

# University of South Carolina Mutual Non-Disclosure Agreement

This agreement is by and between the University of South Carolina, a state agency of higher education established under the laws of the state of South Carolina, with an office at Horizon I, 541 Main Street, Columbia, South Carolina 29201, (hereinafter referred to as "USC"), and [Insert Name of Company], a [type of company] with offices at [Company Address], (hereinafter referred to as "COMPANY").

WITNESSETH THAT:

WHEREAS, USC is a multi-campus, public institution serving the entire state of South Carolina through teaching, research, creative activity, and service;

WHEREAS, USC and COMPANY (the "Parties") are owners, respectively, of certain proprietary information, including but not limited to data, know-how, formulae, technical and non-technical specifications, methods, processes, designs, business plans and forecasts, software programs, invention disclosures, and pending patent applications, (hereinafter "INFORMATION"), with all rights, title, and interests vested therein; and

WHEREAS, each Party desires to disclose INFORMATION to the other (hereinafter the "Disclosing Party"), and each Party desires to receive INFORMATION from the other (hereinafter the "Receiving Party"), for the purpose of pursuing collaborative research through the GRAPES Center. Such INFORMATION is regarding, but not limited to, the following subject matter:

Grid-connected Advanced Power Electronic Systems

This exchange includes all communication of INFORMATION between the parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above.

NOW, THEREFORE USC and COMPANY agree to the following terms and conditions:

1. INFORMATION subject to this Agreement may be transmitted either in writing, machine readable form, or orally and must be identified as confidential at the time of disclosure and, if disclosed orally, subsequently summarized in writing within twenty (20) days and confirmed as confidential.
2. Each Party, including its subsidiaries and affiliates, will maintain in confidence the INFORMATION of the other Party with the same degree of care it exercises for its own confidential and proprietary information, but not less than a reasonable degree of care. For purposes of this paragraph "subsidiaries and affiliates" shall mean any corporation, firm, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with either of the Parties to this Agreement.
3. The Receiving Party will not use the INFORMATION of the Disclosing Party except for its evaluation of the INFORMATION pursuant to this Agreement.
4. The Receiving Party will disclose the INFORMATION of the Disclosing Party only to those officers and employees of the Receiving Party directly concerned with the evaluation of the INFORMATION. The Receiving Party will not disclose INFORMATION received from the Disclosing Party to any third party without the express written consent of the Disclosing Party.
5. In the event that any copies of the Disclosing Party's INFORMATION are furnished to the Receiving Party in connection with the Receiving Party's evaluation hereunder, the Receiving Party agrees to use such copies only for its evaluation, and to keep confidential the results of any such evaluation or other tests that may be conducted on such INFORMATION, except that the Receiving Party shall report the results of any such evaluation or tests to the Disclosing Party and such results shall thereafter be included in the Disclosing Party's INFORMATION.

6. The obligations of non-disclosure and the limitation upon the right to use INFORMATION (including test results) imposed upon the Parties to this Agreement shall not apply to the extent that the Receiving Party can demonstrate that the INFORMATION disclosed by the Disclosing Party: (a) was in the possession or control of, or was independently developed by, the Receiving Party prior to the time of disclosure hereunder, as evidenced by the Receiving Party's prior written records; or (b) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of the Receiving Party; or (c) was lawfully obtained by the Receiving Party from a third party under no obligation of confidentiality to the Disclosing Party; or (d) is disclosed pursuant to an order of law after the Receiving Party has given notice to the Disclosing Party of such order and has cooperated with Disclosing Party's efforts, if any, to obtain a protective order or confidentiality agreement with provisions equivalent to the provisions of this Agreement.
7. All proprietary rights (including but not limited to copyrights, patents, and trade secrets) in and to INFORMATION shall remain the property of the Disclosing Party.
8. **THE INFORMATION IS FURNISHED BY BOTH PARTIES ON AN "AS IS" BASIS. NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, CONCERNING THE INFORMATION, INCLUDING BUT NOT LIMITED TO ITS FITNESS FOR THE PURPOSE STATED BELOW. FURTHER, NEITHER PARTY WARRANTS THAT USE OF THE INFORMATION IS SAFE AND WITHOUT HAZARDS. EACH PARTY SHALL ASSUME ALL RISKS ASSOCIATED WITH THE USE OF THE OTHER PARTY'S INFORMATION.**
9. Neither Party is obligated to disclose INFORMATION to the other Party under this Agreement.
10. INFORMATION disclosed under this Agreement is done so with the express understanding that neither Party will be obligated to enter into any further agreement with the other Party and that nothing in this Agreement shall be construed as granting any license or right to a Receiving Party to INFORMATION received hereunder.
11. At the end of COMPANY's involvement in the GRAPES Center, the Receiving Party will, upon the request of the Disclosing Party, promptly return all of the INFORMATION and use reasonable efforts to destroy all copies thereof, except that one copy may be retained by the Receiving Party for the sole purpose of determining the Receiving Party's continuing obligations under this Agreement.
12. The obligations of the Parties as to INFORMATION disclosed under this Agreement shall terminate five (5) years from the date of disclosure. Either party may terminate this agreement upon thirty (30) days written notice to the other party and both Parties will be bound by the obligations of non-disclosure in this Agreement for the aforementioned five (5) year period.
13. This Agreement covers all previous disclosures of INFORMATION, oral and written, between the Parties. Such previous disclosures shall be deemed to have been made on the effective date of this Agreement unless otherwise specified in writing.
14. This Agreement sets forth the entire agreement between the Parties as to the subject matter hereof, and none of the terms of this Agreement shall be amended or modified except in a writing signed by the Parties. If either party is required by law or institutional reporting procedures to make any disclosure that identifies the existence or terms of this Agreement, then either may do so without prior written consent from the other.
15. The Parties agree that this Agreement may be executed by electronic copy or facsimile and in two (2) or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.
16. This Agreement becomes effective as of the last date signed below and remains in effect as long as COMPANY remains a member of the GRAPES Center.

17. IN WITNESS WHEREOF, the parties have caused this agreement to be executed by persons thereunto duly authorized and their official seals to be affixed hereto, the day and year set forth below:

For USC:

For COMPANY:

\_\_\_\_\_  
Tiffany J. Beverly  
Associate Director  
Technology Commercialization,  
Office of Economic Engagement

\_\_\_\_\_  
[SIGNATORY'S NAME]  
[TITLE]  
[COMPANY]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date