

## NON-DISCLOSURE, CONFIDENTIALITY and PROJECT AGREEMENT

\_\_\_\_\_, CLIENT wishes to disclose to *Lake Superior State University - Prototype Development Center*, (UNIVERSITY) certain confidential, proprietary property, which relates to \_\_\_\_\_, the Project, for the purpose of permitting UNIVERSITY to possibly assist CLIENT in the development and marketing of the Project.

CLIENT wishes to maintain the confidentiality of the information disclosed to UNIVERSITY to preserve to CLIENT the commercial benefits from utilization of such information, except as may hereafter be specifically agreed in writing between the parties.

UNIVERSITY desires to evaluate the feasibility of performing certain tasks and procedures concerning proprietary property of CLIENT, to bid on performing such tasks, and/or to perform such tasks as may be agreed upon between the parties hereto.

THEREFORE the parties agree as follows:

"Confidential Information" shall include all information relating to business programs, inventions, trademarks, copyrighted material, trade secrets, existing products, potential products, applications, systems, components, technologies, pending/abandoned patent applications, and business topics. Without limiting the generality of the foregoing, Confidential Information includes, but is not limited to, the following types of information and materials, whether or not reduced to a tangible medium or still in development: human or machine readable documents, audio tapes, video tapes, computer discs, data, source code, object code, documentation, research, development plans, designs, drawings, specifications, engineering prints, machines, prototypes, articles of manufacture, processes, procedures, client lists, customer information, market research data, marketing techniques, marketing material, timetables, strategies, pricing policies, financial information, prospective trade names or trademarks, and other related information. UNIVERSITY expressly understands and agrees that confidential information shall also include all information received by UNIVERSITY prior to the signing of this agreement that would otherwise qualify as Confidential Information.

Unless UNIVERSITY specifically identifies with written consent of CLIENT that certain information is not encompassed by this agreement, all information disclosed by CLIENT to UNIVERSITY relating to the Project will be presumed to be confidential and will be so regarded by UNIVERSITY unless such information is publicly available.

UNIVERSITY agrees:

- (1) That it will maintain the confidentiality of CLIENT's Confidential Information except with the written permission of CLIENT;
- (2) That UNIVERSITY shall also ensure that any employee, student or subcontractor of UNIVERSITY participating in this engagement shall be bound by and agree to the obligations of UNIVERSITY herein respecting Confidentiality and Intellectual Property;
- (3) That all UNIVERSITY students involved in the design and execution of said Project will also sign confidentiality/non-disclosure agreements, and that, upon CLIENT's request, all such students shall be identified in writing to CLIENT;
- (4) That it will not disclose to any third party, including subcontractors of the UNIVERSITY, without written authorization from CLIENT any of CLIENT's Confidential Information;
- (5) That it will use CLIENT's Confidential Information solely to perform or determine the feasibility of performing certain tasks to be explicitly specified by CLIENT;
- (6) That it will not use for its own benefit or the benefit of any third party any of CLIENT's Confidential Information;
- (7) That it will not contract or negotiate with customers of CLIENT for UNIVERSITY to provide to such customers products manufactured by, or caused to be manufactured by, UNIVERSITY which incorporate or utilize any Confidential Information of CLIENT, and that UNIVERSITY shall not transmit or export, directly or indirectly, the Confidential Information or any technical data received from CLIENT, nor the direct product thereof, outside the United States unless properly authorized in writing by CLIENT and such transmission or export complies strictly with all the export laws and regulations of the United States;

## NON-DISCLOSURE, CONFIDENTIALITY and PROJECT AGREEMENT

- (8) That, except as may be further directed or requested by CLIENT, it will not sell, other than to CLIENT, any products manufactured from tooling or molds provided by CLIENT, or developed in accordance with or in response to CLIENT's Confidential Information;
- (9) That upon the termination of the relationship between the parties, which may be accomplished via fifteen (15)-day written notice by either party with or without cause, UNIVERSITY shall return any and all documents of any nature, originals and copies, to CLIENT. Furthermore, any information, technical or engineering procedure devised for concept which is developed at any stage during these negotiations or other contractual relationship between the parties shall be the sole property and for the sole benefits of CLIENT and shall not be used for any other purpose by UNIVERSITY, its agents, or representatives;
- (10) To hold harmless CLIENT, heirs, successors, assigns and legal representatives for liability incurred to persons who are injured as a consequence of UNIVERSITY's use of any Confidential Information, equipment, products, and prototypes;
- (11) That UNIVERSITY will not reverse-engineer or otherwise work to discover the technological principles of a mechanical application through analysis of its structure, function and/or operation with the intention to construct a new device or program that provides the same or competing function and operation; and,
- (12) That Ownership to any inventions, technology, and all intellectual property rights arising from this Project with UNIVERSITY shall be defined in writing and become part of this document by reference.

CLIENT agrees:

- (1) That CLIENT will indemnify and hold harmless UNIVERSITY against any and all litigation, actions, claims or proceedings whatsoever arising out of UNIVERSITY's execution of its obligations hereunder;
- (2) That it acknowledges that UNIVERSITY does not warrant the Project's merchantability, use, safety or patentability and that any decision to use any prototype product or process arising from the Project is solely that of the CLIENT;
- (3) That UNIVERSITY shall rely upon CLIENT for access to technical or other information used in completion of the project and UNIVERSITY will be entitled to rely upon the accuracy and completeness of such data and that UNIVERSITY may seek such additional data or analysis as may be reasonable to properly complete its engagement hereunder;
- (4) That UNIVERSITY's remuneration will be based on a fixed fee proposal acceptable to CLIENT and that CLIENT will also reimburse UNIVERSITY for reasonable out-of-pocket expenses (e.g. for travel cost incurred outside UNIVERSITY's principal location), and for any subcontracts, provided such expenses or costs are previously approved by CLIENT;
- (5) That in the event that the scope of the Project changes significantly from that which was originally contemplated, parties agree that a re-evaluation of the Project and modification of fees will occur;
- (6) To indemnify the UNIVERSITY, its officers, employees and agents, and student participants against any claims brought, or actions filed, against the parties in respect to the subject of indemnity herein recited, whether or not such claims or actions are valid, and against all costs incurred and the CLIENT further agrees that the UNIVERSITY, its officers, employees, agents, and student participants may employ an attorney of their selection to appear and defend the action at the CLIENT's expense; and,
- (7) To indemnify the University, its officers, employees, and agents, and the Student from all liability or loss, including attorney's fees, that the UNIVERSITY, its officers, employees or agents, or student participants may suffer or that may occur arising out of any claim, action or proceeding that may be brought against the UNIVERSITY, its officers, employees or agents, or student participants for:
  - a. Any violation of any patent in connection with the use, distribution, or sale of any design or any prototype resulting from the Project
  - b. Any injury or loss to any person or damage or loss to property including that of the CLIENT arising out of the use, distribution or operation of any design or prototype resulting from the Project

CLIENT and UNIVERSITY further agree:

- (1) That should this agreement be breached, money damages would be inadequate compensation, and therefore any court of competent jurisdiction may also enjoin the breaching party from disclosing or utilizing Confidential Information encompassed by this agreement;
- (2) The prevailing party shall be entitled to reasonable attorney fees in addition to any other amounts awarded as

**NON-DISCLOSURE, CONFIDENTIALITY and PROJECT AGREEMENT**

- damages;
- (3) This agreement may not be assigned or transferred in whole or in part by either party, except with the written consent of the other party. This agreement shall inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns;
  - (4) That the Laws of the State of Michigan shall govern this agreement and it shall be deemed executed in the city of Sault Ste. Marie in the state of Michigan;
  - (5) That both parties to this agreement consent to the exclusive jurisdiction and venue of the state and federal courts located in the State of Michigan, United State of America and that all parties agree that this choice of forum is convenient and waive any objection to the submission of such jurisdiction;
  - (6) This agreement sets forth all of the covenants, promises, agreements, conditions, and understandings between the parties and there are no covenants, promises, agreements, conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this agreement shall be binding upon either party unless reduced in writing and signed by them.
  - (7) This agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument;
  - (8) This agreement may be exchanged between the parties via facsimile and the facsimile signatures shall be treated as an original signature;
  - (9) If any of the terms of this agreement or any application thereof shall be invalid, illegal, or unenforceable, the remainder of this agreement, and any other application of such terms shall not be affected thereby; and,
  - (10) That each of the undersigned persons represents that he or she is authorized to sign this agreement on behalf of his or her respective party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Executed by the parties this \_\_\_\_\_, day of \_\_\_\_\_ year 20\_\_\_\_.

CLIENT:

UNIVERSITY: Lake Superior State University  
Prototype Development Center

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Morrie Walworth

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

Dean: College of Engineering Technology and Economic  
Development / Director: Intellectual Property and  
Economic Development