

THE ANDREW W. MELLON FOUNDATION
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OFFICE OF THE GENERAL COUNSEL AND SECRETARY

March 22, 2007

Jutta Treviranus
Adaptive Technology Resource Center
University of Toronto
130 St. George Street
Toronto, ON M5S 1A5

Dear Ms. Treviranus,

My colleagues in the Research on Information Technology program are pleased to be able to present to the Trustees of The Andrew W. Mellon Foundation (the "Foundation") the January 24, 2007 proposal submitted by you to Ira Fuchs for an appropriation of \$2,500,000 to the University of Toronto ("Toronto") for the development, in partnership with a number of other institutions, including without limitation, the University of California, Berkley, the University of British Columbia, the University of Cambridge, York University, Michigan State University, the University of Michigan, the University of Colorado, the Sakai Foundation, Moodle Pty, Ltd., IBM, Sun Microsystems and Yahoo! (collectively, not including Toronto, the "Partners"), of user interface software for academic community source projects as further described in the January 24, 2007 proposal (the "FLUID project").

The Foundation is supporting a number of similar projects. Broadly speaking, our program objectives are to enhance research, learning, and teaching. Our Trustees recognize that we cannot achieve these objectives without the investment of considerable resources. They require, accordingly, that we have an explicit understanding with Toronto about the rights of the Foundation in any intellectual property that might result from its investment in the FLUID project.

The Foundation does not expect to hold the intellectual property ownership rights in any software, source codes, processes, tools, techniques, architecture, prototypes, and/or related documentation created or developed in connection with or otherwise incorporated in the FLUID project, including but not limited to ally modified and/or derivative software products, source codes, processes, tools, techniques, architecture, prototypes, and/or related documentation (collectively, "Software"). Presumably, these would be the property of Toronto or the property of other owners from whom Toronto has obtained or will obtain usage rights. However, consistent with the Foundation's mandate to ensure that the products developed with its funds be used for the greatest possible educational benefit, this grant is conditioned upon the agreement of Toronto to the following terms:

1. Toronto shall, and shall obtain the agreement of the Partners to, distribute to the non-profit educational, scholarly and charitable communities all Software developed under the January 24, 2007 proposal on a royalty-free basis, pursuant to the open source Educational Community License and a Creative Commons license with respect to documentation.
2. Toronto shall take proactive steps in publications and at conferences to inform the non-profit educational, scholarly and charitable communities of the availability of the Software on a royalty-free, open source basis in an open source depository such as SourceForge.net and/or its project website, or office of technology transfer.
3. Toronto shall, and shall obtain the agreement of the Partners, to incorporate in the Software only those digital products, including but not limited to software, source codes, processes, tools, techniques and/or related documentation that can be used by the educational, scholarly and charitable communities without any licensing fee or restriction on use or further distribution.
4. Toronto represents and warrants, and shall obtain the agreement of the Partners, that all Software created or developed will either be: (a) created by employees of Toronto or a Partner acting within the scope of their employment as a "work made for hire" under 17 U.S.C. § 101 or appropriate equivalent if operating outside the U.S. and assigning all patent rights to Toronto or a Partner; or (b) created by contractors, consultants, advisors, students or other collaborators with whom Toronto or a Partner has entered into a signed, written contract, executed prior to the creation of the work assigning all rights, titles, and interest in such work to Toronto or Partners, or agreeing to make the Software available pursuant to the license set forth in Section 1.
5. Toronto shall, and shall obtain the agreement of the Partners, to use reasonable efforts to obtain all necessary licenses such that the Software developed by or for Toronto and/or the Partners for their use and use by third parties (in conformance with any terms and conditions of use imposed by Toronto or a Partner) will not infringe on the copyright, patent or other rights of any third parties.
6. Toronto agrees that any license or service fees charged by Toronto or the Partners for the Software will be for additional services or functionality beyond the specified Software and that neither the intent nor the reasonable effect of such fees will be to denigrate Toronto's commitment to provide effective, free-of-charge versions of the Software.
7. Toronto acknowledges and agrees that, to the best of its knowledge, the Foundation will derive no direct or indirect financial benefit from the FLUID project or the Software and that the Foundation has no right or ability to supervise or control the implementation and uses of the FLUID project or Software. In no event shall the Foundation or its officers, trustees, employees or agents be responsible for any representations or warranties made by Toronto or the Partners regarding the FLUID project or Software, nor shall the Foundation be liable for any direct, indirect, special,

consequential, punitive, incidental or other damages related to use by Toronto, the Partners or any third party of the Software. Toronto shall not, and shall obtain the agreement of the Partners not to, make any statements, representations or warranties or accept any liabilities or responsibilities whatsoever with regard to any person or entity that are inconsistent with any disclaimer or limitation specified in this paragraph 7.

8. Toronto represents and warrants, and shall obtain the agreement of the Partners, that any assignment or other transfer of the copyright in or ownership of the Software shall be subject to the representations, warranties and obligations under this Agreement (and any agreements between Toronto and the Partners with respect to Partner commitments Toronto is obligated to obtain hereunder), and any purported assignment or transfer to the contrary shall be null and void.

9. This Agreement constitutes the entire agreement and supersedes all prior communications, understandings, and agreements between the parties, whether written or oral, relating to the subject matter herein.

10. This Agreement shall be governed by the copyright laws of the United States and laws of the State of New York, without giving effect to its conflict of law principles. The parties agree to bring any suit with respect to this Agreement in the New York County, New York, and the parties consent to such jurisdiction.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement. In entering into this Agreement, the Foundation's sole interest is to serve scholarly purposes.

We ask that Toronto indicate its consent to these terms by having an officer with corporate authority sign below, thus binding Toronto, and by returning an original signed copy of this letter to me as soon as possible.

Sincerely,

Michele S. Warman
General Counsel & Secretary

Counter signed by:
Jennifer MacInnis
Acting Director, Intellectual
Property and Contracts
University of Toronto