

# MUTUAL NON-DISCLOSURE AGREEMENT

**Project Director, or PI Name:** \_\_\_\_\_  
**Project Sponsor (if applicable):** \_\_\_\_\_  
**CU Proposal Number (if applicable):** \_\_\_\_\_

THIS AGREEMENT, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ having its principal office at \_\_\_\_\_, hereinafter "Company" and Clemson University, having its principal office at Clemson, South Carolina, hereinafter "Clemson", establishes the terms and conditions under which the parties agree to exchange or disclose certain information, some of which may be confidential and proprietary and subject to the restrictions on use and disclosure that are expressed in this Agreement.

**WHEREAS**, the parties contemplate furnishing to or acquiring from each other data, services, or goods with the potential that the parties may do business together, and

**WHEREAS**, certain confidential information may be exchanged between the parties in a tangible or non-tangible form, and

**WHEREAS**, the parties desire to maintain and protect the confidentiality of such information,

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. Maintenance and Limited Disclosure of Confidential Information**

A. Company has developed certain information, some of which it considers to be confidential and proprietary information not publicly announced or disclosed, that relates to:

Company agrees to make a limited disclosure of this information to Clemson solely for the purpose of

B. Clemson has developed certain information, some of which it considers to be confidential and proprietary information not publicly announced or disclosed, that relates to:

Clemson agrees to make a limited disclosure of this information to company solely for the purpose of

C. The parties agree that all information (written, oral, or otherwise) is presumed to be non-confidential unless all written information, or information otherwise in a tangible form is clearly marked "CONFIDENTIAL" or "PROPRIETARY" at the time of disclosure. Information disclosed in a non-tangible form shall be considered confidential if, at the time of disclosure, it is described as "CONFIDENTIAL" or "PROPRIETARY" and if within 15 days following disclosure the disclosing party sends the other party a signed summary of the information including when, where, how, and to whom such disclosure was made.

D. The parties agree that all confidential information disclosed under this Agreement, unless written consent is otherwise granted by the disclosing party, shall be maintained in confidence for a period of three (3) year from the date of disclosure and shall be used solely in connection with the obligations undertaken in this Agreement.

E. The parties hereby agree that the obligations imposed upon either party herein shall not apply to Confidential Information which:

- (1) is or becomes publicly known through no wrongful act of the receiving party; or
- (2) was in the public domain at the time it was disclosed to the receiving party; or
- (3) was known to the receiving party at the time it was disclosed; or
- (4) is or was rightfully received from another without any breach of this Agreement; or
- (5) is independently developed by the receiving party; or
- (6) is approved for release by prior written authorization of the discloser; or
- (7) is required by operation of law to be disclosed.

The party seeking to establish such an exception has the burden of proving it with written documentation.

**2. Security**

- A. Access to all Confidential Information shall be restricted to those employees and persons in the receiving party's immediate organization (excluding parent corporations, subsidiaries, etc.) having a need to know to perform services specifically requested by one party or the other to fulfill the purpose of this Agreement. Such employees or persons shall be notified of the proprietary nature of such Confidential Information, and the receiving party shall use the same degree of care as it employs with its own Confidential Information, but in all events shall use at least a reasonable degree of care.
- B. Reasonable care to protect the Confidential Information shall include security at receiver's facilities to limit access to a need to know basis and education as to the need for security and confidentiality, etc.

**3. Limitation of Rights**

- A. Nothing contained in this Agreement shall be construed as granting any license of rights under any intellectual property, including, but not limited to, patents, trademarks, copyrights, mask works in semiconductor chips or other proprietary information.
- B. No furnishing of Confidential Information and no obligation hereunder shall obligate either party to enter into any further Agreement or negotiation with the other, or to refrain from entering into an agreement or negotiation with any other party which does not breach any of its obligations under this Agreement.

**4. Termination**

All copies, regardless of the medium, evidencing any and all disclosed Confidential Information shall be returned by the receiving party to the disclosing party upon written request by the disclosing party. The receiving party shall certify in writing that it has returned (or destroyed as in the case of fixation in computer storage mediums) all copies of the Information in its possession.

**5. Continuation of Confidential Obligations**

The obligations of Paragraphs 1-4, except as otherwise provided in Paragraphs 1.D and 1.E, shall remain in effect and bind the heirs, successors, assignees, and legal representatives of each party to this Agreement for a period of three (3) years after the expiration or termination of this Agreement.

**6. Disputes and Arbitration**

The parties agree that any disputes or questions arising under this Agreement, including the construction and application of this Agreement, shall be settled in a court of law with proper jurisdiction being South Carolina.

**7. Export Control**

Both parties agree that to the best of their knowledge and belief, that the information, i.e., technology, to be disclosed and protected under this Non-Disclosure Agreement is not subject to export licensing requirements of the U.S. Department of Commerce, 22 CFR 738, or the U.S. Department of State, 22 CFR 120. In the event it becomes necessary to disclose protected technology subject to the export licensing requirements, notification of the licensing requirements, i.e., applicable ECCN or U.S. Munitions List Category number, will be provided to the receiving party prior to the transfer of any export controlled technology.

**8. General**

- A. Any and all modifications or amendments to the Agreement must be in writing and signed by both parties.
- B. Each party acknowledges that this Agreement is a valid and legally binding obligation that has been executed by its authorized representative.
- C. This Agreement is governed by and construed in accordance with the laws of the State of South Carolina.
- D. A copy of this Agreement transmitted via facsimile, bearing the signature of one or both parties shall be deemed to be of the same legal force and effect as an original of the Agreement bearing such signature(s) as originally written by such one or both parties.
- E. The effective date of this agreement shall be the date of the last party to sign below and except for paragraph 5, above, which shall survive the expiration hereof, this agreement shall remain in effect for three (3) years from the effective date, unless otherwise terminated in writing by either party, which termination requires 30 days written notice from the terminating party to the other party.
- F. This Agreement constitutes the entire agreement between the parties, superseding any and all prior or contemporaneous oral or written representations, communications, understandings or agreements with regard to the subject matter hereof.

**COMPANY AUTHORIZED OFFICIAL**

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CLEMSON UNIVERSITY AUTHORIZED OFFICIAL**

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Completed forms may be submitted to:  
Clemson University  
Office of Sponsored Programs  
300 Brackett Hall  
Clemson, SC 29634-5702  
Attn: Jo Abernathy or Senior Contract Advisor**

*Revised: May 2006*

*H:\Contract\_CU\_Formats\Common\_Contract\_Conditions\Disclose\A Mutual NDA Form\_Perferred*