

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

EVALUATION LICENSE AND OPTION AGREEMENT

Carnegie Mellon University – _____

This Agreement (hereinafter this “Agreement”) is made and entered into this ___ day of _____, _____ (“Effective Date”) by and between Carnegie Mellon University (hereinafter “Carnegie Mellon”), a Pennsylvania non-profit corporation having a principal place of business at 5000 Forbes Avenue, Pittsburgh, Pennsylvania 15213 and _____, a _____ having a principal place of business at _____ (“Licensee”).

Whereas, Carnegie Mellon owns certain rights in certain technology and related intellectual property relating to _____, as more particularly described in Attachment A (the “Technology”); and

Whereas, Licensee may be interested in licensing, using, or otherwise commercializing the Technology and therefore desires to evaluate the Technology for possible licensing (the “Purpose”); and

Whereas, Carnegie Mellon is willing to license the Technology to Licensee for the Purpose on and subject to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. DELIVERY; RIGHT TO INSPECT

1.1 Within thirty (30) days of the Effective Date, Carnegie Mellon shall deliver to Licensee, one copy of the Technology via [insert method of delivery] in object code form in the following format _____ [insert format, e.g., diskette, paper, etc.].

1.2 Licensee accepts the Technology on an “AS IS, AS PROVIDED” basis. The Technology is the product of academic research, and Carnegie Mellon does not represent that it is free from errors or is suitable for any particular task.

1.3 Carnegie Mellon reserves the right to inspect Licensee’s use of the Technology and any related information specified herein from time to time for the purpose of verifying Licensee’s compliance with this Agreement. Licensee agrees to reasonably cooperate with Carnegie Mellon in any such inspections.

2. USE; OWNERSHIP; PROPRIETARY PROTECTION

2.1 The Technology and associated Confidential Information (hereinafter defined) are furnished to Licensee on a non-exclusive basis solely for the Purpose, at Licensee’s facilities and no other purpose. Licensee shall use the Technology and Confidential Information solely for such purpose.

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2.2 Carnegie Mellon hereby grants to Licensee a non-exclusive, non-transferrable, limited right during the term of this Agreement to practice under any patent claiming priority to _____ (the "Patent") solely for the Purpose.

2.3 Licensee may not copy, decompile, reverse engineer or disassemble the Technology or otherwise unlock (as that term is generally used in the industry) the Technology or make any derivatives thereof.

2.4 The Technology and information disclosed or provided by Carnegie Mellon relating thereto, including the Patent, contain Confidential Information of Carnegie Mellon. All Confidential Information has been entrusted to Licensee for use only as expressly authorized under this Agreement. Licensee shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, but no less than a reasonable standard of care, to protect the Technology, the Patent and associated Confidential Information against any unauthorized use or disclosure. Consistent with the foregoing, Licensee shall maintain in confidence and shall not disclose to any third party nor shall Licensee use or exploit in any way for its benefit or for the benefit of any third party, any Confidential Information (including the Patent) for a period of five (5) years following termination of this Agreement, unless such information ceases to be Confidential Information prior to the end of such five (5) year period through no fault of Licensee, or Licensee and Carnegie Mellon enter into a written agreement authorizing same.

2.4 For purposes of this Agreement, "Confidential Information" means any information relating to the Technology, including know-how, copyrights, trademarks, designs, data, algorithms, code, the Patent, patent applications and oral communications relating to the Technology, and information not relating to the Technology that is disclosed to Licensee in the manner set forth hereinafter. All such information shall be Confidential Information, including information disclosed or provided to Licensee prior to the date of this Agreement, unless such information (i) was already known to Licensee prior to the disclosure or provision 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 Licensee from a third party not under any obligation of confidentiality with respect thereto, or (iv) is independently developed by Licensee without use of or reference to the Confidential Information. 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 Licensee; provided, 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 Licensee of such fact and within thirty (30) days thereafter Carnegie Mellon shall send a memorandum to Licensee outlining the information deemed to be Confidential Information.

2.5 Licensee agrees that the Technology and Confidential Information (including the Patents) shall not be used as the basis of a commercial product or service, rewritten in another computer language or otherwise adapted to circumvent the need for obtaining a license from Carnegie Mellon (if one

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is then available) for the use of the Technology and Confidential Information (including the Patents) other than as specified by this Agreement.

2.6 Licensee agrees that it will not directly or indirectly transmit, by way of trans-shipment, export, diversion or otherwise, the Technology or any Confidential Information outside of the United States.

2.7 This Agreement conveys to Licensee only a limited right to use, fully terminable in accordance with the provisions of this Agreement. Licensee shall not assert any right, title, or interest in or to the Technology or Confidential Information (including the Patents). Title to the Technology (including copyright) and Confidential Information shall remain with Carnegie Mellon. Carnegie Mellon claims and reserves to itself all rights and benefits afforded under U.S. copyright law and all international copyright conventions in the Technology (and any associated Confidential Information, including the Patent).

3. TERM OF AGREEMENT; TERMINATION

3.1 The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (i) _____ (__) months thereafter, (ii) Licensee's permanent cessation of use of the Technology and associated Confidential Information, or (iii) thirty (30) days following Licensee's receipt from Carnegie Mellon of written notice of Licensee's breach of this Agreement if Licensee fails to cure such breach within the thirty (30) day period.

3.2 Upon termination of this Agreement, Licensee shall cease use of the Technology and Confidential Information, return the same to Carnegie Mellon and destroy any notes or other documents referencing or containing the Technology and/or Confidential Information (including the Patent).

3.3 Any rights or obligations under this Agreement that by their nature survive following termination shall survive following termination of this Agreement and continue to remain binding upon the parties.

4. OPTION FOR COMMERCIAL LICENSE

4.1 Carnegie Mellon hereby grants to Licensee the option ("Option") to request to negotiate [an exclusive or a non-exclusive] commercial license from Carnegie Mellon to manufacture, use, sell, lease or otherwise dispose of products and/or services based on, in whole or in part, the Technology and to practice under the Patent.

4.2 The Option shall exist and be exercisable by Licensee during the period of time commencing with the Effective Date and terminating simultaneously upon the termination of this Agreement for any reason (the "Option Period"), at which time the Option shall simultaneously expire.

4.3 In consideration of the granting of the Option, Licensee shall pay to Carnegie Mellon a fee ("Option Fee") of _____, payable within thirty (30) days of execution of

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this Agreement, which Option Fee is fully creditable toward any fees or other consideration payable under any commercial license, if any, for the Technology and the Patent by Licensee from Carnegie Mellon subsequently obtained as a result of any exercise of the Option.

4.4 In addition to the Option Fee, in consideration of the granting of the Option, should Carnegie Mellon incur any out of pocket fees or expenses for the filing, prosecution or maintenance of the Patent or any U.S. and/or foreign patents comprising the Technology during the Option Period, Licensee agrees to reimburse Carnegie Mellon for all such fees and expenses within thirty (30) days of receipt of each notification or bill therefor, regardless of whether Licensee exercises its Option or whether Licensee obtains a license from Carnegie Mellon for the Technology and the Patent.

4.5 If Licensee elects to exercise the Option, it shall do so by notifying Carnegie Mellon in writing of same, so that Carnegie Mellon receives such request within the Option Period. Within fifteen (15) days of receipt by Carnegie Mellon of Licensee's written notice of such exercise, the parties shall thereupon negotiate in good faith in an effort to arrive at mutually agreeable, commercially reasonable terms regarding the amount of royalties. If, despite negotiating in good faith, the parties are unable to come to mutually agreeable, commercially reasonable terms for a commercial license within seventy five (75) days of receipt by Carnegie Mellon of Licensee's written notice of such exercise, neither party shall thereafter have any further obligation to negotiate. All license terms other than the amount of royalties shall be Carnegie Mellon's standard license terms and conditions for licenses of Carnegie Mellon technologies through Carnegie Mellon's Center for Technology Transfer and Enterprise Creation generally requested of licensees by Carnegie Mellon.

5. NO WARRANTIES; LIMITATIONS ON TYPES AND AMOUNTS OF DAMAGES; INDEMNIFICATION

5.1. ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT, INCLUDING THE TECHNOLOGY AND/OR THE CONFIDENTIAL INFORMATION (INCLUDING THE PATENT) ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CARNEGIE MELLON DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. LICENSEE IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF CARNEGIE MELLON RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS, INCLUDING THE TECHNOLOGY AND/OR THE

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CONFIDENTIAL INFORMATION (INCLUDING THE PATENT) GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT.

CARNEGIE MELLON SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF CARNEGIE MELLON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

CARNEGIE MELLON'S MAXIMUM LIABILITY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT), REGARDLESS OF THE MANNER CLAIMED OR FORM OF ACTION ALLEGED, IS LIMITED TO THE AMOUNTS PAID TO CARNEGIE MELLON BY LICENSEE UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT OR OTHER CIRCUMSTANCE GIVING RISE TO THE CLAIMED LIABILITY.

5.2 Licensee shall defend, indemnify and hold harmless Carnegie Mellon, its trustees, officers, employees, attorneys and agents from and against any liability, damage, loss or expense (including attorneys' fees and expenses) incurred by or imposed upon any of Carnegie Mellon and/or its trustees, officers, employees, attorneys and agents in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Licensee under this Agreement under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

6. NOTICES

Any notice under any of the provisions of this Agreement shall be deemed given when (i) personally delivered, or (ii) sent prepaid by nationally recognized overnight carrier, or (iii) deposited in the mail, postage prepaid, registered or certified first class mail, and in the case of (ii) or (iii), when addressed to the applicable party at the address indicated below, or such other address as such party shall specify for itself by like notice to other party. Each party shall in the case of (ii) or (iii), transmit to the other a facsimile copy or an electronic mail copy of each such notice promptly after sending same by nationally recognized overnight carrier or depositing same in the mail, as applicable.

In the case of Carnegie Mellon:

Associate VP
Center for Technology Transfer and
Enterprise Creation
Carnegie Mellon University
5000 Forbes Avenue

In the case of Licensee:

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Pittsburgh, PA 15213

Fax: 412.268.7395

Email: innovation@cmu.edu

Fax: _____

Email: _____

7. MISCELLANEOUS

7.1 Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

7.2 This Agreement shall be governed and construed in all respects in accordance with the substantive laws of the Commonwealth of Pennsylvania without regard to conflict of law provisions in that or any other jurisdiction. All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (a) at Carnegie Mellon's election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (i) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (ii) each party shall bear its own cost of arbitration, (iii) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (iv) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court of before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement, provided that either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or Confidential Information as described in this Agreement, or (b) in the event that Carnegie Mellon does not elect binding arbitration as permitted in point (a) above, exclusively in the U.S. District Court for the Western District of Pennsylvania or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

7.3 All remedies available to a party for one or more breaches by the other party shall be cumulative and may be exercised separately or concurrently without waiver of any other remedies. The failure of either party to act on a breach of this Agreement by the other party shall not be deemed a waiver of said breach or a waiver of future breaches, unless such a waiver is in writing and is signed by the party against whom enforcement is sought.

7.4 This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only by a writing signed by a duly authorized representative of the party against whom enforcement thereof is sought.

Both parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

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Carnegie Mellon University:

By: _____
Robert Wooldridge, Associate VP for
Technology Transfer and Enterprise Creation

By: _____
Name/Title: _____

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Attachment A

Description of the Technology
