

**THE LINUX FOUNDATION**  
**NDA PROGRAM**  
**CONFIDENTIAL DISCLOSURE AGREEMENT**  
**FOR DEVELOPERS**

This NDA Program Confidential Disclosure Agreement for Developers (the “Agreement”) is made by and between The Linux Foundation, an Oregon nonprofit mutual benefit corporation (“Company”), located at 210 Fell Street, Suite 16, San Francisco, California, and the undersigned consultant, an individual residing at the address set forth below (“Consultant”), as of the date of the Company’s signature below (the “Effective Date”).

WHEREAS, Company’s NDA Program (the “Program”) is intended to facilitate the sharing of certain proprietary software specifications, information and related materials between their third party owners and open source community developers who are actively working on projects that depend on the interfaces defined in such specifications, information and materials;

WHEREAS, Consultant desires to participate in the Program as a consultant of Company for the purpose of facilitating Consultant’s development of open source software products and/or drivers; and

WHEREAS, Company wishes to admit Consultant into the Program as a consultant of Company on the terms and conditions set forth herein.

NOW WHEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Engagement. Subject to compliance with the terms and conditions set forth herein, Company hereby admits Consultant to the Program and engages Consultant as its consultant as of the Effective Date.

2. Confidential Information. Consultant hereby acknowledges and agrees that, in connection with its participation in the Program, Company will disclose Confidential Information (defined below) to Consultant. For purposes of this Agreement, the term “Confidential Information” means the specifications, information or other materials described on Exhibit A hereto, as Exhibit A may be revised from time to time upon mutual written consent of the parties, and any and all other information or materials that may be disclosed by Company to Consultant during the term of this Agreement, to the extent such information is either (i) marked as confidential when disclosed or (ii) not marked as confidential when disclosed (including without limitation, information disclosed orally or visually) but treated as confidential and designated in writing to Consultant as confidential within 30 days after such disclosure. Notwithstanding the foregoing, the term “Confidential Information” shall not include information that (a) was in Consultant’s possession prior to the Effective Date other than by reason of Consultant’s contact with the Company or its agents, (b) is or becomes a matter of publicly knowledge generally through no act or omission of Consultant, (c) is received by Consultant from a third party that has the right to disclose it or (d) is developed independently by Consultant without any use or reference to any Confidential Information.

3. Permitted Use. Consultant acknowledges and agrees that, except as expressly provided in Section 4, below, Consultant may use the Confidential Information solely for reference purposes in order (i) to evaluate the feasibility of using such Confidential Information to develop open source software products; (ii) to aid in debugging issues and improving the overall stability and functionality of such open source software products; and (iii) to develop, use, modify and/or distribute such open source software

products, provided that each such open source software product shall only be distributed or otherwise made accessible under the terms of such Acceptable Open Source License (defined below) as Company selects from time to time in its discretion (such product as licensed, an “Open Source Software Program”). For purposes of this Agreement, an “Acceptable Open Source License” is an open source software license approved by the Open Source Initiative ([www.opensource.org](http://www.opensource.org)).

4. Obligations. Notwithstanding anything to the contrary in Section 3, Consultant will not at any time disclose, divulge or make accessible to any person or entity, or appropriate to the use of the Consultant or any third party, any Confidential Information, for any reason or purpose whatsoever, in any form; provided, however, that, Consultant may incorporate technically required components of the Confidential Information into Open Source Software Products developed by Consultant in accordance with Section 3 above, where such components must be incorporated into such Open Source Software Products in order for such Open Source Software Product to function properly. Consultant will use all commercially reasonable efforts to protect the Confidential Information and to prevent the unauthorized use, dissemination or publication thereof.

5. Ownership of Confidential Information. Consultant will obtain no right, title or interest in the Confidential Information, or any related information or data. The Confidential Information shall at all times remain the sole property of Company or the owner of such Confidential Information, as applicable.

6. Return of Information. Consultant will return all Confidential Information, including all copies in any form, to Company immediately upon termination of this Agreement.

7. Consulting. Nothing in this Agreement creates an employment contract or other agreement for a specific term, entitles Consultant to any payment, or otherwise alters the at will nature of Consultant’s consulting relationship with Company. Either party may terminate the consulting relationship at any time, for any reason, with or without prior notice.

8. Continuation of Obligations. Except to the extent this Agreement provides otherwise, the restrictions of and Consultant’s obligations under this Agreement will survive after Consultant’s consulting relationship terminates, regardless of the reason for termination. Upon termination of Consultant’s consulting relationship, Consultant agrees to execute and deliver to Company the Termination Certification in the form attached as Exhibit B to this Agreement.

9. Consent to Injunction. Consultant acknowledges that Company would suffer irreparable harm for which monetary damages alone would not adequately compensate Company if it breached this Agreement. For that reason, Consultant agrees Company shall be entitled to injunctive relief to enjoin any breach or threatened breach of this Agreement, in addition to any other available remedies.

10. Governing Law and Jurisdiction. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California. The exclusive jurisdiction for any action to interpret or enforce this Agreement shall be San Francisco County, California.

11. Attorney Fees. In the event of any suit, action or arbitration to interpret or enforce this Agreement, the prevailing party shall be entitled to its reasonable attorney fees, costs, and out-of-pocket expenses, at trial and on appeal.

12. Waiver. Company’s failure to demand strict performance of any provision of this Agreement shall not constitute a waiver of any provision, term, covenant, or condition of this Agreement or the right to demand strict performance in the future.

13. Successors and Assigns. This Agreement shall be binding upon Consultant's heirs, executors, administrators or other legal representatives and may be assigned and enforced by Company, its successors and assigns.

14. Entire Agreement. This Agreement constitutes the entire agreement of Company and Consultant with respect to the subject matter of this Agreement. Each of the rights, obligations and remedies provided for in these agreements shall be cumulative.

15. Severability and Enforcement. The parties agree that any provision of this Agreement or its application which is held invalid shall be modified as necessary to render it valid and enforceable. If any provision of this Agreement or its application is held invalid and cannot be modified to render it valid and enforceable, the invalidity shall not affect other obligations, provisions, or applications of this Agreement which can be given effect without the invalid provisions or applications.

16. Opportunity for Review. Consultant acknowledges that it has carefully read the foregoing Agreement, understand its contents, and signed it voluntarily.

**THE LINUX FOUNDATION**

**DEVELOPER:**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Exhibit A**

### **Specified Confidential Information**

The use of the following materials and information is exclusively governed by the terms and conditions of the NDA Program Confidential Disclosure Agreement for Developers to which this Exhibit is attached:

**[LIST ALL CONTRIBUTED TECHNOLOGY AS SPECIFICALLY AS POSSIBLE]**

## Exhibit B

### TERMINATION CERTIFICATION

I hereby certify that I have returned all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, flow charts, materials, equipment, documents, and property, including copies and reproductions of all of the aforementioned items belonging to or provided to me by the Company, its subsidiaries, affiliates, successors and assigns. I further certify that I have complied with all the terms of the NDA Program Confidential Disclosure Agreement for Developers signed by me (the "NDA").

I hereby affirm my continuing obligations under the NDA, notwithstanding the termination of my employment or consulting relationship.

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

Signature of Consultant: \_\_\_\_\_

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