



Mutual Confidentiality Agreement

Effective Date: July 9th, 2019

In connection with the discussions between **Embry-Riddle Aeronautical University** ("ERAU") and **Magna Powertrain of America, Inc.** ("MPT") regarding MPT's support of the EcoCAR Mobility Challenge with a MPT P4 electric drive and dual inverter/control module (the "Project"), each of ERAU and MPT may, from time to time, have access to, or be provided with, confidential and/or proprietary information, from or regarding the other party, as further described below (collectively, the "Confidential Information"). Accordingly, for good and valuable consideration, each of ERAU and MPT agree to treat all of the Confidential Information made available or provided to it in accordance with this agreement.

For purposes of this agreement: (a) the term "Discloser" means either ERAU or MPT when it or any of its affiliates provides or discloses any of the Confidential Information to Recipient; (b) the term "Recipient" means either ERAU or MPT when it or any of its affiliates receives any of the Confidential Information of or from Discloser; (c) the term "Representatives" means the affiliates of a party and such party's and affiliates' officers, directors, employees, advisors, agents or representatives, and in the case of ERAU, includes students directly involved in the Project; and (d) the term "Confidential Information" includes all prints, designs, drawings, layouts, developments, data, models, prototypes, samples, knowledge, technology, products, processes, techniques, inventions, discoveries, improvements, licensed rights, software, computer programs, know-how, show-how, trade secrets, ideas, studies, Project objectives and timetables, plans, books, records, customer and/or competitor information, market information, business plans, financial information, operational information, quotations, budgets, and all other information whatsoever regarding either party or its affiliates or their respective businesses, products, services, operations, customers or suppliers (including, if applicable, patents and/or patent applications), in whatever format or medium (including oral, graphic, visual, electronic, physical or written form), and whether or not marked "confidential", "secret", "proprietary" or identified as such in some other applicable fashion.

The provisions of this agreement do not impose confidentiality obligations on Recipient with respect to information which Recipient can demonstrate:

- (i) was already known to Recipient or its Representatives and existed in documentary or other physical form in the possession of Recipient or its Representatives prior to the time of disclosure;
- (ii) is subsequently conceived, discovered or developed by Recipient or its Representatives, directly or indirectly, completely independent of any of the Confidential Information;
- (iii) is, or has become, generally available to the public other than as a result of a disclosure by

Recipient or its Representatives;

- (iv) is disclosed by Recipient with Discloser's specific and prior written consent as and to the extent set forth in such consent; or
- (v) becomes available to Recipient on a non-confidential basis from another source, provided that such other source is not known by Recipient to be bound by any confidentiality agreement with, or other obligation of secrecy to, Discloser or another party.

If Recipient is required under a judicial or governmental order or directive from a court or governmental authority of competent jurisdiction to disclose any of the Confidential Information, Recipient shall give Discloser prompt notice prior to such disclosure, to the extent permitted by law, in order to provide Discloser with a reasonable opportunity to obtain an appropriate protective order or seek another remedy, and shall use commercially reasonable efforts to cooperate with Discloser to obtain such order or remedy. If no protective order or other remedy is obtained and/or disclosure is required, Recipient shall disclose only that portion of the Confidential Information which it is legally required to disclose.

Recipient shall keep the Confidential Information strictly secret and confidential, not disclose it to any third party, and use it solely for the purposes of the Project and not for the benefit of Recipient or any third party, with all rights to commercially exploit the Confidential Information and anything derived from the Confidential Information being reserved exclusively for Discloser. Notwithstanding the previous sentence, the Confidential Information may be disclosed by Recipient to any of its Representatives who need to know the same in carrying out their responsibilities in the course of the Project; provided that Recipient shall inform such Representatives of the confidential nature of such Confidential Information and shall direct them to treat such Confidential Information in accordance with this agreement; and provided that third party advisors, agents or representatives of Recipient are bound by a confidentiality agreement with Recipient on terms substantially similar to the terms of this agreement, and in the case of students of ERAU and its affiliates, each student signs an acknowledgment in the form of Schedule A hereto. Recipient is and shall remain individually and jointly liable with its Representatives for any breach of this agreement.

Recipient agrees to use adequate procedures and safeguards to preserve the secrecy and confidentiality of the Confidential Information, including to prevent third parties from gaining access thereto, such procedures and safeguards being at least equal to those used by Recipient to protect its own confidential information of the same or a similar nature and relative importance as that of the Confidential Information, but no less than reasonable procedures and safeguards under the circumstances.

Except to the extent prohibited by applicable law, at Discloser's written request, and in any event upon termination or completion of the Project, Recipient will, and will cause its Representatives to, promptly return to Discloser all of the Confidential Information in tangible form and all documents or materials derived from or containing any of the Confidential Information, including all copies, notes, samples, specimens, evaluations, studies, materials and analysis thereof, and will promptly delete or destroy all computer and other electronic media containing any of the Confidential Information, in each case without retaining any copies, notes or extracts thereof (whether or not made or compiled by Recipient or its Representatives, or disclosed by Discloser or any of its Representatives). In lieu of the return of the Confidential Information described above, Discloser may (at its option) permit the destruction of the Confidential Information, with such destruction being confirmed by a written statement of a senior representative of Recipient. Notwithstanding the foregoing, Recipient may

retain copies of electronic records containing any of the Confidential Information which are systemically and automatically created and stored on backup media or in backup storage facilities for the purpose of fulfilling Recipient's information technology disaster recovery or backup procedures, or business continuity plans, and are not accessible in the ordinary course of business; provided that such records shall be held and remain subject to the confidentiality and use limitations in this agreement, and may not be accessed except as required for such purpose; and provided further that if any such records are restored or otherwise made accessible, Recipient shall immediately and permanently delete such records.

All of the Confidential Information, however stored, at all times remains, as between Discloser and Recipient, the property of Discloser. Nothing in this agreement grants Recipient any right or license (express or implied) under any patent, patent application, copyright, trademark, trade secret or other form of proprietary technology or intellectual property rights in or to the Confidential Information (and whether now or hereafter owned, used or controlled by Discloser and/or Discloser's Representatives). Unless otherwise agreed to by ERAU and MPT in writing, Recipient shall not attempt to secure any proprietary technology or intellectual property rights in or to any of the Confidential Information. Unless otherwise agreed to in writing by the parties, Recipient further agrees not to: decompile, disassemble, decode, modify, redesign, or reverse engineer any of the Confidential Information; remove or destroy any confidentiality or proprietary rights marks or legends in or on any of the Confidential Information; or violate any security features of the Confidential Information.

Discloser represents and warrants to Recipient that Discloser owns the Confidential Information, or has the right to disclose such Confidential Information and to allow Recipient's use thereof. Except for the previous sentence, the Confidential Information is made available and disclosed on an "as is" basis. Neither party makes any representation or warranty to the other party, express or implied, with respect to any of the Confidential Information, including with respect to the accuracy or completeness of the Confidential Information or any implied warranties and conditions of merchantability, fitness for a particular purpose, or freedom from patent or copyright infringement, whether arising by law, custom or otherwise. Only those representations or warranties that are made within a definitive agreement, if, when and as agreed to by ERAU and MPT will have any legal effect. Discloser shall not be liable to Recipient for, or in connection with, Recipient's use of any of the Confidential Information.

Nothing in this agreement obligates either ERAU or MPT to purchase any goods or services from, or to enter into any supply contract or other agreement with, the other party. Neither party is obligated to disclose or make available any information to the other party. Each party has the absolute discretion as to what information it makes available to the other party. Nothing in this agreement constitutes a confirmation, approval, consent, or other agreement to begin any project or any other business in the future between the parties.

Unless otherwise mutually agreed (which agreements include the form and substance of the intended disclosure) or required by applicable law, each of ERAU and MPT agree not to make any public comment, statement or communication relating to this agreement, the Project, the Confidential Information or the business discussions or arrangements contemplated under this agreement.

The obligations arising under this agreement commence on the date first set out above and continue for a period of five (5) years after the date of the last disclosure of the Confidential Information made under this agreement.

If any provision of this agreement is held by a court of competent jurisdiction to be invalid, unenforceable or contrary to applicable law, such provision will be deemed to be deleted and the validity and enforceability of the remaining provisions of this agreement will in no way be affected thereby.

Neither party shall, directly or indirectly, assign or purport to assign this agreement or any of its rights or obligations under this Agreement, in whole or in part, to any third party without the prior written consent of the other party. This agreement is binding upon and enures to the benefit of the parties, and their successors and permitted assigns.

Unless otherwise agreed to by ERAU and MPT, all notices authorized, or required to be given, under this agreement shall be in writing and given by hand delivery, courier, or registered mail to ERAU and to MPT at the respective address set forth herein.

This agreement contains the entire agreement of, and supersedes any and all prior understandings, representations, arrangements and agreements between, the parties, whether oral or written, with respect to the subject matter hereof. This agreement may only be waived, modified or amended in writing when signed by authorized representatives of both ERAU and MPT. In this agreement, words signifying the singular number include the plural and vice versa, and every use of the words "including" or "includes" is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively. In the event that an individual representing a party to this agreement signs an agreement while attending a site visit, and such agreement conflicts, or is inconsistent, with this agreement, then this agreement will control and govern.

Without limiting any rights or remedies available to either party (including injunctive relief to prevent any actual or threatened breach of this agreement), ERAU and MPT agree to use reasonable efforts to amicably settle any disputes or differences which may arise under this agreement. Each party acknowledges that any violation of this agreement may give rise to irreparable injury to the other party and that damages may not be an adequate remedy for such violation. Accordingly, ERAU and MPT agree that, in addition to any other legal or equitable remedies that may be available, Discloser is entitled to seek equitable relief, including an injunction or order for specific performance, in the event of a breach or threatened breach of this agreement by Recipient.

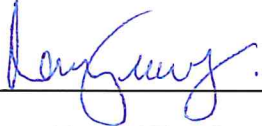
This agreement is governed by and will be construed in accordance with the laws of the State of Michigan, U.S.A., excluding conflicts of law principles.

It is the express wish of the parties that this agreement and all related documents, including notices and other communications delivered under this agreement, be drawn up, negotiated and agreed to in the English language. Any translation of this agreement or any related document will be for convenience purposes only and the English version thereof governs.

This agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement. When executed by a party, this agreement may be delivered in person or by confirmed facsimile or e-mail (in PDF format) or other electronic means, and any such facsimile, PDF or other electronic signature versions are deemed to be originals for all purposes.

As confirmation of ERAU's acceptance of this agreement, please execute and return a copy of this agreement to the attention of the undersigned, at the address below, at your earliest convenience.

MAGNA POWERTRAIN OF AMERICA, INC.



Name: Ronald Frawley

Title: Strategic Planning & Corporate Development Director

Address: 1235 E. Big Beaver Road

Troy, Michigan 48083 USA

ACCEPTED and AGREED effective as of the date first set forth above:

EMBRY-RIDDLE AERONAUTICAL UNIVERSITY

Nanette Guzman

Digitally signed by Nanette Guzman
DN: cn=Nanette Guzman, o=Embry-Riddle Aeronautical
University, ou=Director, Office of Sponsored Research,
email=guzmann2@erau.edu, c=US
Date: 2019.07.15 08:55:32 -04'00'

Name: Nanette Guzman

Title: Director, Grants and Contracts Administration

Address: 600 S Clyde Morris Blvd.

Daytona Beach, FL 32114

SCHEDULE A

**Acknowledgment of Responsibility to Protect
Confidential Information for University Students**

Any term not otherwise defined in this Acknowledgment shall have the meaning set forth in the Mutual Confidentiality Agreement between Embry-Riddle Aeronautical University and Magna Powertrain of America, Inc. dated July 9, 2019 (the "NDA").

Every student who has access to Confidential Information provided or disclosed by MPT and its Affiliates must sign this Acknowledgement before he/ she is granted access to such information.

By signature below, I acknowledge and confirm that I have read and understand the NDA, which governs access to, disclosure and use of Confidential Information provided or disclosed by MPT and its Affiliates for the Project. I understand and agree that Confidential Information provided or disclosed by MPT and its Affiliates shall be kept confidential, used solely for the Project and disclosed only as permitted pursuant to the NDA.

I further agree to comply with and abide by all terms and conditions set forth in the NDA including, but not limited to, such terms and conditions related to the confidentiality, ownership and restriction on disclosure and use of MPT's Confidential Information and the return and/ or destruction of such Confidential Information in accordance with the NDA.

Read and acknowledged:

Name: David Jefts (Printed)

Signature: 

Date: 9/19/2019

Witness: _____

Date: _____