

CONFIDENTIALITY UNDERTAKING

FOR THE PURPOSE OF COLLABORATING IN A PROJECT

(UNILATERAL UNDERTAKING BY RECIPIENT WHERE THE OTHER PARTY HAS APPLIED FOR PATENT RIGHTS)

1. INTERPRETATION AND DEFINITIONS

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

1.1.1 "the Discloser" is

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

1.1.3 "the Recipient" is

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

1.1.5 "the Project" means
.....
.....;

1.1.6 "the Technology" means
.....
.....;

1.1.7 "the Parties" are the Discloser and the Recipient;

1.1.8 "Confidential Information" means confidential information proprietary to the Discloser relating to the Technology that is to be disclosed for the purpose of the Project 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 and marketing and business information generally;

1.1.9 "Commencement Date" means the date of signature of this undertaking by the Recipient;
and

1.1.10 "Date of Patent Registration" means the date on which patent registration for any aspect of the Technology has been obtained by the Discloser in any territory throughout the world;

- 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

The Discloser has in its possession certain Confidential Information relating to the Technology for which the Discloser has applied, or intends to apply for patent registration. In the interim, before the Date of Patent Registration, the Discloser may disclose aspects of the Confidential Information to the Recipient, which Confidential Information will be used by the Recipient solely for the purposes of the Project and be subject to the terms and conditions in this undertaking. However, the Discloser intends ultimately to rely on its patent rights and the obligations accepted by the Recipient in terms of this undertaking will accordingly terminate on the Date of Patent Registration.

3. NON-DISCLOSURE

- 3.1 The Recipient undertakes to maintain the confidentiality of any Confidential Information to which the Recipient may gain access after the Commencement Date, whether intentionally disclosed or inadvertently made available or exposed to the Recipient by the Discloser. the Recipient 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 Project, in which events such disclosure will be subject to the provisions of clause 4 of this undertaking.
- 3.2 The Recipient will take all reasonable steps to prevent the Confidential Information falling into the hands of an unauthorised third party.
- 3.3 Any documents and/or material including Confidential Information which comes into the possession of the Recipient will (unless the Discloser provides its written consent to the contrary):
 - 3.3.1 not be copied, reproduced, published or circulated by the Recipient other than for those purposes as may have been contemplated by the Parties and are necessary for the purpose of the Project; and
 - 3.3.2 be surrendered to the Discloser on demand.

4. DISCLOSURE TO PERSONNEL

- 4.1 Notwithstanding anything contained in clause 3, the Recipient is entitled to disclose such aspects of the Confidential Information as may be relevant to one or more of its technically qualified employees, consultants or subcontractors, provided that the employee, consultant or subcontractor concerned:
 - 4.1.1 has a legitimate interest therein, and then only to the extent necessary for the purpose of the Project; and
 - 4.1.2 is informed by the Recipient of the confidential nature of the Confidential Information and the obligations of confidentiality to which such disclosure are subject.

- 4.2 The Recipient 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 Recipient will procure that any person to whom it discloses any Confidential Information accepts all the obligations that that the Recipient has accepted in this undertaking as if such person had signed this undertaking.
- 4.4 The Recipient 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. USE

the Recipient 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 and is necessary for the purpose of the Project.

6. EXCEPTIONS

- 6.1 The obligations set out in this undertaking do not apply to information which:
- 6.2 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 Recipient;
- 6.3 is already in the possession of the Recipient at the Commencement Date and did not emanate from the Discloser; or
- 6.4 becomes available to the Recipient from a party other than the Discloser not being subject to any related obligation of confidentiality in favour of the Discloser.

7. TERMINATION

- 7.1 The rights of the Discloser and the obligations accepted by the Recipient in this undertaking will survive termination of the Project.
- 7.2 The obligations accepted by the Recipient hereunder will terminate on the earlier of: the anniversary of the Commencement Date; and the Date of Patent Registration.

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 Discloser 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 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.

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 20

For: **Recipient**
Duly authorised