



# University of New Hampshire

## UNH MUTUAL NON-DISCLOSURE AGREEMENT

Rev 04/26/2011

**PURPOSE.** The University of New Hampshire InterOperability Laboratory (UNH-IOL) invites the undersigned (“Guest”) to attend UNH-IOL Open Computer Project (OCP) Open Network Systems Plugfest (each an “Event”, and collectively, the “Events”), which are planned to take place at the UNH-IOL Host-Site located at 121 Technology Drive, Suite 2 Durham, NH, starting on June 15, 2015 (“Effective Date”) and ending on June 19, 2015 (“Termination Date”). The purpose of the Event(s) is to allow guests to test the interoperability of Guest’s own products with products of other guests attending the Event(s) (“Purpose”).

**CONFIDENTIALITY.** Guest agrees to treat as confidential all information received at or concerning activities taking place during the Event(s), including, but not limited to, all test activities and test results, and all other guests’ respective information disclosed during the Event(s) to Guest concerning their research, experimental work, development, design details and specifications and engineering information as confidential information (“Confidential Information”). Guest shall treat all Confidential Information of the other guest(s) (each a “Discloser”) with the same degree of care as Guest accords to its own confidential information, but in no case less than reasonable care. Guest shall use such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products. Guest shall not disclose Confidential Information of the Discloser to any person or entity other than Guest’s (a) officers, (b) employees, and (c) consultants who are given access to such Confidential Information for the sole purpose of testing the interoperability of Guest’s own products with other guests’ products and who have entered into written confidentiality agreements with Guest which protect the Confidential Information of Disclosers to the same extent required of Guest by the provisions of this Agreement.

Notwithstanding the foregoing, in no event is information Confidential Information if it (a) was in Guest’s possession before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Guest; (c) is received by Guest, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information to Guest; or (d) is independently developed by Guest without use of the Discloser’s Confidential Information. For purposes of this Agreement, UNH students are not third parties vis á vis UNH.

**LIMITATIONS ON USE.** Guest shall use the Discloser’s Confidential Information solely for the Purpose described above. Disclosure by the Discloser of its Confidential Information does not constitute a grant to Guest of any right or license to the Discloser’s Confidential Information, except as set forth herein.

**CARE OF CONFIDENTIAL INFORMATION.** Guest shall exert reasonable efforts to maintain the Discloser’s Confidential Information in confidence, except that Guest may disclose or permit disclosure of any of the Discloser’s Confidential Information to its directors, officers, employees, consultants, advisors and, in the case of UNH, students, who need to know such Confidential

InterOperability Laboratory

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Information to fulfill UNH's obligations under this Agreement and who have been advised of and have agreed to maintain the confidential nature of the Confidential Information. Guest shall be deemed to have discharged its obligations hereunder provided it has exercised the foregoing degree of care and provided further that it shall immediately, upon discovery of any disclosure not authorized hereunder, notify the Discloser and take reasonable steps to prevent any further unauthorized disclosure or unauthorized use.

**REQUIRED DISCLOSURES.** Nothing in this Agreement shall be construed to prevent Guest from disclosing Confidential Information pursuant to an order of a court or other governmental authority of competent jurisdiction, as long as Guest promptly notifies the Discloser of its obligation to disclose and provides reasonable cooperation to the Discloser in any efforts to contest or limit the scope of such order or subpoena.

**NO WARRANTY.** All Confidential Information is provided "as is." Neither party makes any warranties, expressed or implied, regarding its Confidential Information's accuracy, completeness, suitability or performance.

**COMPLIANCE WITH LAWS.** Guest agrees to comply with all applicable laws while attending each Event, including antitrust laws. Without limitation, Guest agrees not to disclose or exchange information relating to Guest's current or projected product pricing (including price changes, price differentials, markups, discounts, allowances and terms and conditions of sale (including credit terms, etc.)) or data that bear on prices (including profits, margins or cost), expected purchasing requirements, sales plans, marketing plans, business forecasts or any other topic that relates to a party's ability or plans to compete.

**OWNERSHIP OF CONFIDENTIAL INFORMATION AND OTHER MATERIALS.** All Confidential Information and any Derivatives thereof remain the property of the Discloser and no license or other rights to Confidential Information is granted or implied hereby. Confidential Information includes all summaries and abstracts of the same. "Derivatives" shall mean, for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted.

**OWN RISK.** Notwithstanding the provisions of this Agreement, Guest agrees that participation in any activities at the Event(s) is solely at Guest's own risk.

**NO LICENSES GRANTED.** No licenses are granted by Guest to any other party to any of Guest's intellectual property, and no licenses are granted by any other party to Guest for such other party's intellectual property, as a result of their signing this Agreement and/or their participation in the Event(s), by implication, estoppel, or otherwise. Intellectual property shall include, without limitation, trademarks, copyrights, patents, mask works and trade secrets.

**TERMINATION.** This Agreement shall terminate upon the Termination Date set forth above. Guest's obligation not to use or disclose Confidential Information of the Discloser will terminate three (3) years after termination of this Agreement.

#### **GENERAL.**

Export Control. Each party covenants and warrants that it will not disclose to the other any information that contains information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains the written consent of the other party. In the case of UNH, the written consent must be executed by UNH's Director of Sponsored Programs Administration.

No Agency or Future Commitment. The parties do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the parties by this Agreement, and each party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the parties to enter into any subsequent agreement or relationship.

Entire Agreement/Amendment. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by a written instrument signed by an authorized representative of each party.

Assignment. This Agreement may not be assigned by either party without the other party's prior written consent.

Severability. The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof and the provision shall be reformed to be enforceable and reflect as closely as possible the intent of the original provision.

Waiver. Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.

Governing Law. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the state of New Hampshire.

Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, Guest has caused their respective duly authorized representatives to execute this Agreement as written below.

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

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

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

Company: \_\_\_\_\_

Date: \_\_\_\_\_