

University of Washington Microfabrication Facility, Fluke Hall

NON-DISCLOSURE AGREEMENT

This Agreement is effective as of the beginning date set forth in section 4 below, by and between the University of Washington, an agency of the State of Washington and an institution of higher education with its principal campus located in Seattle Washington (hereinafter "UW") operating a Microfabrication Facility in Fluke Hall and <COMPANY> (hereinafter "Company").

WHEREAS, the parties may exchange certain proprietary, confidential information relating to proposed and ongoing projects and activities with Company associated with the use of the Microfabrication Facility;

NOW, THEREFORE, to assure that all such proprietary information will be maintained under circumstances of strict confidentiality, the parties acknowledge and agree as follows:

1. DEFINITIONS

Proprietary Information means any information relating directly or indirectly provided to a party (the "Receiving Party") or its assignors/inventors and identified as Proprietary Information at the time it is provided to the other party (the "Disclosing Party"). Proprietary Information may be conveyed in written, graphic, oral or physical form and may include scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, data, plans or other records and information. Proprietary Information made available in written form to the Receiving Party will be marked with the legend, "PROPRIETARY INFORMATION", "CONFIDENTIAL", or an equivalent conspicuous legend.

Proprietary Information does not include information which the Receiving Party can demonstrate:

- (a) Was in the Receiving Party's knowledge or possession prior to disclosure to Receiving Party;
- (b) Was public knowledge or has become public knowledge through no fault of the Receiving Party;
- (c) Was properly provided to the Receiving Party by an independent third party who has no obligation of secrecy to Disclosing Party;
- (d) Was independently developed by the Receiving Party without benefit or use of the Proprietary Information as documented by written evidence; or
- (e) Was approved for release by written authorization of the Disclosing Party.

2. UW MAINTENANCE OF INFORMATION

Receiving Party agrees to maintain Proprietary Information as confidential and agrees not to disclose Proprietary Information to any third party, nor to use Proprietary Information for Receiving Party's own benefit or for the benefit of any other person or entity. This agreement shall be in effect upon signing and its obligation to maintain Proprietary Information as confidential shall extend for two (2) years after the date of termination of this agreement. Upon Disclosing Party's request, Receiving Party will immediately return all Confidential Information in Receiving Party's possession.

Receiving Party may disclose certain Proprietary Information that is required by law to be disclosed by Receiving Party, provided that Receiving Party (a) gives Disclosing Party prompt written notice of such requirement prior to such disclosure; (b) cooperates with Disclosing Party in obtaining an order protecting the information from public disclosure at Disclosing Party's expense; and (c) limits the disclosure to the specific Proprietary Information and to the extent reasonably required by law to be disclosed. If Disclosing Party fails to

obtain the court order enjoining disclosure, Receiving Party will release the requested information on the date specified.

3. UW USES OF PROPRIETARY INFORMATION

When acting as a Receiving Party, UW may use the Company's Proprietary Information only for the purpose of analyzing and evaluating the potential technical and commercial uses of the Proprietary Information in the conduct of Microfabrication Facility research and development as directed by Company. The following further restrictions apply:

(a) UW staff working within the Microfabrication Facility or otherwise having access to the Proprietary Information may not use, or disclose Proprietary Information for purposes of manufacture or procurement of any invention contained within the Proprietary Information, and

(b) UW shall not use Proprietary Information for its own research purposes, or to develop products or technologies for commercialization.

4. TERM AND TERMINATION

This agreement will begin on _____ and end on _____. This agreement may be earlier terminated at any time by either party upon thirty (30) days' written notice to the other party.

5. AMENDMENTS

Any amendments to this Agreement must be in writing and signed by authorized representatives of both UW and Company.

6. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and supersedes all previous representation, understandings, or agreements, oral or written, between the parties with respect to the subject matter hereof.

7. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and performance determined in accordance with the laws of the State of Washington, and both parties hereby consent to exclusive jurisdiction and venue of the King County Superior Court of the State of Washington in any dispute arising under or in the course of this Agreement.

8. ASSIGNMENT AND BINDING EFFECT

Neither party may transfer or assign its rights or obligations under this Agreement except with the express written consent of the other party. This Agreement shall inure the benefit of and be binding upon each of the parties hereto and their respective permitted successors and assigns.

9. WAIVER

No provision of this Agreement shall be deemed to have been waived by any act of or acquiescence on the part of any party. A waiver may only occur by an instrument in writing signed by an authorized representative of the party waiving the particular provision involved. No waiver of any provision of this Agreement shall constitute waiver of any other provision or of the same provision on any other occasion.

10. RELATIONSHIP OF THE PARTIES

The parties agree that the relationship between the parties established by this Agreement does not constitute a partnership, joint venture, agency, or contract of employment of any kind between them and that nothing herein shall be interpreted as establishing any form of exclusive relationship between the parties. The parties further agree that nothing herein shall be interpreted as precluding either party from entering into agreements similar to this agreement with third parties or from conducting educational, research or other activities that may involve the

same or similar subject matter as this agreement, the conduct of which is outside and independent of this agreement, providing that any such educational, research or other activities are not done in a manner that is inconsistent with the rights and obligations of the parties to this agreement.

11. REASONABLE COSTS

In the event an action is commenced to enforce a party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and attorney's fees.

12. NOTICES

Unless otherwise specified under this Agreement, any and all notices, requests, or demands permitted under this Agreement shall be made in writing and shall be deemed to have been given or made when delivered in person, or, when sent by electronic mail or FAX (with receipt confirmed), or, sent by same day or overnight courier, or, deposited in the United States certified registered mail, return receipt requested, postage prepaid, addressed to the parties at its address as the same appears above, or at such other address as the parties subsequently may furnish to the other party by notice hereunder.

13. EXPORT CONTROL

Both Parties understand that the parties are subject to and that their obligations under this Agreement are contingent upon compliance with certain laws and regulations of the United States applicable to the export of technical data and information, computer software, laboratory prototypes and other commodities (including without limitation the Arms Export Control Act, as amended, and the Export Administration Act of 1979) ("Export Controlled Materials"). Both Parties understand that Proprietary Information may include Export Controlled Material. Both Parties understand that the transfer of any Export-Controlled Material to the other Party or any Third Party may require a license from a cognizant agency of the United States Government and/or written assurances by the other party that they shall not transfer Export-Controlled Material to certain foreign countries without the prior approval of an appropriate agency of the United States government. **Neither Party represents that any such export license shall not be required, nor that, if required, it shall be issued. Both Parties agree that they will not provide or make accessible to the other any Export-Controlled Materials without first notifying the other in writing of the existence and nature of the Export-Controlled Materials and obtaining the prior written agreement of the other party, through a duly-authorized representative, for that party to receive such Export-Controlled Materials. All Export-Controlled Materials shall be conspicuously labeled "Export Controlled" together with any applicable Export Control Classification Number.**

Institution
Signature _____
Printed Name _____
Title _____
Date _____

UW MFF/NTUF:
Signature _____
Printed Name _____
Title _____
Date _____

Contact Information:

University of Washington
College of Engineering
371 Loew Hall, Box 352180
Seattle, WA 98195-2180