

# SAMPLE

## PROPRIETARY INFORMATION AGREEMENT BETWEEN **COMPANY NAME** AND GEORGIA TECH RESEARCH CORPORATION

THIS AGREEMENT is effective the **DAY day of MONTH, 2006**, by and between **Company Name** having its principal offices at **Company Address** (hereinafter referred to as "**COMPANY**"), and the **Georgia Tech Research Corporation**, a nonprofit corporation organized and existing under the laws of the State of Georgia and having its principal offices at 505 Tenth Street, Atlanta, Georgia 30332 (hereinafter referred to as "**GTRC**").

WHEREAS, **COMPANY** may disclose to **GTRC** and **GTRC** may disclose to **COMPANY**, certain technical data or information that is commercially valuable and not generally known in its industry of principal use (hereinafter collectively referred to as "Proprietary Information") pursuant to **GTRC**'s performance of certain research pertaining to **technical subject matter** (hereinafter referred to as the "Subject Matter") in order to **purpose of the exchange of information/research** (hereinafter referred to as "Purpose"); and

WHEREAS, **COMPANY** and **GTRC** desire to provide a procedure for the exchange of such Proprietary Information;

NOW, THEREFORE, in consideration of the mutual obligations contained herein, **COMPANY** and **GTRC** hereby agree as follows:

1. The exclusive points of contact with respect to the transmission and control of Proprietary Information exchanged between **COMPANY** and **GTRC** hereunder are designated by the respective parties as follows:

<b>COMPANY:</b>	<b>GTRC:</b>
Name	Name
Company	Department
Address Line 1	Georgia Institute of Technology
Address Line 2	Atlanta, GA 30332-Mail Code
Ph: phone number      Fax: fax number	Ph: phone number      Fax: fax number
Email: email address	Email: email address

Either party may change its point of contact upon written notice to the other party.

2. **GTRC** and **COMPANY** agree to use reasonable care to hold in confidence and not disclose any and all Proprietary Information disclosed by either party hereunder. The obligations of each party receiving Proprietary Information shall extend for five (5) years from the initial date of disclosure hereunder and shall be considered satisfied if the party uses the same degree of care to protect and avoid disclosure of Proprietary Information it receives hereunder as the receiving party uses to protect and avoid disclosure of its own Proprietary Information but in no event less than a reasonable standard of care. Each party shall use the Proprietary Information only for and to the extent required to

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accomplish the Purpose of this Agreement. The parties shall only disclose the Proprietary Information to those employees of their companies that have a legitimate business need for such information and only for and to the extent required to accomplish the Purpose of this Agreement. Notwithstanding the foregoing, GTRC is a cooperative organization of the Georgia Institute of Technology ("GIT") and may disclose Proprietary Information to GIT provided that GIT is obligated to GTRC under terms at least as restrictive as those contained in this Agreement not to disclose Proprietary Information to any other third party.

3. Written information exchanged hereunder shall be considered Proprietary Information for the purposes of this Agreement only if such information is clearly marked with an appropriate stamp or legend as Proprietary Information. Nonwritten information exchanged hereunder shall only be considered Proprietary Information if, at the time of such disclosure, the Information being disclosed is identified as proprietary and the disclosing party provides the receiving party with a writing which clearly identifies the nature and content of the disclosed information within twenty (20) days after such disclosure.

4. Proprietary Information does not include Information which:

- (a) is published or otherwise in the public domain through no fault of the receiving party; or
- (b) can be demonstrated by the receiving party to have been in its possession prior to receipt under this agreement; or
- (c) is obtained by the receiving party without restriction from a third party; or
- (d) is independently developed by the receiving party by individuals who have not had either direct or indirect access to such information; or
- (e) is disclosed by the receiving party to a third party with the written approval of the disclosing party without any restriction.

5. Neither party shall be liable to the other for the disclosure of Proprietary Information that is obligated to be disclosed by order of a court of competent jurisdiction.

6. The term of this Agreement shall be three (3) years from the effective date of this Agreement. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Proprietary Information shall be protected in accordance with this Agreement for the period of protection as stated in section 2 of this Agreement regardless of earlier termination or expiration of this Agreement.

7. The validity, interpretation, and effect of this Agreement shall be governed by the laws of the State of Georgia. Suit under this Agreement shall only be brought in a court of competent jurisdiction in the State of Georgia.

8. Neither party shall assign, nor in any manner transfer, any Proprietary Information received

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hereunder or its interests in this Agreement or any part hereof, without first obtaining the prior written approval of the other party. Notwithstanding the foregoing, Company expressly acknowledges that GTRC may assign some or all of its obligations and rights to GIT.

9. A receiving party shall not be liable for accidental or inadvertent disclosure or use of Proprietary Information received pursuant to this Agreement, if such receiving party shows that the standard of care as stated herein was employed in the protection and handling of the disclosing party's Proprietary Information, and that upon discovery, the receiving party made a reasonable effort to retrieve any such accidentally or inadvertently disclosed Proprietary Information and took such additional measures as may reasonably have been required under the circumstances to prevent any further unauthorized disclosure and use of the disclosing party's Proprietary Information.

10. In furnishing any information hereunder, the disclosing party makes no warranty, guarantee, or representation, either expressed or implied, as to its adequacy, accuracy, sufficiency or freedom from defects or that the use or reproduction of any information shall be free from any patent, trade secret, trademark or copyright infringement. The disclosing party shall not be liable in damages of whatever kind or for any costs, expenses, risks, or liabilities as a result of the other party's receipt or use of, or reliance on, any such information furnished hereunder.

11. The receiving party agrees that no technical data received hereunder shall be exported or disclosed to any foreign national, firm or country, including foreign nationals employed by or associated with the receiving party, without first complying with the U.S. Export Administration Regulations (EAR) and/or U.S. International Traffic in Arms Regulations (ITAR), including obtaining an export license or technical assistance agreement, if applicable. The parties do not anticipate the need to disclose technical data that is subject to control under the EAR or ITAR (collectively "export controlled information").

Company agrees that it shall not provide any export controlled information to GTRC. Nonetheless, Company acknowledges that if it desires to disclose export controlled information there exists a strong likelihood that faculty and/or students involved in fulfilling the Purpose may be foreign persons. Company agrees to cooperate with GTRC in assuring compliance with applicable export control regulations by marking such export controlled information with a statement identifying the applicable Export Control Regulation(s).

12. This Agreement contains the entire understanding between the parties concerning the exchange of Proprietary Information relative to the Subject Matter stated herein, and supersedes any prior agreements, oral or written. This Agreement may not be modified, except by written amendment duly executed by an authorized representative of each party. All authorizations and notices hereunder shall be forwarded to point of contact identified in this Agreement.

13. Nothing in this Agreement shall grant to a party the right to make commitments of any kind for, or on behalf of, another party. This Agreement is not intended to be, nor shall it be construed as, a joint venture, teaming relationship, partnership, or other formal business arrangement.

14. If any provision of this Agreement shall be held invalid or unenforceable, such provision will be deemed deleted from this Agreement without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

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15. This Agreement may be signed in one or more counterparts (including faxed copies), each of which shall be deemed one and the same original.

IN WITNESS WHEREOF, GTRC and COMPANY have caused this Agreement to be executed by their duly authorized representatives.

**COMPANY:**

By:

Name:

Title:

Date:

**GEORGIA TECH RESEARCH CORPORATION:**

By:

Name:

Title:

Date:

APPROVED AS TO LEGAL FORM: \_\_\_\_\_