

CONFIDENTIALITY UNDERTAKING

FOR THE PURPOSE OF COLLABORATING IN A PROJECT

(UNILATERAL UNDERTAKING BY RECIPIENT)

1. INTERPRETATION AND DEFINITIONS

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

1.1.1 "the Recipient" is

1.1.2 the Recipient's physical address is

.....;

1.1.3 "the Discloser" is

1.1.4 the Discloser's physical address is

.....;

1.1.5 "the Project" means

.....

.....;

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

1.1.7 "Confidential Information" means confidential information of the Discloser generally relating to 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, marketing and business information generally, 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 date of signature of this undertaking by the Recipient.

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 that the Discloser may disclose to the Recipient, or that the Recipient may be exposed, or have access to, which

Confidential Information will be used solely for the purposes of the Project and be subject to the terms and conditions in this undertaking.

3. NON-DISCLOSURE

- 3.1 The Recipient acknowledges that all right, title and interest in and to the Confidential Information vests in the Discloser and that the Recipient has no claim of any nature in and to the Confidential Information.
- 3.2 The Recipient undertakes to maintain the confidentiality of any Confidential Information to which the Recipient 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 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.
- 3.3 The Recipient will abide by all the rules and procedures of the Discloser designed to protect the Discloser's 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 including Confidential Information which comes into the possession of the Recipient or that may be generated by the Recipient in the performance of the Project shall (unless the Discloser provides its written consent to the contrary):
 - 3.4.1 be deemed to form part of the Confidential Information of the Discloser and subject to the provisions of this undertaking;
 - 3.4.2 be deemed to be the property of the Discloser;
 - 3.4.3 not be copied, reproduced, published or circulated by the Recipient other than those purposes contemplated and necessary for the purpose of the Project; and
 - 3.4.4 be surrendered to the Discloser on demand, and in any event on termination of the Project.

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 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 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 shall procure that any person to whom it discloses any Confidential Information accepts all the obligations that the Recipient has accepted in this undertaking as if such person had signed this undertaking.
- 4.4 The Recipient will be responsible for any breach of the provisions of this undertaking by any persons detailed in 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 and, in any event, the Recipient 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.

6. EXCEPTIONS

- 6.1 The obligations set out in this undertaking will not apply to information which:
 - 6.1.1 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; or
 - 6.1.2 is already in the possession of the Recipient at the Commencement Date and did not emanate from the Discloser.
- 6.2 The Recipient bears the onus of proving any of the exceptions in clauses 6.1.

7. OBLIGATIONS ON TERMINATION OF THE PROJECT

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

8. TERMINATION

Subject to clause 6, the provisions of this undertaking will remain in force indefinitely.

9. 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 Recipient or any other person.

