

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "**Agreement**") made this ____ day of _____, 2008 by and between Florida Gulf Coast University, a member of the State University System of Florida, acting for and on behalf of the Florida Gulf Coast Board of Trustees, a public body corporate of the State of Florida, (hereafter collectively referred to as FGCU) and _____, a(n) individual, corporation (circle one choice) having a residence/office at _____ (hereinafter RECIPIENT), relating to research and developments of FGCU (hereafter Developments) and possible assistance relating to and/or interest therein by RECIPIENT.

FGCU and RECIPIENT hereby acknowledge and agree that RECIPIENT shall have access to certain proprietary information of FGCU, which may include but is not limited to invention disclosures, plans, drawings, specifications, technical and business information, research and development, production processes, engineering information and processes, information regarding machines and equipment, computer program designs, programming techniques, flow charts, software, source code, object code, and financial, marketing and customer information, future research or business plans and other documents or information (both orally or in writing) relating to the Developments of FGCU (collectively, the "**Confidential Information**") as a result of disclosures made hereunder, to evaluate the Developments (collectively, the "**Transaction**"). Such disclosures are made subject to the terms and conditions of this Agreement.

RECIPIENT agrees to hold in confidence all Confidential Information now or hereafter disclosed to it, and further agrees not to use such Confidential Information except as necessary in connection with the Transaction. RECIPIENT shall have the right to communicate the Confidential Information to employees, professional representatives and other subcontractors or consultants retained, engaged or employed by RECIPIENT (collectively, "**Representatives**") who need to know such Confidential Information in connection with the Transaction, provided that each such Representative is informed that receipt of the Confidential Information is subject to the terms and conditions of this Agreement and each such Representative shall have signed a confidentiality acknowledgement prior to receipt of Confidential Information substantially in the form of Attachment A hereto. It shall be the responsibility of RECIPIENT to insure that all such Representatives who are not employees shall have signed the Attachment A to this Agreement before any disclosure of Confidential Information to such Representative, and to provide signed copies of Attachment A to FGCU. RECIPIENT shall be liable for any breach of this Agreement by its Representatives.

The confidentiality obligations and limitations shall not apply to any Confidential Information if the information can be shown by clear and convincing evidence that it:

- (a) is at the time of disclosure, or thereafter becomes public knowledge through no act or omission by RECIPIENT or its Representatives;
- (b) is known by, or is in the lawful possession of RECIPIENT prior to disclosure; or
- (c) is hereafter lawfully disclosed to RECIPIENT by any third party having the unrestricted legal right to disclose such Confidential Information, and which did not acquire the Confidential Information directly or indirectly from FGCU.

Confidential Information that is specific shall not be deemed to be previously or publicly known, ascertainable, obtainable or received by reason of general disclosures, and a combination of features shall not be deemed to be previously or publicly known, ascertainable, obtainable or received by reason of one or more, or all, individual features being contained in disclosures unless the specific combination itself and its principle of operation are so shown by written documentation.

It is understood that RECIPIENT and its representatives shall have full discretion with respect to selection of the Confidential Information to be disclosed under this Agreement.

FGCU and RECIPIENT agree that RECIPIENT shall:

- (a) take all reasonable steps and do all things as reasonably requested by FGCU from time to time, to keep the Confidential Information, and all documents, materials, media and all other things recording, containing, setting out or making reference to any Confidential Information, under RECIPIENT's effective control;
- (b) promptly notify FGCU in the event that it becomes aware of any unauthorized access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce, nor cause, permit or allow any other person to use, copy or reproduce, any document, material, medium or any other thing, recording, containing, setting out or making reference to any Confidential Information except in accordance with this Agreement;
- (d) take all reasonable steps to ensure that the Confidential Information and all documents, materials, media and all other things on or in which the Confidential Information may be recorded, contained, set out or referred to are kept secure and protected at all times from any unauthorized use or access; and

- (e) promptly upon either: (i) completion of the Transaction, or (ii) receipt of written notice from FGCU to do so, shall deliver, or at the option of the FGCU, destroy all documents or other media recording, containing, setting out or making reference to any Confidential Information, including without limitation all documents, notes, reports, memoranda, records on hard drives, disks, emails, jump drives and all other storage media, except for this and other agreements between the parties, and upon request, verify such destruction in writing to FGCU, all in accordance with Florida State retention requirements for which constitutes a public record and is governed by Chapter 119, Florida Statutes.

In the event that RECIPIENT or any of its Representatives is requested in any legal proceeding to disclose any Confidential Information, that party shall give the other party prompt notice of such request so that the disclosing party may seek an appropriate protective order. Each of the parties will use its reasonable best efforts to consult with each other before making any such disclosure under a protective order.

The RECIPIENT understands that the Confidential Information may have been developed under a grant or contract from the federal government or the United States of America and/or the government of the State of Florida. The federal government or the state government may be entitled to certain rights in the Confidential Information and may also be entitled to certain limited royalty free licenses to use any part of the Confidential Information which constitutes and invention. FGCU agrees to provide RECIPIENT with further information about any governmental rights as part of the Confidential Information if the RECIPIENT requests such information in writing.

The RECIPIENT specifically agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that FGCU shall be entitled to specific performance and injunctive relief as remedies for any breach. Such remedies shall not be deemed to be exclusive remedies for breach of the Agreement, but rather shall be in addition to all other remedies available at law or in equity.

In consideration for access to FGCU's Confidential Information, RECIPIENT hereby agrees to assign to FGCU all of RECIPIENT's rights in any developments and/or improvements in the Developments, both patentable and unpatentable, which RECIPIENT may discover or develop alone or jointly with others, and RECIPIENT agrees to execute any documentation and/or take all other steps reasonably requested by FGCU to secure FGCU's ownership of such developments and/or improvements. Improvements for these purposes shall mean any and all information made or acquired by RECIPIENT, whether patentable or non-patentable, advantageous to use of the Developments, to equipment for use in the Developments, or to produce product or market product made by use of the Developments, along with any copyright rights in any software. The development of any software hereunder is as a work for hire, and RECIPIENT shall transfer any rights therein to FGCU.

In exchange for the opportunity to review FGCU's Developments, RECIPIENT shall not participate in any business embodying the Developments revealed by FGCU for a period of two (2) years from the date of termination of the Transaction under this Agreement or any receipt of any materials or information from FGCU, whichever is longer.

This Agreement shall not terminate with the termination of the Transaction but rather extend for a period of five (5) years from the date of disclosure of the particular Confidential Information or until the Confidential Information shall voluntarily have been made public by FGCU, whichever is longer. RECIPIENT acknowledges that the useful life of the Developments is at least five (5) years.

This Agreement shall be governed by the laws of the State of Florida. The parties, acting for themselves and their respective permitted successors and assigns, hereby expressly and irrevocably consent to the exclusive jurisdiction of the state and federal courts Fort Myers, Florida unless in connection with another agreement between FGCU and RECIPIENT, for any litigation which may arise out of performance under or related to this Agreement. The parties submit to the personal jurisdiction of such courts in Florida, and specifically waive any objection based on *forum non conveniens* or objection to venue to such courts.

This Agreement contains the entire understanding between the parties pertaining to the subject hereof, and no modifications shall be binding except by a written instrument signed by both parties to this Agreement. RECIPIENT shall not assign its rights and obligations under this Agreement (whether by operation of law or otherwise) without the prior written consent of FGCU. FGCU has the right to assign its rights and obligations under this Agreement to any affiliate or subsidiary of FGCU without the consent of RECIPIENT.

This Agreement is made and entered into between the parties as of the date first set forth above.

Florida Gulf Coast University

Dr. Thomas J. Roberts

Associate Vice President for Research

Signature: _____

Date: _____

Recipient

By: _____

Title: _____

Date: _____

ATTACHMENT A

_____ acknowledges and agrees that I have read the foregoing Confidentiality Agreement between Florida Gulf Coast University, and the named Recipient.

I agree and acknowledge that I am bound to the terms and obligations of the Confidentiality Agreement, the same as with my name substituted for Recipient in the Confidentiality Agreement.

Florida Gulf Coast University

Above Named Individual

By: _____

Date: _____

Date: _____

Form of Identification:

Social Security No. OR Tax Id. No. _____

OR (If Individual) Driver's License No. _____