

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “**Agreement**”), effective as of __, 20____ (the “**Effective Date**”), is made by and between Midwest Microelectronics Consortium, Inc., a Delaware corporation (“**MMEC**”), and _____, a _____, with offices at _____, (the “**Undersigned Party**,” and individually with MMEC, a “**Party**” and collectively with MMEC, the “**Parties**”).

WHEREAS, each Party maintains its own Confidential Information (as defined below);

WHEREAS, the Parties desire to enter into certain discussions (the “**Discussions**”) related to certain research and business opportunities (collectively, the “**Purpose**”); and

WHEREAS, in support of the Purpose, each Party may wish to disclose to or receive from the other certain Confidential Information, subject to the terms of this Agreement.

NOW THEREFORE, the Parties agree:

1. *Confidential Information.* For purposes of this Agreement, “**Confidential Information**” shall mean any tangible and intangible business, technical or other information, whether written, graphic, electronic, oral, visual or any other form, that is disclosed by one Party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”), including: (a) processes, methodologies, data, drawings, devices, equipment, facilities, technology, formulations, specifications, ingredients, intellectual property, analyses, test results, databases, summaries, or comparisons; (b) finances, customers, suppliers, personnel, contracts, products, pricing, commercial practices, product applications, markets, and business strategies; and (c) all information communicated or observed in connection with a facilities tour, a demonstration, any visual, audio, or verbal presentation, or exhibition of any tangible materials during the Discussions. Information shall be deemed to be Confidential Information if it is (a) in writing, is marked “confidential,” “proprietary,” or other similar marking at the time of disclosure; (b) provided orally, visually or other non-written form, is identified as confidential at the time of disclosure and confirmed in writing to the Receiving Party within thirty (30) days of such disclosure. A Disclosing Party’s Confidential Information may include confidential information of a third party if disclosed by the Disclosing Party to the Receiving Party.

2. *Obligations Regarding Confidential Information.* Each Party agrees to treat all Confidential Information of the other Party as confidential, and agrees specifically that the Receiving Party will:

a. not use the Disclosing Party’s Confidential Information for the Receiving Party’s own benefit or for any other purpose other than for the Purpose;

b. limit dissemination of the Disclosing Party’s Confidential Information to only the Receiving Party’s employees, third party contractors, sub-contractors and service providers who have a need to know and require access to such Confidential Information in order to perform their duties in support of the Purpose, and who have been informed of the proprietary nature of the Confidential Information;

c. not disclose the Disclosing Party’s Confidential Information to any other third party without the prior written consent of the Disclosing Party, including disclosure as part of any submission to any agency of United States Government, whether as a deliverable or otherwise, and, even with such written consent, the Disclosing Party shall be given the opportunity, prior to disclosure, to apply

conforming markings to the Confidential Information as the Disclosing Party may be deem necessary, or as required under applicable United States Government regulations, to preserve its proprietary nature, and the Receiving Party shall not remove or alter any such conforming markings;

d. not intentionally aid, encourage, or allow any other person, business, or entity to gain possession of or access to any of the Disclosing Party's Confidential Information;

e. protect such Confidential Information by using the same degree of care, but no less than reasonable care, as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, and dissemination; and

f. upon discovery by the Receiving Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, promptly notify the Disclosing Party and take reasonable steps to recover the lost or improperly disclosed information and to prevent further unauthorized use or disclosure.

3. *Exceptions to Obligations.* The restrictions imposed by this Agreement upon use and disclosure of a Disclosing Party's Confidential Information shall not apply to the extent that information:

a. is within the public domain, or enters the public domain, through no fault of the Receiving Party;

b. is rightfully disclosed to the Receiving Party by a third party without restriction as to further disclosure or use;

c. was in the possession of the Receiving Party prior to receipt thereof from the Disclosing Party, as evidenced by verifiable records;

d. was independently developed by the Receiving Party by persons having no access to the Disclosing Party's Confidential Information, as evidenced by verifiable records; or

e. is ordered by a court of competent jurisdiction or required pursuant to applicable law to be produced by the Receiving Party; provided, however, that upon the receipt of any such order or legal requirement, the Receiving Party shall promptly, to the extent not prohibited by applicable law and to the extent possible given any applicable deadlines, notify the Disclosing Party so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement. In any event, the Receiving Party shall disclose only so much of the Confidential Information as it is legally compelled to disclose per advice of their legal counsel and upon request of Disclosing Party will take reasonable steps to obtain assurances that any Confidential Information it must disclose will be treated confidentially to the extent possible.

If any exception listed above applies to only a portion of any Confidential Information, the remainder shall continue to be subject to the prohibitions and restrictions of this Agreement. Confidential Information supplied by a Disclosing Party to a Receiving Party pursuant to this Agreement shall not be deemed to be publicly available or in the possession of Receiving Party merely because it encompasses general disclosures or sub-combinations that are publicly available, or in the prior possession of the Receiving Party. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principle of operation are in the public domain or in the Receiving Party's possession.

4. *Disclosure Period.* The term of this Agreement shall begin on the Effective Date and will terminate three (3) years from the Effective Date. Either Party may terminate this Agreement at any earlier time by giving the other at least thirty (30) days' prior written notice to the other Party, at the end of which this Agreement will be terminated. No termination or expiration of this Agreement shall affect either Party's obligations and rights herein with respect to Confidential Information disclosed prior to termination or expiration. The obligations under this Agreement shall continue until the third (3rd) anniversary of the termination of this Agreement.

5. *Compliance with Export Regulation and Similar Restrictions.* All information, including Confidential Information, exchanged hereunder may be subject to restrictions imposed by the United States Government and each Party agrees to comply with such restrictions. Disclosing Party agrees not to provide Receiving Party with any Confidential Information that may be subject to export control laws and regulations without first informing Receiving Party in writing prior to any such disclosure and shall not forward or provide any export-controlled information to Receiving Party without Receiving Party's express written permission.

6. *Relationship of the Parties.* This Agreement does not create any obligation of either Party to disclose any information to the other Party or to enter into any relationship, and either Party reserves the absolute right, in its sole discretion, to decline to participate in any relationship or other business opportunity and to terminate the Discussions. This Agreement does not create any right of one Party to represent, bind or make commitments of any kind for or on behalf of the other Party, or create any partnership, teaming, or other agency relationship between the Parties.

7. *Warranties.* Each Party represents to the other that it has the right to enter into this Agreement and to make the disclosures it makes pursuant to this Agreement. **ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS." NO WARRANTIES ARE MADE BY EITHER PARTY HEREUNDER (WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) IN RESPECT THEREOF, INCLUDING ANY WARRANTY WITH RESPECT TO COMPLETENESS, PERFORMANCE, ACCURACY, QUALITY, VALIDITY, FITNESS FOR PURPOSE OR USEFULNESS OF EXCHANGED INFORMATION.**

8. *No License.* The Parties agree that no license or other right to use the Disclosing Party's Confidential Information, patents, inventions, copyrights, trademarks, or other intellectual property is granted or implied by this Agreement, and the Parties acknowledge that the Disclosing Party owns the Disclosing Party's Confidential Information.

9. *Return of Confidential Information.* The Receiving Party agrees that, upon written request of the Disclosing Party, it will promptly return to the Disclosing Party all physical embodiments of the Disclosing Party's Confidential Information and all copies thereof, whether authorized or unauthorized, or, at the option of the Receiving Party, the Receiving Party shall certify in writing to the Disclosing Party as to the destruction thereof. If Confidential Information is in electronic form, Receiving Party shall, upon written request of Disclosing Party, make a reasonable effort to remove Confidential Information from their "live" computer file systems; *provided that* Confidential Information stored in computer backup media shall be exempted from the removal requirement provided it is not accessible in the ordinary course of business. Notwithstanding such return or destruction, the Receiving Party shall hold in confidence and not use all Confidential Information according to the terms of this Agreement. The Receiving Party may keep one (1) copy of the Disclosing Party's Confidential Information for archival purposes for use solely in the event a dispute arises hereunder and only in connection with such dispute.

10. *No Restriction on Business.* Each Party acknowledges that the other Party currently engages in its own business and research and that each Party intends to continue to do so. Nothing in this Agreement shall restrict either Party from engaging in such business or research provided that such Party does not use any of the other Party's Confidential Information in its business without the express written consent of the other Party.

11. *Points of Contact.* The primary points of contact for the Parties with respect to the exchange of Confidential Information and for the purposes of receiving notices under this Agreement are as follows:

Midwest Microelectronics Consortium, Inc. Attn: Jackie Janning-Lask 70 Birch Alley, Suite 240 Beavercreek, OH 45440 jlask@mmeconsortim.org	The Undersigned Party:
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Notices will be deemed validly given and effective upon delivery if delivered by hand, nationally recognized overnight courier, delivered by electronic mail, or other electronic means (in which case recipient will provide prompt acknowledgment separately from any machine-generated automatic reply), or by post (first class recorded delivery, with proof of posting, or certified mail). Each Party may change its designation by written notice to the other Party.

12. *Injunctive Relief.* Each Party acknowledges that due to the unique nature of the Confidential Information, any actual or threatened breach of any term or condition of this Agreement may cause immediate and irreparable harm to the other Party. Therefore, in addition to any other remedies that a Party may have at law or in equity, each Party will be entitled to seek preliminary and permanent injunctive relief to prevent a breach or threatened breach of the provisions of this Agreement.

13. *Final Agreement.* This Agreement sets forth the entire understanding between the Parties hereto relative to the disclosure of Confidential Information covered by this Agreement, and supersedes all previous or contemporaneous understandings, commitments, or agreements, written or oral, regarding such information. This Agreement shall apply in lieu of, and notwithstanding the language of, any specific legend or statement associated with any particular information or data exchanged, and the obligations of the Parties shall be determined exclusively by this Agreement. Confidential Information exchanged under other agreements between the Parties prior to the Effective Date of this Agreement shall be protected under the terms of those agreements unless such information is also disclosed under this Agreement or used in connection with the Discussions, thereby entitling that information to be protected hereunder. If the Parties subsequently enter into an agreement that requires or permits use or disclosure of Confidential Information disclosed pursuant to this Agreement, the terms of such later agreement requiring or permitting such use or disclosure shall provide a limited exception to the provisions of this Agreement.

14. *Severability.* In case any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal or unenforceable provisions shall be curtailed, limited, construed, or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied, and the other provisions of this Agreement shall not be affected thereby.

15. *Modification.* Any modification, rescission or amendment of this Agreement shall be effective only if in writing signed by an authorized representative of both Parties.

16. *Assignments.* Neither Party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. Any attempted assignment or transfer by any Party, or whether by agreement or occurring by virtue of the purported operation of law, shall be void. Except as so limited, this Agreement is binding on and shall inure to the benefit of the assigns and successors of the Parties.

17. *Waiver.* Any waiver of the provisions of this Agreement shall be in writing. Failure by either Party to enforce any of the provisions of this Agreement, or any right with respect thereto, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof.

18. *Construction.* This Agreement is deemed to have been jointly drafted by the Parties, and any uncertainty or ambiguity shall not be construed for or against any Party. The failure to include in or the fact of removal from the executed version of this Agreement of language that was included in prior drafts of this Agreement shall not be used by, or construed for or against, any Party in interpreting this Agreement. Use of the words “include” or “including” shall mean “include, without limitation” and “including without limitation,” respectively.

19. *Authority and Scope.* The persons executing this document for and on behalf of the Parties represent that they are fully authorized to do so for and on behalf of their respective principals.

20. *Counterparts.* This Agreement may be executed and delivered by facsimile or electronically by a scanned .pdf file and in any number of counterparts each of which when so executed and delivered shall be deemed to be an original, but which together shall constitute but one and the same instrument.

The Parties left the remainder of this page blank intentionally. The signature page follows.

The Parties have executed this Agreement as of the Effective Date.

Midwest Microelectronics Consortium, Inc. Signature: _____ Print Name: _____ Title: _____ Date: _____	_____ Signature: _____ Print Name: _____ Title: _____ Date: _____
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