

**confidentiality agreement**

BETWEEN

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Of the first part**

**AND:**

Università degli Studi di Cassino e del Lazio Meridionale (nel seguito denominata UNICAS o “Parte divulgante”), con sede legale e domicilio fiscale in Cassino (Fr), 03043 Viale dell'Università - Rettorato (Campus Universitario), Loc. Folcara (C.F. 81006500607 e Partita IVA 01730470604

**Of the second part**

Hereinafter referred to collectively as the “Parties” and/or individually as a “Party”

**PREAMBLE**:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** specialises in collaborative research in the fields of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DIEI-UNICAS** specialises in promoting scientific research in all its forms and ensuring the dissemination of relevant knowledge and technologies in the fields of electrical and information engineering including, among others, power electronic circuits and devices with the attention to their reliability, robustness and failure mechanisms in harsh environments.

The Parties wish to exchange information in the field of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the purposes of exploring the possibilities of working together in this field in the course of which they might come to disclose to one another certain confidential Information of a technical and/or commercial and/or financial nature.

IN VIEW OF THE ABOVE, the Parties hereby agree to keep the information they shall exchange as part of their partnership relationship strictly confidential, in keeping with the following provisions:

**ARTICLE 1: DEFINITIONS**

**Agreement:** shall mean this confidentiality agreement, its appendices, and any riders thereto.

**Confidential Information**: shall mean any information, knowledge or data, whatever the nature thereof (such as any technical, industrial, commercial or financial information), whatever medium it is recorded on (be it verbal, written, electronic or other) and whatever its form (such as drawings, diagrams, descriptions, specifications, reports, software applications and all related documentation, samples, prototypes, specifications), whether or not it is protected by intellectual property rights, disclosed by either Party to the other Party or Parties, or to which a particular Party has access as part of the Project.

All the Confidential Information disclosed by the Disclosing Party to the other Party/Parties as part of this Project shall be treated by the Receiving Party as Confidential Information, provided that:

* the fact that any information disclosed in tangible form is confidential is stated in writing; or
* the fact that any information disclosed verbally, digitally or visually is confidential is stated in writing or by e-mail within 15 calendar days following the disclosure.

**Affiliated Company**: shall mean any legal person identified in Appendix 1 that is directly or indirectly controlled by a Party or that controls a Party or is controlled by the same person as one of the Parties, for as long as this control shall last.

For the purposes of this definition, the term control shall mean:

* the holding of 50% or more of the share capital of this legal person, or
* the holding of 50% or more of the voting rights of the shareholders or partners of this legal person.

**Party or Parties:** shall mean the signatory or signatories of this confidentiality agreement or of the letter of accession shown in the appendix.

**Disclosing Party:** shall mean the Party that discloses the Confidential Information to one or more other Parties.

**Receiving Party:** shall mean the Party that receives the Confidential Information from one or more other Parties.

**ARTICLE 2: SUBJECT-MATTER**

This Agreement sets out the rules that are applicable to exchanges of Confidential Information between the Parties and to the protection of such information.

**ARTICLE 3**: **CONFIDENTIALITY UNDERTAKINGS AND PROTECTION of the Confidential Information**

3.1 The Receiving Party undertakes to ensure that any Confidential Information that is disclosed by a Disclosing Party:

a) is protected and kept strictly confidential and treated with the same protection measures to prevent disclosures, copying and/or other uses as those that it usually applies to its own information;

1. is not directly or indirectly disclosed, to a third party or to a person other than those mentioned in articles \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) without the prior written consent of the Disclosing Party and provided that the third party beneficiary undertakes beforehand in writing to submit to the same confidentiality obligations as those contained in this Agreement;
2. is not used wholly or partly for any purposes other than the sole purposes of the Project. The Receiving Party specifically undertakes to only disclose the Confidential Information to those of its employees or seconded personnel to whom this disclosure is necessary for the purposes of the Project or to its attorneys and auditors, who must have been informed about the confidentiality of the Confidential Information and who are bound by written confidentiality and usage obligations that are in keeping with the obligations arising from this Agreement;
3. is not wholly or partly duplicated, copied or reproduced without the prior consent of the Disclosing Party.

3.2 Immediately after becoming aware of an inadvertent leak, the Receiving Party must do everything possible (i) to inform the third party about the interests of the Disclosing Party, (ii) to inform the Disclosing Party about this leak, (iii) to avoid any further leaks, and (iv) to retrieve the elements leaked, including all copies, personal notes or correspondence concerning the Confidential Information contained in the elements leaked, notwithstanding any damages that may be claimed by the Disclosing Party.

3.3 If, at any point in time over the duration of this Agreement, the Receiving Party must disclose Confidential Information in order to comply with legal or administrative proceedings or a court ruling, the Receiving Party shall notify this in writing as soon as possible to the Disclosing Party, which shall inform the Receiving Party about the measures to be taken or which might opt to waive the enforcement of this Agreement. The Receiving Party must prove that this disclosure is mandatory.

3.4 Any Confidential Information that is disclosed by the Parties under this Agreement and that is classified must be identified as such by the Disclosing Party at the time of its disclosure. The disclosure, the protection and the use of this Confidential Information shall take place in accordance with the security procedures stipulated by the relevant authorities and the provisions of this Agreement.

**ARTICLE 4**: **EXCLUSIONS**

The confidentiality obligation shall not apply to information that the Receiving Party can prove, using written evidence, that:

a) it fell into the public domain prior to its disclosure by the other Parties or afterwards, through no fault of its own; or

b) it is publicly known, through no fault of its own; or

c) it was disclosed, without infringing this Agreement, by a third party who was entitled to do so, and may be disclosed without restriction; or

d) it was already in its possession before this Agreement came into force or was developed by it independently, without using any Confidential Information; or

e) it is covered by a written disclosure authorisation issued beforehand by the Disclosing Party.

**ARTICLE 5**: **RESTRICTIONS**

None of the provisions of this Agreement shall be interpreted as:

1. compelling the Parties to provide any Confidential Information to the other Parties;
2. compelling the Parties to pursue their cooperation or to become bound to one another contractually, on any grounds whatsoever;
3. preventing the Parties from offering their products to or purchasing components from third parties and/or from cooperating with third parties to this Agreement;
4. constituting an express or implied guarantee by the Disclosing Party as to the accuracy of the information disclosed, its comprehensiveness, or usefulness. The Disclosing Party shall not incur any liability towards the Receiving Party pursuant to the latter’s use of this Confidential Information.

**ARTICLE 6: INTELLECTUAL PROPERTY RIGHTS**

None of the provisions of this Agreement shall be interpreted as expressly or implicitly granting the Receiving Party of the Confidential Information a right of ownership, a license, usage rights or any other rights over the Confidential Information.

Whichever Party receives the Confidential Information shall expressly refrain from using all or part of the information received from the other Party/Parties to register any intellectual property title or right, such a patent, a certificate of use, a model or a trademark.

**ARTICLE 7**: **START DATE – DURATION – RESCISSION**

This Agreement shall come into force retroactively on

It shall remain in force for a period of one (1) year as of that date.

Each Party may terminate this Agreement as of right and without the need for bringing legal action, by a mere written notification sent to the other party/parties by registered post with acknowledgement of receipt two months prior to the rescission date.

The rescission of the Agreement shall only put an end to the exchange of information between the Parties and shall not extinguish the confidentiality undertakings by which the Parties are bound. The Receiving Party’s confidentiality obligation under this Agreement shall remain in force for a period of five (5) years following the expiry or the rescission of this Agreement.

**ARTICLE 8: RESTITUTION / DESTRUCTION of the Confidential Information**

Upon receiving a request from the Disclosing Party at any point in time, as well as upon termination of this Agreement, the Receiving Party must return and stop using the Confidential Information, as well as any authorised copies thereof, within fifteen (15) days, and/or destroy any computer file containing the Confidential Information, unless the Receiving Party is subject to an obligation by a court ruling or an administrative decision for the preservation of the Confidential Information. Should the Disclosing Party accept this, the Confidential Information and any authorised copies thereof may also be destroyed by the Receiving Party. Once the destruction has taken place, the Receiving Party must notify this in writing to the Disclosing Party.

**ARTICLE 9: INTUITU PERSONAE BASIS**

Neither Party may transfer and/or assign to a third party any of its rights and obligations arising from this Agreement without the prior written consent of the other Party/Parties, save in case of any merger, takeover or reorganisation of this Party that does not lead to a change of control as per the meaning of this term in article L. 233-3 of France’s Commercial Code, in which case the Party that is thus reorganised shall inform the other Parties about this change as soon as possible.

The subsidiaries or any Affiliated Company of one of the Parties shall be treated as third parties to this Agreement.

**ARTICLE 10**: **MODIFICATIONS**

No modification of this Agreement shall be binding on the Parties unless it is drawn up in writing and signed by all of the Parties.

**ARTICLE 11:** **MISCELLANEOUS**

11.1 Should one of the provisions of this Agreement be declared null and void or inapplicable, all the other terms of this Agreement shall remain valid.

11.2 Any Confidential Information, and/or any element of Confidential Information, as defined in this Agreement (for instance when incorporated in an element, software application, technology, service or other deliverable), that is disclosed by one Party to one or more Parties, may be subject to the laws and regulations on export controls, including the export control rules of the United States, and the Parties acknowledge that any bypassing of these rules shall accordingly be prohibited. Any exporting, transfer or use of the Confidential Information must take place in keeping with the applicable export controls laws and regulations.

11.3 This Agreement shall not give rise to the formation of a joint venture, a partnership or any other formal business entity, and must not be interpreted as doing so.

**ARTICLE 12: TOLERANCE**

Should one of the Parties tolerate a particular situation, this shall not result in the other Party gaining any acquired rights. Such a tolerance cannot be interpreted as a waiver of the former’s right to avail itself of the rights in question.

**ARTICLE 13**: **applicable law and settlement of disputes**

This Agreement shall be governed by Italian law.

Should a dispute arise in connection with the subject-matter of this Agreement, the Parties shall endeavour to resolve it amicably within thirty (30) days following the date of the notification of the dispute by one Party to the other.

Should it not be possible to reach an amicable settlement, the appropriate French courts shall have exclusive jurisdiction over any dispute arising from this Agreement or in connection with the performance or the interpretation of this Agreement.

Should either Party fail to perform any of the terms of this Agreement, this may cause imminent and irreparable damage to the other Party.

Therefore, notwithstanding the foregoing provisions and notwithstanding the other rights and remedies at its disposal, any Party may bring emergency proceedings before any French court that has jurisdiction should the other Party fail to perform any of its obligations under this Agreement.

**ARTICLE 14**: **NOTIFICATIONS / CONTACT PERSONS**

Any notification shall be deemed to be valid if it is issued by means of a letter sent by registered post with acknowledgement of receipt.

Notifications must be sent to the following addresses:

* For \_\_\_\_\_\_\_\_\_\_\_\_\_\_: For the attention of the Chief Executive Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* For UNICAS: For the attention of the Pro Tempore Rector

Viale dell'Università - Rettorato - (Campus Universitario), Loc. Folcara

03043 Cassino (FR), ITALY

Any facsimile, photocopy, scanned copy or electronic version of the final, signed version of this Agreement and the signatures of the duly empowered representatives of the Parties shall be considered as originals for all intents and purposes and shall be fully applicable.

Made out in three (3) originals.

|  |  |
| --- | --- |
| For **UNICAS** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: | For **\_\_** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature)  Name: prof. Giovanni Betta  Title: Pro Tempore Rector  Date: …../…../..… | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature)  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_  Date: ……/..…./…… |