

CONFIDENTIALITY UNDERTAKING

(UNILATERAL UNDERTAKING BY AN EMPLOYEE IN FAVOUR OF EMPLOYER)

1. INTERPRETATION AND DEFINITIONS

1.1 In this undertaking, unless inconsistent with, or otherwise indicated by the context:

1.1.1 "the Employee" is

1.1.2 the Employee's physical address is

.....;

1.1.3 "the Company" is

1.1.4 the Company's physical address is

.....;

1.1.5 "the Parties" are the Company and the Employee;

1.1.6 "Confidential Information" means confidential information of the Company including, without limiting the generality of the foregoing, all related secret knowledge, technical information and specifications, manufacturing techniques, systems, processes, methods of production, designs, circuit diagrams, blueprints, electronic artwork, samples, devices, formulae, know-how, information concerning materials, marketing and business information generally, and other related materials of whatever description in which the Company has an interest in being kept confidential; and

1.1.7 "Commencement Date" means the earlier of: the date of signature of this undertaking by the Employee; and the date on which the Employee was employed by the Company.

1.2 Words in the singular include the plural and *vice versa*.

1.3 Words importing, and references to any one gender include each of the other two genders.

2. PREAMBLE

2.1 The Employee has been, or is to be, employed by the Company to perform various services for the Company.

2.2 The Company has in its possession certain Confidential Information that the Company may disclose to the Employee, or that the Employee may be exposed to in terms of the Employee's employment with the Company.

2.3 The employment of the Employee is subject to the terms and conditions in this undertaking.

3. NON-DISCLOSURE

- 3.1 The Employee acknowledges that all right, title and interest in and to the Confidential Information vests in the Company and that the Employee has no claim of any nature in and to the Confidential Information.
- 3.2 The Employee undertakes to maintain the confidentiality of any Confidential Information to which the Employee may gain or have gained access whether before or after the Commencement Date, and whether intentionally disclosed or inadvertently made available or exposed to the Employee by the Company. The Employee may not divulge or permit to be divulged to any person any aspect of the Confidential Information, save as may be authorised in writing by the Company or as may have been contemplated by the Parties and is necessary for the purpose of performing the Employee's services in terms of the Employee's contract of employment.
- 3.3 The Employee will abide by all the rules and procedures of the Company designed to protect its Confidential Information and shall take all such reasonable steps to prevent the Confidential Information falling into the hands of an unauthorised third party.
- 3.4 Any documents and/or material embodying Confidential Information which comes into the possession of the Employee or that may be generated by the Employee in the performance of the Employee's contract of employment shall (unless the Company provides its written consent to the contrary):
 - 3.4.1 be deemed to form part of the Confidential Information of the Company and be subject to the provisions of this undertaking;
 - 3.4.2 be deemed to be the property of the Company;
 - 3.4.3 not be copied, reproduced, published or circulated by the Employee other than for those purposes contemplated by the Parties and only insofar as is necessary for the Employee to perform the services in terms of the Employee's contract of employment; and
 - 3.4.4 be surrendered to the Company on demand, and in any event on termination of the Employee's contract of employment.

4. USE

The Employee shall not use or attempt to use the Confidential Information for any purpose other than for those purposes authorised in writing by the Company or as may have been contemplated by the Parties and only insofar as is necessary for the Employee to perform the services in terms of the Employee's contract of employment and, in any event, the Employee will not use or attempt to use the Confidential Information in any manner that will cause or be likely to cause injury or loss to the Company.

5. EXCEPTIONS

- 5.1 The obligations set out in this undertaking do not apply to information which is in fact lawfully in the public domain at the Commencement Date or lawfully comes into the public domain after the Commencement Date otherwise than as a result of the conduct of the Employee.

5.2 The Employee bears the onus of proving either of the exceptions listed in clause 5.1.

6. TERMINATION

Subject to clause 5, the provisions of this undertaking will remain in force indefinitely.

7. INTERIM RELIEF

The Employee acknowledges that a breach of any of the provisions contained herein would cause the Company to suffer loss which could not adequately be compensated for by damages and that the Company may, in addition to any other remedy or relief, enforce the performance of this undertaking by interim interdict or specific performance upon application to a court of competent jurisdiction without proof of actual or special damages and notwithstanding that in any particular case damages may readily be quantifiable, and the Employee will not plead sufficiency of damages as a defence in the proceeding for such interim relief.

8. AMENDMENT

No amendment, alteration, addition, variation or consensual cancellation of this undertaking will be valid unless in writing and signed by the Parties.

9. WAIVER

9.1 No waiver of any of the terms or conditions of this undertaking will be binding for any purpose unless expressed in writing and signed by the Company and any such waiver will be effective only in the specific instance and for the purpose given.

9.2 No failure or delay on the part of the Company in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10. SEVERABILITY

In the event that any of the provisions of this undertaking are found to be invalid, unlawful, or unenforceable such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

11. JURISDICTION

This undertaking is governed by the law of

SIGNED AT

THIS

DAY OF

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EMPLOYEE