



Fab Owners Association
19925 Stevens Creek Blvd.
Cupertino, CA 95014-2358
(408) 725-7127
(408) 725-8885 (Fax)

Participant:

(Who is the other party to the agreement?)

(Print Full Name and Address)

Discloser:

(Who will be disclosing the information?)

(Write in FOA, Participant, or Both)

Nature of Information

to be Disclosed:

(What is being disclosed?)

Information relating to manufacturing capacities,

principles and methodologies.

Effective Date of Agreement:

Period of Duty of Confidentiality:

(How long should it be kept secret?)

(FOA Legal Department must approve a period other than five (5) years.)

Period to Exchange Information:

(How long do the parties expect to exchange information?)

(FOA Legal Department must approve a period longer than two (2) years.)

This Agreement, entered into as of the Effective Date of Agreement (indicated above) by and between Fabrication Owners Association, with offices at 19925 Steven Creek Blvd. Cupertino, California 95014-2358 ("FOA") and Participant (indicated above).

Whereas, the Discloser (indicated above) represents that it possesses information ("Information") relating to the Nature of Information to be Disclosed (indicated above), which is considered to be proprietary, confidential and valuable ("Confidential Information"); and

Whereas, the Information is being exchanged between Participant and FOA solely for the purpose of compiling data to improve manufacturing performance by or for the parties ("Purpose of Disclosure").

Now therefore, the parties hereto agree as follows:

1. Confidential Information

Any Information disclosed by the Discloser to the other party under this Agreement, whether in written, oral, visual or machine readable form, that is considered to be Confidential Information, shall be marked as such at the time of disclosure, if written, or if in oral or visual form, shall be reduced to writing in summary form, identified as Confidential Information, and sent to the receiving party within thirty (30) days following such oral or visual disclosure. The Discloser may only disclose confidential information for the Period to Exchange Information (indicated above) from the Effective Date of this Agreement.

2. Non-Disclosure and Use

The parties agree that for the Period of Duty of Confidentiality (indicated above) from the Effective Date of Agreement, the parties shall not disclose any Confidential Information received from the Discloser to any other person without the express prior written consent of the disclosing party. The parties shall not use the other's Confidential Information for any purpose other than the Purpose of Disclosure and shall use the same degree of care to avoid unauthorized disclosure and unauthorized use of such Confidential Information as it employs with respect to its own confidential and proprietary information, and at a minimum to exercise reasonable care.



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3. Excepted Confidential Information

The parties hereto agree that Information shall not be deemed to be Confidential Information, and the parties shall have no obligation with respect to any such Information which:

- i. was in the public domain at the time it was disclosed;
- ii. was known to the receiving party at the time of disclosure;
- iii. is disclosed with the prior written approval of the other party hereto;
- iv. was independently developed by the receiving party ; or
- v. becomes known to the receiving party, on a non-confidential basis, from a source other than the other party hereto without breach of this Agreement by the receiving party.
- vi. is required to be disclosed under operation of law (provided discloser is given prompt notice of such requirement).

4. Property Rights

All writings or machine readable data containing Information provided pursuant to this Agreement, and all copies of such writings made by the receiving party shall be and remain the property of the disclosing party, and shall be returned to the disclosing party immediately upon request, or shall be destroyed upon written request of the disclosing party.

5. No License

Nothing in this Agreement shall be construed as granting or conferring any right or license, express or implied, in any invention, discovery, or improvement or any right in any Information, other than as expressly recited in this Agreement.

6. Export Regulations

The parties agree that, except as authorized by the Export Administration Regulations of the U.S. Department of Commerce ("Export Regulations"), they will not transmit, directly or indirectly, any "technical information" acquired hereunder, or any direct product of such data.

7. Warranty

Each party warrants that it has the right to disclose Information provided by it. No other warranties express or implied, are made by either party.

8. No Obligation to Purchase or disclose

Neither party has an obligation under this Agreement to purchase, sell, license, transfer or otherwise dispose of any service, item or technology from the other party. This Agreement imposes no obligation on either party to disclose information

9. General

- a. Neither party is authorized to act for or on the behalf of the other party under this Agreement. Without limiting the generality of the foregoing, each party is an independent contractor, and no principal/agent or partnership relationship is created between them by this Agreement.
- b. No failure or delay by either party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be deemed to be a waiver of any of the other terms and conditions of this Agreement.
- c. Neither party to this Agreement shall be liable for its failure to perform any of its obligations hereunder during any period in which such performance is prevented by any cause beyond its reasonable control.
- d. The validity, performance and construction of this Agreement shall be governed by the laws of the State of California, USA (excluding its conflict of laws provisions). Santa Clara County, California shall be an appropriate venue and jurisdiction for the resolution of disputes hereunder.



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- e. The prevailing party in any legal action arising out of, or related to this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred in such action, including court costs and reasonable attorney's fees.
- f. Each party shall comply with all applicable United States and foreign laws in performing under this Agreement.
- g. All notices or communications to be given under this Agreement shall be in writing and shall be deemed delivered upon hand delivery, three (3) days after deposit in the United States mail, postage prepaid, by certified, registered or first class mail, addressed to the parties at their addresses set forth above and to the attention of the General Counsel in the case of Participant.
- h. In the event that any provision of this Agreement is prohibited by any law governing its construction, performance or enforcement, such provision shall be ineffective to the extent of such prohibition without invalidating thereby any of the remaining provisions of the Agreement. The captions of sections herein are intended for convenience only, and the same shall not be interpretive of the content of such section.
- i. The terms and conditions of this Agreement may not be superseded, modified, or amended except in writing which states that it is such a modification, and is signed by an authorized representative of each party hereto.
- j. This Agreement, including exhibits, constitutes the entire Agreement between the parties as to the subject matter hereof, and supersedes and replaces all prior or contemporaneous agreements, written or oral, regarding such subject matter, and shall take precedence over any additional or conflicting terms which may be contained in either party's purchase orders or order acknowledgment forms.

Accepted and Agreed:

Fabrication Owners Association

Participant

By: _____
signature of authorized representative

By: _____
signature of authorized representative

L. T. Guttadauro
printed name

printed name

Executive Director
title

title

date

date