MEMBER PROPRIETARY INFORMATION EXCHANGE AGREEMENT

1. The successful performance of the Agreement between Auburn University (“Auburn”) and ______________________ (“Member”) dated __________ may require that pertinent technical data and computer software subject to proprietary claims of the Member be made available to Auburn or that pertinent technical data and computer software subject to the proprietary claims of Auburn be made available to the Member. Accordingly, the Member may provide Auburn with access to the Member’s proprietary technical information and computer software, and Auburn may provide the Member with access to Auburn’s proprietary technical information and computer software as necessary for the successful performance of the scope of the subject Agreement.

2. For each Project under the Agreement, the Member will designate, in writing, one person as its authorized representative for the exchange of proprietary information. In all cases, the Center Director will serve as Auburn’s authorized representative for the exchange of proprietary information. Each party reserves the right to change its designation of authorized representative, should circumstances so require, and agrees to promptly notify the other party in writing of any such change.

3. Any information received in writing, identified in writing as proprietary and is addressed to the individual designated pursuant to paragraph 2 of this Member Proprietary Information Exchange Agreement will be protected in accordance with this Agreement. The documentation identifying the particular information considered proprietary shall be sufficiently particular to enable the recipient to identify written, graphic or physical embodiments of such information. Each authorized representative agrees to use his/her best efforts to hold such information in confidence indefinitely and to not use such information for any purposes other than the work called for by the subject Agreement.

4. The obligation to use best efforts to retain such information in confidence will be satisfied if the recipient utilizes the same controls it employs to avoid disclosure, publication or dissemination of its own proprietary information of similar importance.

5. The obligation with respect to handling proprietary information as set forth in this Agreement is not applicable to the following:

   A. The recipient shows that such information is in or has entered the public domain through no fault of the recipient;

   B. Such information is contained in a written record in the recipient’s files prior to the date of its receipt from the originating party;

   C. The recipient at any time lawfully obtained such information from a third party under circumstances permitting its disclosure by the recipient to others;

   D. The information is disclosed by the originating party to the recipient or to others on an unrestricted basis;

   E. The information is disclosed with prior written consent of the originating party, provided the disclosure complies in all respects with the terms of the consent; and/or

   F. The recipient can demonstrate that it has such information independent of its disclosure under this Agreement.
6. Upon termination or expiration of this Agreement in accordance with its terms, the recipient will, upon written request of the originating party, return all proprietary information received from the originating party under this Agreement along with all copies thereof, except that the recipient may retain a legal file copy if the recipients’ normal business procedures include this provision.

7. Should the recipient be faced with legal action or a requirement under government regulations to disclose proprietary information received hereunder, the recipient shall forthwith notify the originating party, and, upon request and at the expense of the latter, shall cooperate with the originating party in contesting such disclosure.

8. It is agreed that no license under any patents or technical information of either party is granted by this Agreement or by any disclosure or proprietary and/or confidential information hereunder, except for the use the purpose of which the disclosure was made.

AUBURN UNIVERSITY  INDUSTRIAL MEMBER

C. Michael Moriarty                      Name  
Vice President for Research            Title

Date                                   Date