

CARTHON: "PROJECT X" CONFIDENTIALITY AGREEMENT

THIS AGREEMENT, herein known as "Agreement", is made between Timothy Carthon of Cleveland, OH, herein known as the "Disclosing Party", and _____ of _____ herein known as the "Receiving Party". Now therefore, in consideration of the promises and covenants contained in this Agreement and the disclosure of confidential information regarding code-name Carthon: Project X, herein known as "Project", each undersigned party (the Receiving Party and the Disclosing Party) agree as follows:

1. Confidential Information and Confidential Materials

Within this Agreement, the term "Confidential Information" shall include and/or mean all of the following:

- a.) Information that Disclosing Party designates as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential. "Confidential Information" includes, but is not limited to, information relating to released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. Confidential Information disclosed to Receiving Party by any Disclosing Party's subsidiaries, assigns, employees, heirs, representatives, successors, and/or agents is covered by this Agreement.
- b.) All tangible materials containing Confidential Information, including, but not limited to, written or printed documents and computer disks or tapes, whether machine or user readable, and know-how acquired as a result of contractual relationships.
- c.) Verbally-communicated information, commercial secrets, personal secrets, artistic secrets and state secrets. The terms confidential information and trade secrets are often used interchangeably but strictly speaking, trade secrets are a subset of confidential information in the context of business, commerce or trade. Examples of trade secrets can include, but are not limited to, manufacturing processes, developments, recipes, engineering, marketing, engineering and technical designs and drawings, product specifications, formulas, technology, customer lists, business strategies, inventions, sales and marketing information, distribution, sales methods and systems, sales and profit figures, finances, and software.
- d.) Technical information; methods; processes; formulas; compositions; inventions; machines; computer programs; research projects and business information as well such as customer lists; pricing data; sources of supply; and marketing production, or merchandising systems or plans.

2. Disclosure

Disclosing Party agrees to disclose, and Receiving Party agrees to receive and protect said Confidential Project Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the confidential information as the Receiving Party uses to protect its own confidential information of unlike and like nature.

3. Non-Disclosure & Nonuse

- a.) Receiving Party shall not disclose, make use of or disseminate and Confidentiality Information to third parties for five (5) years following the date of its disclosure by Disclosing Party to Receiving Party, except to Receiving Party's employee(s), contractor(s), consultant(s), representative(s) and/or lawyer(s) as provided within this agreement. However, Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order, provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

Code-name Carthon: "Project X" Confidentiality Agreement _____ (initial)

- b.) Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information. Receiving Party may disclose Confidential Information or Confidential Material only to Receiving Party's employee(s), contractor(s), consultant(s), representative(s) and/or lawyer(s) on a need-to-know basis during execution of the preparation for Sponsoring and/or Investing in said Project. Receiving Party will have executed or shall execute appropriate written agreements with its employee(s), contractor(s), consultant(s), representative(s) and/or lawyer(s) sufficient to enable it to comply with all the provisions of this Agreement.
- c.) Confidential Information and Confidential Material may be disclosed, reproduced, summarized or distributed only in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder. Receiving Party agrees to segregate all such Confidential Material from the confidential materials of others in order to prevent commingling.

4. Exclusions from Non-disclosure and Nonuse Obligations

Each party's obligations under Clause 3 ("Non-disclosure & Nonuse") with respect to any portion of the Disclosing Party's Confidential Information shall terminate, but only in this Clause's (Clause 4) regard, when the party seeking to avoid its obligation under such Paragraph can document that a disclosure of Confidential Information:

- a.) Occurred in response to a valid order by a court or other governmental body.
- b.) Was/is otherwise required by law, or...
- c.) Was/is necessary to establish the rights of either party under this agreement.

Such a disclosure as described in this Clause 4 shall *not* be considered to be a breach of this Agreement or a waiver of confidentiality for all other purposes contained within this Agreement; provided, however, that Receiving Party shall provide prompt written notice thereof to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure.

5. Non-Compete

During and after expiration or termination of this agreement, Receiving Party agrees not to compete with the business/businesses/Project associated with Project for a period of five (5) years within a 3,000 mile radius of Cleveland, OH.

6. Ownership of Confidential Information

All Confidential Information and Confidential Materials are and shall remain the property of Disclosing Party. By disclosing information to Receiving Party, Disclosing Party does *not* grant any express or implied right to Receiving Party under Disclosing Party patents, copyrights, trademarks, or trade secret information.

7. No Warranty

If either party provides pre-released software as Confidential Information or Confidential Materials under this Agreement, such pre-release software is provided "as is" without warranty of any kind. Receiving Party agrees that neither Disclosing Party nor its supplies shall be liable for any damages whatsoever relating to Receiving Party's use of such pre-release software.

8. Miscellaneous

The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products *without* use of the other party's Confidential Information. However,

Receiving Party shall *not* be free to use, for any purpose, the residuals resulting from access to or work with Disclosing Party's Confidential Information and shall maintain that confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Disclosing Party shall have right to limit/restrict the assignment of Receiving Party and to be paid royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents. Receiving Party cannot benefit from use of Confidential Information directly or indirectly in any form, without explicit written permission of Disclosing Party.

9. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the Project subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, his/its subsidiaries, assigns, heirs, representatives, successors, employees, and/or agents, but only try an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

10. Attorney Fees

If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled the recover of all attorneys' fees by other party.

11. Choice of Law

This Agreement shall be constructed and controlled by the laws of the State of Ohio (USA). Process may be served on either party by mail, postage prepaid, certified or registered, return receipt requested, or by such other traceable method as authorized by law. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.

12. Severability and Survival of Rights & Obligations

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

13. No Warranty on Project Action

Disclosing Party makes no representation or warranty that any product, business, event, or business plans regarding said Project disclosed to the Receiving Party will be marketed or carried out as disclosed, or at all. Any non-contractual actions taken by the Receiving Party in response to disclosure of Confidential Information shall be solely at their/its risk.

14. No Export

Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining both approval from Disclosing Party and such license, if necessary, from the Government.

15. Document Deletion Requests

Upon Disclosing Party's written request, the Receiving Party shall return to Disclosing Party or destroy all written material or electronic media regarding said Project and the Receiving Party shall deliver to Disclosing Party a written statement signed by the Receiving Party certifying same within 7 days from receipt of Disclosing Party's request.

16. Employees, Constituents and Contractors

- a.) During the course of the contract(s) between Disclosing Party and Receiving Party, there may be "Confidential Information" as define in Article 1 (one) of this document disclosed to the Receiving Party and/or employee(s), contractor(s), consultant(s), representative(s) and/or lawyer(s) of Receiving Party.
- b.) The Receiving Party and/or employee(s), contractor(s), consultant(s), representative(s) and/or lawyer(s) of Receiving Party shall not disclose, use for themselves or others, or divulge to others any trade secrets, confidential information, or any other data of Project in violation of this agreement during or at any time after the termination of their employment with Receiving Party (if applicable) whom/which they represent.
- c.) Upon the termination of employment from applicable company(s) represented by Receiving Party, said company, it employee(s), contractor(s), consultant(s), representative(s), lawyer(s), and Receiving Party shall return to the Disclosing Party or his/its designated representative(s) all documents relating to Project, including but not limited to, drawings, blueprints, reports, manuals, correspondence, customer lists, computer programs, and all other materials and all copies thereof relating in any way to Project, or in any way obtained by me during the course of the timeframe of this Confidentiality Agreement contained in Article 3.
- d.) If necessary to, on a need-to-know basis during execution of the preparation for Sponsoring/Investing in Project, Receiving Party further agrees to notify current, future and/or prospective employees of the existence of this agreement and ensure compliance with this agreement according to the generally-accepted best practices for handing Confidential Information.

17. Rights and Remedies

Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information and/or Confidential Materials, or any other breach of this Agreement by Receiving Party and/or applicable representative(s) of Receiving Party, and will cooperate with disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and/or Confidential Materials and prevent its further unauthorized use. Disclosing Party may visit Receiving Party's premises, with reasonable prior notice and during normal business hours, to review Receiving Party's compliance with the terms of this Agreement. This agreement shall be binding for signing parties and successors in interest, and shall inure to the benefit of the Disclosing Party, its successors and assigns. The unenforceability of any provision to this agreement shall not impair or affect any other provision. In the event of any breach of this agreement, the Disclosing Party shall have full rights to injunctive relief, in addition to any other existing rights, without requirement of posting bond.

18. Disclaimers

- a.) Receiving Party releases Disclosing Party, his/its current and future subsidiaries, successors, signatories, affiliates, assignees, licensees, employees, and heirs from any responsibility, especially financial, for any injury sustained while traveling to and/or from any event/function regarding and/or for said Project.

b.) The Disclosing Party does not infer that any individual, agency, or partnership relationship is or necessarily will be created between them and the Receiving Party by this Agreement.

19. Suggestions and Feedback

All information disclosed inside of the Project unveiling shall be deemed confidential. Receiving Party may, from time to time, inside and outside of Project confidential unveiling provide suggestions, comments or other feedback to the Disclosing Party with respect to Confidential Information provided originally by the Disclosing Party (hereinafter "Feedback"). Both parties agree that all Feedback (from Receiving Party only) is and shall be entirely voluntary and shall not, absent any intended or unintended violation of this Confidentiality Agreement, create a confidentiality obligation for either Party. However, the Receiving Party shall not disclose Disclosing Party's response to any feedback offered by Receiving Party without the Disclosing Party's written consent. Feedback outside of the Project unveiling shall be clearly designated as such and, except otherwise provided herein, Disclosing Party shall be free to disclose and use such Feedback as he/it sees fit, entirely without obligation of any kind to Receiving Party. The foregoing shall not, however, affect either party's obligations hereunder with respect to Confidential Information of the Disclosing Party.

"I have read, fully understand, and irrevocably agree with all terms and conditions set forth within this Agreement by the appearance of my printed name and signature below."

IN WITNESS WHEREOF, the parties hereto have caused this Confidentiality Agreement to be executed as of the Effective Date.

Receiving Party Name (Printed)

Receiving Party Email Address

Cell/Contact Number

Receiving Party Signature

Date

Disclosing Party Name

Date

Disclosing Party Signature

Date

Below is the Official Project, aka Carthon: "Project X", de-coded Project Name, for which the information within this Agreement (and Information disclosed to Receiving Party regarding the said Project) claims protection:

TBA

Agreement Effective Date: _____ The date of the Receiving Party's signature _____