

NON-DISCLOSURE OF PROPRIETARY INFORMATION AGREEMENT
between
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
and

AGREEMENT NUMBER: USM_____

THIS AGREEMENT made, entered into, and effective as of _____, by and between the UNIVERSITY OF SOUTHERN MISSISSIPPI, hereinafter referred to as "USM" and having a place of business at Hattiesburg, Mississippi and _____, hereinafter referred to as "AGENCY" and having a place of business _____.

WHEREAS, AGENCY and USM intend to engage in discussions relating to _____

WHEREAS, in the course of such discussions, information and data including without limitation, writings, drawings, computer software, documentation, models and prototypes may be exchanged which may be proprietary, business confidential or competition sensitive to the party disclosing it; and

WHEREAS, AGENCY and USM wish to protect such disclosed proprietary, business confidential or competition sensitive information from unauthorized use and disclosure by the receiving party; and

WHEREAS, USM has and will provide certain proprietary business confidential or competition sensitive information which both parties hereto agree to handle pursuant to the terms of this Agreement; and

NOW THEREFORE, IN CONSIDERATION OF THESE PREMISES, AGENCY and USM hereby agree that:

1. In order to be eligible for the protection afforded by this Agreement, proprietary, business confidential or competition sensitive information disclosed by one party to the other pursuant to this Agreement shall include:
 - (a) all information between the parties related to design of a new type of protective holder for portable computers and other various electronic devices whether verbal, visual, written, electronic or prototype form and transmitted either by presentation, discussion, mail, electronically by computer, email, fax or telephone.

Proprietary, business confidential or competitive sensitive information meeting the conditions of this section shall hereinafter be referred to as the "INFORMATION".

2. Each party receiving INFORMATION disclosed to it by the other party pursuant to this Agreement shall not;
 - (a) disclose such INFORMATION to any third party; nor
 - (b) disclose such INFORMATION to any person within its organization not having a "need to know", in order to carry out the purposes of this Agreement; nor
 - (c) make copies of the INFORMATION except as may be reasonably necessary for the purpose expressly contemplated by this Agreement for an archival or back-up copy; nor
 - (d) use such INFORMATION for any purpose other than that expressly contemplated by this Agreement.
3. Notwithstanding the restrictions above with respect to disclosure of INFORMATION to third parties, the parties may incorporate such INFORMATION in a proposal, report or other submittal to the U.S. Government provided, however, that information disclosed to the U.S. Government bears restrictive legends according to FAR 52.215-12 and FAR 15.509 (and similar DFARS provisions) or like successor provisions.
4. A receiving party shall not be liable for any unauthorized disclosure of the INFORMATION disclosed to it if the same:
 - (a) is disclosed and/or used by such receiving party after a period of five (5) years has elapsed from the date of receipt of the INFORMATION or;
 - (b) is disclosed and/or used by such receiving party following the prior written approval of the disclosing party.
5. Neither party shall be liable for the inadvertent or accidental disclosure of the INFORMATION provided that it has exercised the same degree of care that it normally exercises to preserve its own proprietary, business confidential or competition sensitive information, provided that such degree of care shall, in no case, be less than the prevailing standard of care in the receiving party's Industry, and provided, further, that upon discovery of such inadvertent or accidental disclosure, the disclosing party is notified and all reasonable steps are taken to retrieve such disclosed INFORMATION and to prevent any further disclosure of the INFORMATION.
6. The provisions of this Agreement shall not apply in the event that the INFORMATION:

- (a) is, at the time of disclosure, or later becomes, known to the general public (other than as a result of the breach of this Agreement); or
- (b) was previously known to the receiving party, and can be shown to have been so known by the receiving party's written records, before receipt thereof from the disclosing party; or
- (c) is received by the receiving party, without any obligations of confidentiality, from a third party who has the legal right to disclose the same; or
- (d) is independently developed by the receiving party as shown by that party's written records.

7. For the purpose of administering the provisions of this Agreement, the exclusive points of contact with respect to the transmission, receipt and control of INFORMATION exchanged hereunder are designated by the respective parties as follows:

University of Southern Mississippi
 Dr. Cecil D. Burge
 Associate Vice President for Research
 P.O. Box 5116
 Hattiesburg, MS 39406-5116

The term of this Agreement shall commence upon the effective date thereof, as stated herein above, and shall terminate five (5) years thereafter. Only INFORMATION communicated between the parties during said term shall be subject to the protections of this Agreement.

9. ALL INFORMATION including all copies thereof shall remain the property of the disclosing party. ALL INFORMATION and copies thereof shall returned to the disclosing party, at the disclosing party's option, and shall not be further used by the receiving party, upon whichever of the following events is first to occur:

- (a) within thirty (30) days after the termination of this Agreement; or
- (b) upon completion of the purpose for which the INFORMATION was submitted,
- (c) upon the written demand of the disclosing party; or
- (d) upon the determination by the receiving party that it no longer desires to possess

the INFORMATION.

10. The recipient of INFORMATION shall not export, directly or indirectly, any technical data acquired under this Agreement or any products utilizing such data in violation of U.S. export laws or traffic in arms regulations.
11. Neither party warrants that the INFORMATION it is disclosing hereunder will meet the requirements of the other party or that such INFORMATION when combined with other information or when used in a particular manner by the recipient will be sufficient or suitable for the recipient's purposes. Neither party assumes any responsibility or liability whatever under this Agreement for the results of use of the INFORMATION by the recipient or its customers or agents.
12. This Agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership or formal business entity of any kind and the rights and obligations of the parties shall be limited to those expressly set forth herein. Any exchange of INFORMATION under this Agreement shall not be deemed as constituting any offer, acceptance, or promise of any future contract or amendment to any contract which may exist between the parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both parties. Each party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither shall have any authority to bind the other.
13. No license is created under this Agreement, nor shall any be implied therefrom, under any patent, patent application, copyright, trade secret, know-how, or other intellectual property right of either party. This Agreement shall create no obligation by either party to disclose any particular kind or quantity of information to the other.
14. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Mississippi.
15. Notwithstanding any provision to the contrary contained herein, it is recognized that USM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, §§25-61-1, et seq., Miss. Code Ann. If a public records request is made for any INFORMATION provided to USM pursuant to this agreement, USM shall promptly notify the disclosing party of such request. The disclosing party shall promptly institute appropriate legal proceedings to protect its INFORMATION. No party to this agreement shall be liable to the other party for disclosures of INFORMATION required by Court order or required by law.
16. This is the entire Agreement between the parties concerning the exchange and protection of proprietary or confidential information and it supersedes any prior written or oral agreements relating hereto and may not be amended or modified except by subsequent agreement in writing signed by duly authorized representative of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives.

"USM"

"AGENCY"

The University of Southern Mississippi
Post Office Box 5116
Hattiesburg, MS 39406-5116

Dr. Cecil D. Burge
Associate Vice President for Research

Date: _____

Date: _____

Project Director

Date: _____

Date: _____