SAFECODE MEMBER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Agreement is entered into among the following parties: Software Assurance Forum for Excellence in Code ("SAFECode") and each member of SAFECode that has executed Exhibit A of this Agreement.

WHEREAS, the effectiveness of SAFECode and the ability of SAFECode to accomplish its purposes successfully will depend in part on the willingness of its members to supply information to SAFECode; and

WHEREAS, the members of SAFECode may wish to restrict the distribution or other use of information that they provide to SAFECode; and

WHEREAS, SAFECode also may wish to restrict the distribution or other use of information developed or obtained by SAFECode.

NOW, THEREFORE, the parties agree as follows:

1.   "Confidential Information" means any and all technical and non-technical information which any member of SAFECode provides to SAFECode, whether in writing (print or electronic form) or orally, and that such member does not wish to become public, including but not limited to materials, data, files, programs, research, and documents. "Confidential Information" shall also mean any and all technical and non-technical information which SAFECode develops or obtains and which SAFECode does not wish to become public, including but not limited to materials, data, files, programs, research, and documents.

2.   If any SAFECode member wishes to restrict the use and distribution of its Confidential Information only to SAFECode and the SAFECode membership, then the member shall clearly identify such information as "Member Confidential Information."

3.   Confidential Information of any SAFECode member identified by that member as "Member Confidential Information" shall be maintained in confidence by SAFECode and shall not be disclosed by SAFECode outside of the SAFECode membership. SAFECode shall exercise reasonable care to protect such Confidential Information from inadvertent disclosure and unauthorized access, including by requiring all SAFECode members to enter into materially similar confidentiality and non-disclosure agreements.

4.   Confidential Information of any SAFECode member identified by any that SAFECode member as "Member Confidential Information" also shall be maintained in confidence by all other SAFECode members and shall not be disclosed by any member outside of the SAFECode membership. All members shall exercise reasonable care to protect such Confidential Information from inadvertent disclosure and unauthorized access.

5.	Confidential Information of any SAFECode member that such member does not wish to be distributed to the SAFECode membership in its raw form, and wishes that SAFECode use only for trending or analysis purposes shall be identified by the member as "Member Confidential Information—SAFECode Trending & Analysis Only." SAFECode shall restrict the use and distribution of such Confidential Information accordingly.

6.	Confidential Information may be specific to a certain committee, working group or project, or to the Board of Directors. Such Confidential Information shall be identified as: "Member Confidential Information – For SAFECode <name of group> Participants Only." Such group-specific Confidential Information shall be maintained in confidence by SAFECode and by every SAFECode member that rightfully participates in the designated group, and shall not be disclosed by SAFECode or any participant of the designated group outside of that designated group's current roster of participants. SAFECode and every member authorized to participate in that designated group shall exercise reasonable care to protect such Confidential Information from inadvertent disclosure and unauthorized access beyond that designated group.

7.	Confidential Information identified by SAFECode as "SAFECode Confidential Information" shall be maintained in confidence by SAFECode and by every SAFECode member and shall not be disclosed by SAFECode or any member outside of the SAFECode membership. SAFECode and every member shall exercise reasonable care to protect such Confidential Information from inadvertent disclosure and unauthorized access.

8.	Any member's Confidential Information and SAFECode's Confidential Information may only be used by any other member, or SAFECode, in furtherance of the common purposes of SAFECode and its members and shall not be used for any other purpose. Nothing in this agreement, however, shall be construed to limit any member's right to independently develop or acquire products. Further, notwithstanding anything to the contrary, each member shall be free to use for any purpose the Residuals resulting from access to or work with such Confidential Information, provided that it shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this agreement. The term "Residuals" means any information retained in the unaided memories of the receiving member's employees who have accessed and used the disclosing member's Confidential Information pursuant to the terms of this agreement. An employee's memory is unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it in violation of this agreement. No member shall have any obligation to limit or restrict the assignment of such employees or to pay royalties for any work resulting from the use of Residuals. However, the foregoing will not be deemed to grant to any member a license under another Member's copyrights or patents.

9.   Each party to this Agreement shall immediately notify all other parties upon discovery of any loss or unauthorized disclosure or accessing of Confidential Information.

10.   Notwithstanding any other provision of this Agreement, any member or SAFECode may disclose Confidential Information of another member or of SAFECode to the extent required by law, but must give all other members, and SAFECode, reasonable prior notice to allow any other member, or SAFECode, a reasonable opportunity to obtain a protective order. No obligation under this Agreement will apply to Confidential Information that is: i) already rightfully in a party's possession at the time it is received or thereafter is rightfully received by a party without a nondisclosure obligation; ii) developed independently by a party; iii) publicly available when received, or thereafter becomes publicly available through no fault of a party; or iv) disclosed by the owner of the Confidential Information to a third party without a non-disclosure obligation.

11.   Except as permitted above, and upon the consent of the submitting party, neither SAFECode Members nor SAFECode will disclose Confidential Information for five years after submission. The five-year time period does not apply if applicable law requires a longer period.

12.   This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to conflict of laws principles.

13.   The parties acknowledge that material breach of the Agreement will cause irreparable damage, and therefore any non-breaching party shall be entitled to seek emergency injunctive relief under this Agreement as well as such further relief as may be granted by a court of competent jurisdiction.

14.   No waiver or amendment of any of the provisions of this Agreement shall be binding unless made in writing and signed by all parties. No failure on the part of any party to exercise, or delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such party preclude any other or further exercise thereof or the exercise of any other right or remedy. A waiver on one occasion shall not constitute a waiver on any further occasion.

15.   Should any additional company, firm, or other person be admitted to SAFECode membership pursuant to applicable provisions of the SAFECode Bylaws, such company, firm, or person shall, as a condition of membership, become a party to this Agreement by executing and delivering to SAFECode an additional signature page in the form attached hereto as Exhibit A. No further amendment to this Agreement shall be necessary to effect such action.

16.   The provisions of Sections 8, 10, 11, 12, 14, 16 and 17 shall survive the termination of this Agreement.

17.   The provisions of this Agreement constitute the entire agreement among the parties, and supersede all prior agreements and understandings, relating to the subject matter hereof. This Agreement may not be amended except by a writing signed by all parties hereto. This Agreement may be assigned by any party only upon written consent of all other parties. Any assignment absent such consent shall be void. This Agreement shall be binding upon the successors, heirs, and permitted assigns of each party.

18.   This Agreement may be executed by the parties in separate counterparts, and each of which when so executed and delivered shall be an original, but all counterparts shall together constitute one and the same instrument.

19.   This Agreement shall become effective for each party upon the party's execution of Exhibit A.

EXHIBIT A

SIGNATURE PAGE

The undersigned hereby agrees to be bound by the terms of the SAFECODE MEMBER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("AGREEMENT"), including the mutual covenants, promises, agreements, representations and warranties thereof, and, further, the undersigned, upon execution of this Signature Page, shall be joined as a party to that AGREEMENT effective upon such execution.

Name of Signing Organization: _____

_____   _____ _____
Signature   Name   Date