

**Multi-Party Nondisclosure Agreement (3-Way):** This form is to be used where there are three parties involved in the discussions. The most typical situation is when Cypress is engaging in discussions with a potential customer and they also need their subcontractor to be involved in the discussions.

(a) **PARTIES:** Provide complete identification of the parties entering into the NDA.

(b) **DATE:** Fill in the effective date of the NDA. This should be the date that discussions will begin.

(c) **PURPOSE:** Fill in the blank to identify the purpose and subject matter of the discussions.

(d) **CONFIDENTIAL INFORMATION; and INFORMATION NOT COVERED:** These sections explain how certain types of information will be treated under the NDA. To be protected under the NDA, written information must be stamped "confidential" or "proprietary" or with some similar legend; and if information is verbally disclosed, it must be reduced to writing promptly and the written documentation must be marked with a secrecy legend. Certain information will be excluded from the scope of the NDA. Generally, information which is already part of the public domain, or is independently developed or is revealed to one of the parties from some third source, will not be protected under the NDA.

(e) **RESPONSIBILITIES OF THE PARTIES:** Each party who reveals Confidential Information to the other will still own that disclosed information. The disclosing party must properly identify the information is to be covered under the NDA. The recipient agrees to try to protect the information from disclosure, just as it would protect its own proprietary information, and not use it except in cooperation with the disclosing party for the purpose stated in the NDA.

(f) **DISCLOSURE PERIOD:** Fill in the blank to state how long the discussions are planned.

(g) **SIGNATURE:** Only a Vice President or higher may sign a NDA on behalf of Cypress, and that individual accepts ultimate responsibility for ensuring that the terms of the NDA are enforced.

## MULTI-PARTY NONDISCLOSURE AGREEMENT

**THIS AGREEMENT** ("Agreement") dated \_\_\_\_\_ ("Effective Date"), is made by and among \_\_\_\_\_ principally located at \_\_\_\_\_ ("Company"), Cypress Semiconductor Corporation, principally located at 198 Champion Court, San Jose, CA 95134 and its wholly-owned subsidiaries ("Cypress") and \_\_\_\_\_ principally located at \_\_\_\_\_ ("Company 2").

**1. PURPOSE:** The parties wish to discuss matters of mutual interest, for the purpose of \_\_\_\_\_ ("Purpose"); and the parties expect to disclose to one another certain information considered proprietary or confidential.

**2. CONFIDENTIAL INFORMATION:** The parties intend to disclose to one another certain information which is not in the public domain and may be confidential and proprietary to the disclosing party ("Confidential Information"). The parties further intend to restrict and control the use and disclosure of such information disclosed under this Agreement. Information will be deemed to be Confidential Information and governed by the obligations of nondisclosure and restricted use set forth in this Agreement, if it (i) is clearly and conspicuously marked as "confidential" or "proprietary" by the disclosing party, (ii) is orally identified as confidential at the time of disclosure and then subsequently summarized in written form in a clearly and conspicuously marked document and submitted to the receiving party within 20 days of the initial disclosure, or (iii) reasonably should be considered confidential due to the nature of the information and circumstances of disclosure.

**3. NONDISCLOSURE:** A receiving party must protect Confidential Information by using the same degree of care, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of Confidential Information as the receiving party uses to protect its own confidential information of like nature. A receiving party is responsible for any breach of this Agreement made by any of its agents as if the receiving party itself had made the breach. The term agents, as used in this Section 3 and Section 6, means not only those individuals or companies who are authorized to act on behalf of a party, but also those individuals or companies performing work on behalf of or for the receiving party.

**4. INFORMATION NOT COVERED:** A receiving party has no obligation with respect to any information which: (i) was lawfully known by the receiving party before receipt of it from the disclosing party; or (ii) is or becomes generally known to the public through no wrongful act or omission of the receiving party; or (iii) is rightfully provided to the receiving party by a third party, without restriction on disclosure or use; or (iv) is independently developed by personnel of the receiving party, without breach of the obligations of confidentiality set forth in this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or (vi) is made available by the disclosing party to a third party, without restriction concerning use or disclosure.

**5. OWNERSHIP:** All Confidential Information supplied by the disclosing party will remain the property of the disclosing party. Receiving party must return all copies of Confidential Information to the disclosing party within 20 days from the receipt of the written request or, at the direction of the disclosing party, destroy the same. The receiving party may however retain archival copies of the Confidential Information which it may use only in case of a dispute between the parties. 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 Confidential Information as set forth by this Section 5. No copies of any Confidential Information may be made without the express prior permission of the disclosing party, unless the copies are absolutely necessary in furtherance of this Agreement.

**6. PERMITTED USE:** Confidential Information may only be used by a receiving party for the Purpose set forth in this Agreement. Confidential Information may be disclosed to the employees and agents of the receiving party only on a "need to know" basis, if the employees and agents are subject to obligations of confidentiality and restricted use substantially similar to the terms specified in this Agreement.

**7. PERMITTED DISCLOSURE:** No party will be liable for disclosure of Confidential Information if made in response to a valid order of court or authorized agency of government; the disclosure may be made only to the extent so ordered, provided that notice must first be given to the party owning the Confidential Information, so a protective order, if appropriate, may be sought by the owner. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement.

**8. NO OTHER RIGHTS:** A receiving party does not receive any right or license, express or implied, under any patents, copyrights, trade secrets, or other intellectual property rights of the disclosing party under this Agreement except the limited right to use the Confidential Information to carry out the Purpose during the term of this Agreement.

**9. TERM AND TERMINATION:** This Agreement is effective as of the Effective Date. The disclosure period will commence on the Effective Date and will continue for \_\_\_\_\_ (or, if no timeframe is specified, 3 years from the Effective Date) unless otherwise terminated in accordance with the terms of this Agreement. Each party's respective obligations of nondisclosure and restricted use, as a recipient of Confidential Information under this Agreement, will expire 3 years after the date of each such respective disclosure of Confidential Information. The obligations of nondisclosure and restricted use will survive any earlier termination of this Agreement.

**9.1** Any party may terminate this Agreement upon 30 days prior written notice to the other parties.

**9.2** Any party may terminate this Agreement immediately, by written notice to the other parties for material breach of the terms of this Agreement.

**10. WARRANTY DISCLAIMER:** CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." THE PARTIES MAKE NO WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUFFICIENCY, ACCURACY OR COMPLETENESS OF THE INFORMATION DISCLOSED FOR ANY PURPOSE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

**11. MUTUAL DISCLAIMERS:** No other existing agreement between the parties, if any, is modified or terminated by this Agreement. No party agrees to indemnify the other parties for liability resulting from infringement of patent, copyright or trademark of a third party caused by the use of any Confidential Information disclosed under this Agreement. No party confers the right to the other parties, nor confers any authorization to the other parties to act as an agent on its behalf for any purpose. No party has an obligation under this Agreement to purchase any product or service from the other parties or to offer for sale products using or incorporating the Confidential Information. Nothing in this Agreement shall be construed as a representation that a party will not independently pursue similar opportunities, or acquire or receive products, information, concepts or techniques similar to or competing with products, information, concepts, systems or techniques embodied in the Confidential Information, provided that the obligations of this Agreement are not breached.

**12. EQUITABLE RELIEF:** Each party acknowledges that its breach of this Agreement may result in immediate and irreparable harm to the

disclosing party, for which there may be no adequate remedy at law, and the disclosing party is entitled to seek equitable relief to compel the receiving party to cease and desist all unauthorized use and disclosure of the disclosing party's Confidential Information. If any party brings an action to enforce or protect any rights, obligations or duties under this Agreement, then the prevailing party will be entitled to recover, in addition to its damages, reasonable attorneys' fees and costs.

**13. GOVERNING LAW/VENUE/ARBITRATION:** This Agreement is governed by the law of the State of California, United States of America, without reference to its conflict of law rules. This Agreement shall be enforceable against the parties in the courts of the United States of America and of the State of California located in Santa Clara County, California. Each party hereby irrevocably submits to the exclusive jurisdiction of such courts, and agrees that all claims in respect of this Agreement may be heard and determined in any such courts; provided however, that if a dispute arising out of or in connection with this Agreement is brought by a party located in a jurisdiction where arbitration is required for a judgment to be enforceable, then such dispute shall be referred to and finally resolved by arbitration under the American Arbitration Association International Rules (the "Rules"), which Rules are deemed incorporated by reference into this Section 13. If arbitration is required, the place of arbitration shall be in San Jose, California at the JAMS Resolution Center. The arbitration shall be held by a single arbitrator mutually acceptable to all parties. If the parties cannot agree on a single arbitrator within thirty (30) days from the date written demand is made, each party shall identify one independent individual who shall meet to appoint a single arbitrator. If an arbitrator still cannot be agreed upon within an additional thirty (30) days, one shall be appointed by the JAMS Resolution Center. The language used in the arbitral proceedings shall be English. The parties shall bear the costs and fees of the arbitration and each party shall otherwise bear its own legal or other expenses. Arbitration proceedings shall be conducted on a confidential basis. Notwithstanding the foregoing, the parties may seek injunctive or equitable relief from a court of competent jurisdiction.

**14. EXPORT REGULATION:** No party may export any technical Confidential Information acquired under this Agreement or any commodities using the Confidential Information to any country to which the United States government forbids export or, at the time of export, requires an export license or approval, without first obtaining the required

license or approval. Receiving party will be responsible for obtaining any export license or approval as necessary for the use and disclosure of Confidential Information under this Agreement.

**15. PUBLICITY:** The specific terms of this Agreement, including the Purpose, and the parties' disclosures and activities in connection with this Agreement, are Confidential Information. The parties will not, without the other parties' prior written approval, issue any press release or make any public announcement or statement regarding this Agreement or the existence or any aspect of the business relationship between the parties. Failure by a party to comply with the foregoing sentence will constitute a material breach of this Agreement, not subject to cure, and in addition to any other remedies available to a party under this Agreement or by law or in equity, the non breaching party may terminate this Agreement immediately, upon giving notice of termination to the other parties. A party may however disclose the terms of this Agreement, including the Purpose, and the parties' disclosures and activities in connection with this Agreement: (a) to legal counsel of the party; (b) in connection with the enforcement of this Agreement or rights under this Agreement; or (c) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction solely for use in the due diligence investigation in connection with the transaction.

**16. SEVERABILITY:** If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, that provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of the remaining provisions will not be affected thereby.

**17. ASSIGNMENT:** This Agreement is not assignable to a third party without the prior written consent of the other parties; however, consent is not required to assign this Agreement to a party's wholly-owned subsidiaries or to any party that acquires substantially all of the assets of the assigning party to which this Agreement relates, provided that such assignee is not a competitor of the other parties. Any other attempt to assign this Agreement without the other parties consent will be null and void.

**18. FINAL AGREEMENT:** This Agreement states the entire agreement between the parties relating to the Purpose and supersedes all prior written or verbal agreements relating to this Agreement. This Agreement may only be modified in a writing signed by all parties.

The parties signing below agree to the above terms and conditions and intend to be legally bound. Notwithstanding any statute, regulation, or other rule of law, a signature provided by facsimile or other electronic copy will be deemed to be an original signature, and this Agreement may be executed in counterparts, and all counterparts taken together will be regarded as one and the same instrument.

#### CYPRESS SEMICONDUCTOR CORPORATION

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Vice President  
 Date: \_\_\_\_\_

(This Agreement will not be binding unless signed by the CEO, CFO, a VP, or a person authorized to sign on behalf of one of these individuals.)

#### COMPANY

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### COMPANY 2

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_