

CONFIDENTIALITY UNDERTAKING

(UNILATERAL UNDERTAKING BY A CONTACTOR IN FAVOUR OF DISCLOSER)

1. INTERPRETATION AND DEFINITIONS

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

1.1.1 "the Contractor" is

1.1.2 the Contractor's physical address is
.....;

1.1.3 "the Discloser" is

1.1.4 the Discloser's physical address is
.....;

1.1.5 "the Contract" means **[enter details in general terms]**
.....;
.....;

1.1.6 "the Parties" are the Discloser and the Contractor;

1.1.7 "Confidential Information" means confidential information of the Discloser generally relating to the Contract 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, survey data collection, processing and interpretation, and other related materials of whatever description in which the Discloser has an interest in being kept confidential; and

1.1.8 "Commencement Date" means the earlier of: the date of signature of this undertaking by the Contractor; and the date on which the Contractor was appointed by the Discloser.

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 Contractor has been, or is to be, appointed by the Discloser to provide services to the Discloser.

- 2.2 The Discloser has in its possession certain Confidential Information that the Discloser may disclose to the Contractor, or that the Contractor may be exposed to in terms of the appointment.
- 2.3 The appointment of the Contractor is subject to the terms and conditions in this undertaking.

3. NON-DISCLOSURE AND USE

- 3.1 The Contractor undertakes to maintain the confidentiality of any Confidential Information to which the Contractor 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 Contractor by the Discloser.
- 3.2 The Contractor 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 Discloser or as may have been contemplated by the Parties and is necessary for the purpose of the Contract, in which events such disclosure is subject to the provisions of clause 4 of this undertaking.
- 3.3 The Contractor will not use or attempt to use the Confidential Information for any purpose other than for those purposes authorised in writing by the Discloser or as may have been contemplated by the parties and is necessary for the purpose of the Contract and, in any event, the Contractor 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 Discloser.
- 3.4 The Contractor acknowledges that all right, title and interest in and to the Confidential Information vests in the Discloser and that the Contractor has no claim of any nature in and to the Confidential Information.
- 3.5 The Contractor will abide by all the rules and procedures of the Discloser designed to protect its Confidential Information and will take all reasonable steps to prevent the Confidential Information falling into the hands of an unauthorised third party.
- 3.6 Any documents and/or material including Confidential Information which comes into the possession of the Contractor or that may be generated by the Contractor in the performance of the Contract will (unless the Discloser provides its written consent to the contrary):
 - 3.6.1 be deemed to form part of the Confidential Information of the Discloser and be subject to the provisions of this undertaking;
 - 3.6.2 be deemed to be the property of the Discloser;
 - 3.6.3 not be copied, reproduced, published or circulated by the Contractor other than those purposes contemplated and necessary for the purpose of the Contract; and
 - 3.6.4 be surrendered to the Discloser on demand, and in any event on termination of the Contract.

4. DISCLOSURE TO PERSONNEL

- 4.1 Notwithstanding anything contained in clause 3, the Contractor is entitled to disclose such aspects of the Confidential Information as may be relevant to one or more of its technically qualified employees or consultants, provided that the employee or consultant concerned:
 - 4.1.1 has a legitimate interest therein, and then only to the extent necessary for the purpose of the Contract; and
 - 4.1.2 is informed by the Contractor of the confidential nature of the Confidential Information and the obligations of confidentiality to which such disclosure are subject.
- 4.2 The Contractor shall notify the Discloser of the name of each person or entity to whom any Confidential Information has been disclosed in terms of clause 4.1 as soon as practicable after such disclosure.
- 4.3 The Contractor will procure that any person to whom it discloses any Confidential Information accepts all related obligations that the Contractor has accepted in this undertaking as if such person had signed this undertaking.
- 4.4 The Contractor is responsible for any breach of the provisions of this undertaking by any persons to whom Confidential Information has been disclosed in terms of clause 4.1, and indemnifies the Discloser in this regard.

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

6. OBLIGATIONS ON TERMINATION OF THE CONTRACT

- 6.1 On termination of the Contract, the Contractor shall deliver to the Discloser all documents and/or material containing Confidential Information in its possession or control.
- 6.2 The rights of the Discloser and obligations accepted by the Contractor in this undertaking will survive termination of the Contract.

7. TERMINATION

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

8. RELIANCE ON INFORMATION

Neither the Discloser nor any other person making any representation, warranty or undertaking, express or implied, as to the accuracy, completeness or reasonableness of the

Confidential Information will (save in the event of fraud) incur any liability for the use of, or reliance upon the Confidential Information by the Contractor or any other person.

9. INTERIM RELIEF

The Contractor acknowledges that a breach of any of the provisions contained herein would cause the Discloser to suffer loss which could not adequately be compensated for by damages and that the Discloser 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 Contractor will not plead sufficiency of damages as a defence in the proceeding for such interim relief.

10. AMENDMENT

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

11. WAIVER

- 11.1 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 Discloser and any such waiver will be effective only in the specific instance and for the purpose given.
- 11.2 No failure or delay on the part of the Discloser 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.

12. 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.

13. JURISDICTION

This undertaking is governed by the law of

SIGNED AT _____ THIS _____ DAY OF _____ 20____

For: **Contractor**
Duly authorised