

EXCELSIOR JET SUPPORT SERVICES NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

NO. ___ - _____

THIS AGREEMENT, effective the _____ day of _____ 20____, between EXCELSIOR, LLC, located in Novosibirsk, Russia, (hereinafter "EXCELSIOR"), and _____, located in _____ (hereinafter "CLIENT");

WHEREAS, EXCELSIOR is the vendor of computer software, designed to compile to native code programs written in the Java programming language, named JET; and the provider of support services for JET (hereinafter "SERVICES");

WHEREAS, CLIENT is the owner of computer software programs written in the Java programming language, including, but not limited to, their source code and/or Java bytecode (hereinafter "CODE") and associated documentation (hereinafter "DOCUMENTATION");

WHEREAS, CLIENT has experienced a problem using JET to compile the CODE and has called for the SERVICES;

WHEREAS, CODE and DOCUMENTATION are not public knowledge but are secret and will be disclosed to EXCELSIOR by CLIENT only under the terms of this Agreement, for the sole purposes of providing the SERVICES;

NOW, THEREFORE, the parties agree as follows:

1. Information Transfer

CLIENT transfers to EXCELSIOR the CODE and DOCUMENTATION, or representative portions of CODE and DOCUMENTATION sufficient for providing SERVICES, on the following terms:

EXCELSIOR may:

- a. Disclose the CODE and DOCUMENTATION to any employees who need to know of the CODE and DOCUMENTATION for fulfillment of EXCELSIOR's obligations under this Agreement, provided that such employees shall have agreed in writing to be bound by the terms of this Agreement or have entered into an agreement of similar scope and obligations with EXCELSIOR to protect and limit the use of the confidential information of EXCELSIOR or the confidential information of third parties in EXCELSIOR's possession;
- b. Modify the CODE; and
- c. Run modified or original CODE through any translation, conversion, measurement, or analysis tool in EXCELSIOR's possession.

EXCELSIOR agrees to:

- a. hold in confidence the CODE and DOCUMENTATION that is transmitted to it by CLIENT;
- b. hold in confidence the results of CODE compilation, conversion, analysis, measurement; and any other type of processing and not use these results for purposes other than set forth above; and
- c. not use the CODE or any part of the CODE in its software programs;

2. Ownership

All source code and associated documentation and any EXCELSIOR modifications thereto are and remain the property of CLIENT, and shall be returned within thirty (30) days after CLIENT makes written request for such return.

3. Restrictions

Nothing in this Agreement shall be interpreted as placing any obligation of confidentiality and nonuse on EXCELSIOR with respect to any portion of the CODE and DOCUMENTATION that:

- a. can be demonstrated to have been in the public domain as of the effective date of this Agreement or comes into the public domain during the term of this Agreement through no fault of EXCELSIOR;

- b. can be demonstrated to have been known to EXCELSIOR prior to execution of this Agreement and was not acquired, directly or indirectly, from the CLIENT or from a third party under a continuing obligation of confidentiality or limited use; or
- c. can be demonstrated to have been rightfully received by EXCELSIOR after disclosure under this Agreement from a third party who did not require EXCELSIOR to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, from the CLIENT under a continuing obligation of confidentiality.

Neither the execution of this Agreement nor the furnishing of any software programs, source code of software, and any associated documents hereunder shall be construed as granting either expressly or by implication, estoppel or otherwise, any license under or title to any invention, patent, copyright, trademark or trade name now or hereafter owned by or controlled by the CLIENT.

4. Expiration and termination

This agreement shall be effective for _____ years from the effective date or may be terminated upon thirty (30) days written notice by either party to the other party. The provisions of paragraphs 1, 2, 3, and 4, regarding the rights and obligations of the parties relative to versions of the CODE and DOCUMENTATION delivered prior to the expiration or termination of this Agreement shall survive any such expiration or termination.

Upon termination, EXCELSIOR has to destroy or return to CLIENT all copies of the CODE and DOCUMENTATION in its possession or under its control.

5. Legal addresses of parties

EXCELSIOR:

Excelsior, LLC
 Office 441, 6 Lavrenteva Ave.
 Novosibirsk, 630090 Russia
 Tel: +7 (3832) 39 78 24
 Fax: +1 (509) 271 5205
 E-mail: info@excelsior-usa.com

CLIENT:

6. Applicable Law

The validity and interpretation of this Agreement, and legal relations of the parties to it, shall be governed by the laws of _____.

7. Execution Clauses

Executed as an Agreement by the parties

Signed for and on behalf of EXCELSIOR:

(name)
 (title)
 (signature)
 (date)

Signed for and on behalf of CLIENT:

(name)
 (title)
 (signature)
 (date)