and of no effect.
10. Entire Agreement. This Agreement (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior agreements, understanding or discussions with respect to the subject matter hereof; and (b) may not be amended or in any manner modified except by a non-electronic written instrument signed by authorized representatives of both Parties.
11. Choice of Law and Venue. This Agreement and any actions under it shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws provisions. Any disputes arising under or relating to this Agreement shall be heard in the Court of Common Pleas of Allegheny County, Pennsylvania or the United States District Court for the Western District of Pennsylvania. Each party hereby consents to the jurisdiction of said courts and waives any objection which they may have at any time to the jurisdiction of such courts, the laying of venue in such courts or the convenience of the forum.
12. Export Control. Each Party agrees that it will not directly or indirectly transmit, by way of trans-shipment, export, diversion or otherwise, any Confidential Information of the other Party except in accordance with any and all applicable United States export control laws and regulations. As an institution of higher learning, Carnegie Mellon generally performs fundamental research that is exempt from export control licensing under applicable export control laws. As a result, Carnegie Mellon typically does not wish to take receipt of export-controlled information, except as may be specifically agreed to by Carnegie Mellon and for which Carnegie Mellon has made specific arrangements. [REDACTED] agrees that it will not provide or make accessible to Carnegie Mellon any export-controlled Confidential Information without first informing the Carnegie Mellon's Office of Sponsored Programs of the export-controlled nature of the Confidential Information and obtaining from Carnegie Mellon's Office of Sponsored Programs its written consent to accept such information as well as any specific instructions regarding the mechanism pursuant to which such information should be passed.
13. Severability. If any provision of this Agreement is found unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision 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.
14. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than Carnegie Mellon and [REDACTED] any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
15. Term of Agreement. The term of this Agreement will be one (1) year from the Effective Date, unless it is terminated earlier by either party providing the other party with at least thirty (30) days prior written notice, or unless it is extended as mutually agreed upon by the parties.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative as of the date first written above.

\_\_\_\_\_

CARNEGIE MELLON UNIVERSITY

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

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

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

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

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

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