

REGISTRO DE CONTRATOS

TOMO 21 PAGINA 10

CONTRATO NUM. 2012-000 016

University of Puerto Rico, Mayagüez
ECE Department



Proprietary Information Agreement

This Agreement is entered into by and between the University of Puerto Rico, Mayagüez (UPRM), having a business office at Post Road, Mayaguez, PR 00680, and Drexel University having a business office at 1815 John F. Kennedy Blvd. Suite 2707 Philadelphia, PA 19103, for the purpose of disclosing Proprietary Information to teaming with Drexel University for the MRC proposal BAA-11-55.

UPRM and Drexel University agree that the following terms and conditions apply when one of the parties (Discloser) discloses Proprietary Information to the other (Recipient) under this Agreement. UPRM and Drexel university agree that their mutual objective under this Agreement is to provide appropriate protection for Proprietary Information, while maintaining the ability to conduct their respective business activities.

1. Proprietary Information

Information disclosed hereunder shall be considered "Proprietary Information" and subject to the terms and conditions of this Agreement if disclosed either: (a) in writing; (b) by delivery of items; (c) by initiation of access to Proprietary Information such as may be contained in an electronic data repository; or (d) by oral and/or visual presentation.

All Proprietary Information must be conspicuously marked with the Discloser's restrictive legend and Recipient shall not alter or remove legends. If Proprietary Information is disclosed in non-written form, 1) the Proprietary Information will be identified to the Recipient as proprietary at the time of initial disclosure and 2) within 14 days thereafter the Discloser will provide the Recipient with written confirmation of the Proprietary Information disclosed.

Exclusive Points of Contact

Electrical and Computer Engineering Department
University of Puerto Rico, Mayaguez
Call Box 9000,
Mayaguez, PR 00680
Attn: Manuel Rodriguez-Martinez
787-832-4040, x-3630
manuel.rodriguez7@upr.edu

Drexel University
College of Information Science and Technology
30 N. 33rd Street, Rush 233A
Philadelphia, PA 19104
Attn: Martin Stytz

Notwithstanding the above, Proprietary Information shall not include any information which:

- (a) is or becomes available to the Recipient without restriction from another source; or
- (b) is or becomes generally available to the public other than by Recipients breach of this Agreement; or
- (c) was already known to the Recipient prior to disclosure of the Proprietary Information without obligation of confidentiality, as can be substantiated by written documentation; or
- (d) is independently developed by the Recipient completely independent of the access to the Proprietary Information provided by the Discloser, as can be substantiated by written documentation.

2. Protection of Proprietary Information

For a period of two (2) years after the date of initial disclosure of each element of Proprietary Information, except as provided herein or otherwise specifically agreed in writing, Recipient agrees to limit disclosure of Proprietary Information within its own organization to its employees, employees of its parent and subsidiary firms or, another party with the Discloser's prior written consent, who have a need to know to accomplish the purpose of this Agreement. The Recipient shall have a written agreement with each such party sufficient to require that the party treat Proprietary Information in accordance with and no less restrictive than this Agreement.

The Recipient shall use the same care and discretion as it uses with its own Proprietary Information, but no less than reasonable care, to avoid disclosure, publication, or dissemination of Proprietary Information. The Recipient also agrees to secure Proprietary Information in locked files at all times when not in use, and to segregate Proprietary Information from the material of others. The Recipient shall use Proprietary Information only in connection with the above-stated purpose, and for no other reason.

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In the event the Discloser provides written authorization to the Receiver to disclose Proprietary Information to the United States Government in connection with the above-stated PROGRAM and PURPOSE, the Receiver shall:

- (a) Identify the Proprietary Information as belonging to the Discloser, and
- (b) Mark the Proprietary Information with appropriate restrictive legends as being subject to 18 U.S.C. Section 1905 (Trade Secrets Act) and 5 U.S.C. Section 552 (Freedom of Information Act) and as permitted by the United States Government (as set forth in FAR 52.215-1(e) or DFAR 252.227-7013 and -7014 where applicable), to protect the Disclosers rights in the Proprietary Information.

The Recipient may disclose Proprietary Information when required by law or directed by an authorized representative of the U.S. Government acting within the scope of his authority. In such cases the Recipient shall: (a) give the Discloser prompt notice; and (b) make a reasonable effort to obtain appropriate protection; and (c) provide the Discloser with every available opportunity to challenge, appeal, or seek modification of such order; and (d) shall identify the Discloser as the source of the Proprietary Information; and (e) include all restrictive legends in any released Proprietary Information.

3. Term and Termination

The term of this Agreement shall be from the last date of execution written below by the parties until one (1) year thereafter. Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other.

Upon termination or expiration, whichever occurs first, Recipient will promptly cease all use of Discloser's Proprietary Information. The Recipient shall make a commercially reasonable good faith effort to return all the Discloser's Proprietary Information, or shall verify destruction of all Proprietary Information received under this Agreement, to the Discloser. For the avoidance of doubt, anything that is stored on routine back-up media solely for the purpose of disaster recovery will be subject to destruction in due course, provided that, employees are precluded from accessing such information in the ordinary course of business prior to destruction. The recipient may keep one (1) copy of the Discloser's Proprietary Information for archival purposes.

Notwithstanding the foregoing, latent data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and is generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for return or destruction of Proprietary Information as set forth by this provision.

Any obligations which by their nature extend beyond the termination or expiration of this Agreement will remain in effect until fulfilled, and will apply to both party's successors and assigns.

4. No Licenses or Warranties

Neither this Agreement nor any disclosure of Proprietary Information shall be construed, directly or indirectly or by implication estoppel or otherwise, to offer or grant to Recipient rights in or license under any present or future Proprietary Information, patent or copyright.

THE DISCLOSER PROVIDES PROPRIETARY INFORMATION ON AN "AS IS" BASIS. Nothing in this Agreement shall be construed as a warranty, representation, assurance, guarantee or inducement with respect to the content or accuracy of documents and Proprietary Information transmitted or exchanged under this Agreement. The Discloser will not be liable for any damages arising out of use of Proprietary Information. Disclosure of Proprietary Information containing business plans is for planning purposes only. Therefore, use of such information is at the Recipient's own risk.

5. Relationship of Parties

This Agreement in no way obligates either party to disclose Proprietary Information to the other. Except for those obligations expressly stated herein, no other obligation of any kind is assumed by or implied against either party by the receipt of Proprietary Information nor shall such receipt constitute a waiver of any rights either party may have with respect to such disclosed Proprietary Information.

[Handwritten signatures]
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The parties hereto are and shall remain independent contractors. This Agreement shall not constitute, create, give effect to, or otherwise imply an employment relationship, teaming arrangement, joint venture, pooling arrangement, partnership, or formal business organization of any kind, nor does this Agreement or the disclosure or receipt of any Proprietary Information hereunder constitute an offer, acceptance, promise or obligation by either party to enter into any additional contract, subcontract, amendment, agreement or other business relationship with the other party. The parties expressly agree that this Agreement is solely for the purpose of exchanging Proprietary Information, and unless otherwise agreed in writing, each party shall perform hereunder solely at its own cost and expense.

6. Export Restriction and Indemnification

Each party agrees that it will abide by all export laws, rules and regulations of the United States Government, including without limitation, the International Traffic in Arms Regulations of the US Department of State and the Export Control Act of the US Department of Commerce, in connection with the disclosure, use and export of any Proprietary Information disclosed hereunder. If the Recipient of export-restricted information improperly discloses such information the Recipient shall indemnify and hold harmless the Discloser from all directly applicable and reasonably incurred resulting claims, demands, damages, costs, fines, penalties, attorney's fees and all other expenses. This provision shall be honored after the expiration of this Agreement.

7. Security Classification – No classified information exchanged

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8. General Provisions

- (a) Headings. The provisions of this Agreement shall take precedence over and supercede any heading, legend, or notice inconsistent with this Agreement.
- (b) No Transfer or Assignment. This Agreement may not be transferred or assigned by either party without the express written consent of the other party.
- (c) Complete Agreement. This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and supercedes all other representations, understandings or communication, whether written or verbal, and may not be modified in whole or in part except in a writing signed by authorized representatives of both parties.

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

Drexel University

Robert B. McGrath, Ph.D.
Associate Vice Provost
Tech Commercialization

July 5, 2011

University of Puerto Rico, Mayagüez

Manuel Rodriguez-Martinez, Ph.D.
Associate Professor

Jorge Rivera Stantos, Ph.D.
UPRM Chancellor

July 7, 2011