

## CONFIDENTIALITY UNDERTAKING

### (THIRD PARTY - EVALUATION)

#### 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 Evaluation" means .....  
.....  
.....;

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

1.1.7 "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 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 to, which Confidential Information will be used by the Recipient solely for the purpose of the Evaluation 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 should gain access whether before or after the Commencement Date of this undertaking, and whether intentionally disclosed to the Recipient or inadvertently made available to the Recipient by the Discloser. The Recipient will not divulge or permit to be divulged to any person any aspect of the Confidential Information save as may be authorised by the Discloser.
- 3.3 The Recipient will abide by all the rules and procedures of the Discloser designed to protect the 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 material of a confidential nature that comes into the possession of the Recipient or any related material that is generated by the Recipient will (unless the Discloser provides its prior written consent to the contrary):
  - 3.4.1 be deemed to form part of the Confidential Information of the Discloser and be 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 for any purpose other than those purposes contemplated by the Parties and only insofar as is necessary for the Recipient to conduct the Evaluation; and
  - 3.4.4 be surrendered to the Discloser on demand, and in any event on termination of the Evaluation.

### 4. USE

The Recipient will not use or attempt to use any aspect of the Confidential Information for any purpose other than those purposes contemplated by the Parties and only insofar as it is necessary for the Recipient to conduct the Evaluation and, in any event, the Recipient will not use or attempt to use the Confidential Information in a manner that will cause or be likely to cause injury or loss to the Discloser.

### 5. EXCEPTIONS

- 5.1 The above undertakings by the Recipient relating to confidentiality will 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 Recipient.
  - 5.1.3 The Recipient bears the onus of proving either of the exceptions in clause 5.1.

## 6. OBLIGATIONS ON TERMINATION OF THE EVALUATION

- 6.1 On termination of the Evaluation, the Recipient shall deliver to the Discloser all documents or material embodying Confidential Information in the Recipient's possession or control, including any such documents or material generated while conducting the Evaluation.
- 6.2 The rights and obligations in terms of this undertaking will survive termination of the Evaluation.

## 7. PARTIES UNDER CONTROL OF THE RECIPIENT

The Recipient will procure that any employee, officer or agent of the Recipient, or any sub-contractor appointed by the Recipient will comply with the provisions of this undertaking. The Discloser may, in its discretion, specify that any such person sign a secrecy undertaking in a form specified by the Discloser from time to time and the Recipient will in turn ensure that no Confidential Information is disclosed to such person and that such person will not be engaged in the Evaluation until such undertaking has been signed.

## 8. TERM

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

## 9. AMENDMENT

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

## 10. WAIVER

- 10.1 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.
- 10.2 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.

## 11. 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.

## 12. JURISDICTION

This undertaking is governed by the law of .....

SIGNED AT                      THIS            DAY OF                      20

For: **The Recipient**  
Duly authorised