



MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made this _____ (date), by and between Cosemi Technologies Inc. (hereinafter referred to collectively as “Cosemi”), a California corporation, with offices at 17110 Armstrong Avenue, Irvine, CA 92614 and _____ (Company name) (hereinafter referred to collectively as “_____”(Short name), a _____ Corporation (type), with offices at _____ (Address). Cosemi and _____ (Short name) are sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Cosemi develops and markets manufacturable optical devices for all optical communication. Cosemi proposition will provide our customers with the highest quality and performance optical solutions on a very cost-effective basis.

WHEREAS, (Company business description) _____

WHEREAS, the Parties have determined that disclosure and examination of certain confidential and proprietary information is necessary to their continued discussion and evaluation of a possible business arrangement (such activities hereinafter referred to as “Explorations”);

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants herein contained, the Parties agree as follows:

1. The term “Confidential Information” shall mean all non-public information, oral or written, and materials (in any medium), including trade secrets, sensitive business information, proprietary technical data, technical expertise, and other confidential or sensitive information of which either Party becomes aware as a result or in the course of the discussions regarding the Exploration which could reasonably be understood to be confidential, whether or not so marked, and is related to either Party’s business and all other information or data identified or understood as proprietary or confidential at the time of disclosure which either Party or its representatives provides or discloses to the other Party in order to evaluate the feasibility of the Explorations; provided however, that Confidential Information does not include information which:

- (a) through no breach of this Agreement, is or becomes publicly available;
- (b) was already known to receiving Party and or its affiliates (“Recipient”) at the time of disclosure as evidenced by documents maintained in the ordinary course of business;
- (c) was independently developed by Recipient without reference to the Confidential Information;
or
- (d) was lawfully obtained from a third party without breach of any agreement between the third party and the disclosing Party (“Discloser”).

Confidential Information disclosed under this Agreement shall not be deemed to be within the foregoing exceptions merely because portions of such information or more general information are in the public domain or in the possession of the undersigned.

The Recipient shall have the burden of proving the applicability of any of the foregoing exceptions.

2. **Affiliates.** For purposes of this global Agreement, “Affiliates” shall mean any officer, director, employee, representative, independent contractor, shareholder, member, partner, attorney, accountant or other agent of any Party and any agent of any of the above. Each Party shall inform its Affiliates of the obligations under this Agreement and shall be responsible for their breaches thereof.

3. Each Recipient shall not disclose, use, duplicate or otherwise misappropriate any Confidential Information (except as necessary to conduct Explorations), shall not reverse-engineer any Confidential Information, and shall keep confidential and not disclose any Confidential Information to anyone (including, without limitation, any affiliate or other related party), unless the Discloser has, in its sole discretion, previously and expressly consented to such use, duplication or disclosure in writing. Each Recipient may disclose such Confidential Information to those employees of Recipient whose knowledge is necessary to conduct the Explorations, provided that all such employees be advised of their obligations to protect Discloser's interests, which obligations shall be identical to Recipient's under this Agreement. Without limiting any of the foregoing, each Party agrees to protect the other Party's Confidential Information with at least the same degree of care as it exercises to protect its own highly confidential information of like character, but in no event less than reasonable care. Each Party agrees that the Confidential Information shall not be made available (including the fact that discussions are taking place) to any other person or group (including customers or suppliers of either Party hereto) for any other purpose whatsoever without the prior written consent of the Discloser. Further each Party agrees to use the Confidential Information only for consideration of an Agreement between the Parties for the purposes of the Explorations to which this Agreement is directed, and specifically agrees not to use the Confidential Information to gain a competitive advantage in the marketplace.

4. Notwithstanding Section 3 herein, a Recipient may produce or disclose Confidential Information if and to the extent required pursuant to applicable laws, regulations or court order, provided the Recipient has given the Discloser prior written notice so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or the Discloser waives compliance with the provisions of this Agreement, the Recipient shall furnish only that portion of the Confidential Information which the Recipient is legally required to disclose and shall exercise its reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded the Confidential Information.

5. The Parties acknowledge and agree that:

- (a) All Confidential Information disclosed by or belonging to each Discloser is and shall remain the exclusive and valuable property of that Discloser;
- (b) The Recipient does not hereby obtain any license or other interest in or intellectual property right to Confidential Information of the Discloser or the subjects thereof;
- (c) On the Discloser's written request, upon the completion of the Explorations or the termination of this Agreement, whichever is earlier, each Recipient shall promptly deliver to Discloser all products, components and equipment provided by Discloser hereunder, as well as all records or other things containing or embodying Discloser's Confidential Information within its possession or control which was delivered or made available to each Recipient during or in connection with Explorations, or, on the Discloser's written request, provide a corporate officer's written certification that all such Confidential Information has been destroyed.

6. Remedies

- (a) The Parties agree that if a Party, or an Affiliate thereof, breaches, or is likely to breach, this Agreement, the other Party shall be entitled to temporary and/or permanent injunctive relief and/or an order for specific performance from any court of competent jurisdiction (without the necessity of posting any bond, which is hereby waived). Both Parties acknowledge that a violation or threatened violation of this Agreement by a Party or any Affiliates of that Party will result in irreparable and continuing damage for which a remedy by law would be inadequate and specifically agree not to oppose such relief on the grounds that there is an adequate remedy at law. If the Party against which injunctive relief is sought under this subsection claims that disclosure was or is permitted under paragraphs 1(a-d) and/or 4, that Party must present clear and convincing evidence that such exception applies.
- (b) Each Party acknowledges that the restrictions on the use, duplication and disclosure of the other Party's Confidential Information set forth herein are reasonable to protect the latter's business interests. Since unauthorized disclosure of Confidential Information would cause irreparable harm, if the Recipient breaches any of its obligations hereunder, the Discloser shall be entitled to seek equitable relief to protect its interest therein, including but not limited to injunctive relief, as well as money damages.
- (c) The right to injunctive and other equitable relief under subsection 6(a) shall be cumulative and in addition to whatever other remedies may be available (including a suit for monetary damages).
- (d) If any action is necessary to enforce the terms of this Agreement (including relief under subsection 6(a)), the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses.

7. **Term.** This Agreement becomes effective on the first date of disclosure of the Confidential Information, and will terminate on the earlier to occur of: (a) the execution of a definitive agreement which includes confidentiality provisions substantially similar to those set forth herein or which expressly supersede this Agreement; or (b) thirty (30) days prior written notice given by either Party terminating the Explorations. Notwithstanding the foregoing, the obligations and rights of the Parties: (i) with respect to Confidential Information that constitutes a "trade secret" (as defined by applicable law) will survive the termination of this Agreement for so long as such Confidential Information remains a trade secret under applicable law; and (ii) with respect to all other Confidential Information, will survive the termination of this Agreement for a period of three (3) years from termination, or as long as required by applicable law.

8. Miscellaneous

(a) The signatories hereto warrant and represent that they are duly authorized to bind Cosemi and _____ (Short name), respectively, and to execute this Agreement. All notices pursuant to this Agreement shall be in writing and delivered to the other party's signatory to the address or fax number written below such party's signature hereunder. The address or fax number may be changed by a proper notice pursuant to this Agreement. All notices shall be effective when received.

(b) Each Party represents that it has the legal right to disclose all information it reveals to the other pursuant to this Agreement. Nothing in this Agreement shall compel either Party to reveal to the other any information that it does not wish to reveal. Each Party warrants that it has the right to



disclose all such Confidential Information pursuant to this Agreement, and any such Confidential Information provided to either Party under this Agreement is provided "AS IS". NO OTHER WARRANTIES WITH RESPECT TO SUCH CONFIDENTIAL INFORMATION, EITHER EXPRESS OR IMPLIED, ARE MADE BY EITHER PARTY HEREUNDER. Each Party represents that entering into this Agreement will not conflict with any material Agreement already entered into by such Party.

(c) If any provision hereof is held invalid under any applicable rule of law such invalidity shall not affect other provisions hereof which can be given effect without the invalid provisions, and to this end the provisions hereof are declared to be severable. The above notwithstanding, any such invalid provisions shall be construed and enforced (to the extent possible) in accordance with the original intent of the Parties as herein expressed.

(d) This Agreement supersedes all prior or contemporaneous discussions and writings and constitutes the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement shall not be modified except in writing signed by both Parties hereto. Neither Party may transfer or otherwise assign its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part, without the prior written consent of the other Party. Any such prohibited assignment shall be void.

(e) No waiver of any provisions of the Agreement shall be effective unless agreed to in writing by the Party against whom such waiver is sought to be enforced. Waiver of any default or breach hereunder shall not constitute a waiver of any other default or breach whether similar or otherwise.

(f) The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of California other than any rule that might refer such matters to the laws of any other jurisdiction.

IN WITNESS WHEREOF the Parties have by their duly authorized representatives executed this Agreement as of the date first written above.

Cosemi Technologies, Inc. _____(Company)

By: _____ By: _____

Print: Nguyen Xuan Nguyen Print Name: _____

Title: President & CEO Title: _____

Address: 17110 Armstrong Avenue Address: _____(Street)

Irvine, CA 92614 _____(City/State)

_____(Country)