

## **MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

THIS MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this "Agreement") is executed on the date of (**DATE**), (the "Effective Date"), by and between (**Customer Name**) ("Party A"), located at (**Address**), and Pan Taiwan Enterprise Co., Ltd. ("Party B"), located at 16F-1, No. 16, Jian Ba Road, Chung Ho District, New Taipei City 235603, Taiwan, R.O.C.

Each party hereto would like to protect the confidentiality of, maintain their respective rights in and prevent the unauthorized use and disclosure of their valuable confidential information. Accordingly, Party A and Party B ("the Parties") hereby agree as follows:

### **1. PROPOSED TRANSACTION**

The Parties intend to engage in discussions and negotiations concerning the establishment of a relationship under which Party A would enter into a business relationship with Party B, or explore potential business opportunities, or develop new projects under existing business relationship.

In the course of such discussions and negotiations, each party (the "Disclosing Party") may disclose or deliver to the other party (the "Receiving Party") or its officers, employees, directors, agents and/or counsels, certain confidential technical, proprietary, business, and other information, for the purpose of enabling the Receiving Party to evaluate the feasibility of new business relationship or new projects.

### **2. CONFIDENTIAL INFORMATION**

In connection with their evaluation of the Proposed Transaction, the Parties may receive information about each other that the Disclosing Party considers to be confidential or proprietary. The Receiving Party agrees to treat all such information it receives from the Disclosing Party as "Confidential Information", whether provided before, on or from time to

time after the Effective Date, in accordance with the terms and provisions of this Agreement. As used in this Agreement, the term “Confidential Information” means any non-public information disclosed under this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, but not limited to:

- (i) nonpublic information relating to the Disclosing Party’s technology, in particular, pricing, customers and prospective customers, customers’ confidential information, vendors and vendor lists, bills of materials, processes (manufacturing, testing and assembly processes), know-how, designs, methods of operation, sales techniques, drawings, models, tooling, technical document, trade secrets, business plans, promotional and marketing activities, finances and other business affairs,
- (ii) third-party information that the Disclosing Party is obligated to keep confidential, and
- (iii) the nature, content and existence of this Agreement and any discussions or negotiations between the Parties.

### **3. EXCLUSIONS**

“Confidential Information” does not include information which:

- (i) was or becomes generally available to the public other than as a result of a breach of any agreement of confidentiality or disclosure by the Receiving Party or its representatives,
- (ii) was or legally becomes available to the Receiving Party on a non-confidential basis from a third party, provided that such source is not bound by a confidentiality agreement with the Disclosing Party,
- (iii) the Receiving Party can demonstrate was in its possession at the time of disclosure, and was not acquired, directly or indirectly, from the Disclosing Party, its associates,

or from a third party subject to an obligation of confidentiality,

(iv) is independently developed by the Receiving Party without use of, reference to or reliance upon the Confidential Information from the Disclosing Party; or

(v) is the subject of a written permission to disclose the information provided by the Disclosing Party.

#### **4. USE OF CONFIDENTIAL INFORMATION**

The Receiving Party shall use Confidential Information only in pursuance of its business relationship with the Disclosing Party. Except as expressly provided in this Agreement, the Receiving Party shall not reproduce, decompose, reverse engineer or disclose the Disclosing Party's Confidential Information in any way or to anyone without the Disclosing Party's prior written consent. The Receiving Party shall take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature.

#### **5. PERMITTED DISCLOSURES**

The Receiving Party may disclose Confidential Information only to the officers, employees, directors, agents and/or counsels within its or any of its affiliates' organization, its subcontractors or other related persons, who have a need to know such Confidential Information in the performance of their duties in order to achieve the Proposed Transaction and who are bound to protect the confidentiality of such Confidential Information, each of whom shall be notified of the restrictions on use of Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by such persons. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure.

#### **6. COMPELLED DISCLOSURE**

In the event the Receiving Party is requested by the courts or competent authorities to disclose any part of the Confidential Information, the Receiving Party shall notify the Disclosing Party promptly of such requests, to the extent permitted by law, and the documents requested thereby, so that the Disclosing Party may seek an appropriate protective order and/or waive in writing the Receiving Party's obligation not to disclose the Confidential Information. The Receiving Party may disclose such information without liability hereunder; provided however, that the Receiving Party shall only disclose necessary portion and deliver to the Disclosing Party written notice of the information to be disclosed as far in advance of its disclosure as is practicable, and the Receiving Party shall use its best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed.

## **7. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

Upon the written request of the Disclosing Party, the Receiving Party shall return as soon as reasonably practicable all tangible forms (including electronic) of Confidential Information received by it that have not already been properly disposed of. If requested by the Receiving Party, the Disclosing Party shall identify the Confidential Information that it provided to the Receiving Party. The Disclosing Party shall not request the return of Confidential Information that the Receiving Party is required to fulfill its contractual obligations, if any, to the Disclosing Party, or to exercise its rights, if any, under any contract with the Disclosing Party. The Receiving Party shall only dispose of Confidential Information (such as documents or prototype or pre-production parts) in a manner that results in the destruction of the Confidential Information (such as shredding) so that the Confidential Information cannot be recovered or used by a third party following disposal. At the Disclosing Party's request, the Receiving Party shall acknowledge in writing its compliance with this Section.

## **8. OWNERSHIP**

Each party agrees that the Disclosing Party has and shall retain the exclusive ownership of the Confidential Information it discloses and all related patent, copyright, trade secret, trademarks, technical specifications, methods, know-how and other intellectual property rights, if any. However, the application for the intellectual property rights shall be the sole responsibility of the Disclosing Party.

No license or conveyance of such rights to the Receiving Party is granted or implied under this Agreement.

## **9. REMEDIES**

The Receiving Party recognizes and acknowledges the competitive value and confidential nature of the Disclosing Party's Confidential Information and the irreparable damage that could result if such Confidential Information is disclosed to any third party or otherwise used in violation of this Agreement. The Receiving Party acknowledges that remedies at law may be inadequate to protect the Disclosing Party against any actual breach of this Agreement by the Receiving Party or by its Representatives, and, without prejudice to any other rights and remedies otherwise available to the Disclosing Party, the Receiving Party agrees to the granting of injunctive relief in the Disclosing Party's favor with proof of actual damages arising out of the actual breach of this Agreement by the Receiving Party or by its Representatives.

## **10. TERM**

This Agreement shall terminate automatically upon the earlier of (i) the termination of the Parties' business relationship, or (ii) two (2) years from the Effective Date.

However, the Receiving Party's obligations with respect to the Confidential Information shall continue to be binding for a period of five (5) years from the date of such early termination or expiration of the term of this Agreement.

## **11. GOVERNING LAW AND JURISDICTION**

The Parties shall negotiate and settle the disputes under this Agreement in good faith. In

case the disputes can not be settled through the negotiation between the Parties, the following principles shall apply:

- (1) If Party B is the party raising the legal action, this Agreement shall be governed by and construed in accordance with the laws of **(Party A's Country)**. And the Parties hereto consent to the jurisdiction of **(The court of Party A's country)**.
- (2) If Party A is the party raising the legal action, this Agreement shall be governed by and construed in accordance with the laws of Taiwan, the Republic of China and the Parties hereto consent to the jurisdiction of Taiwan Taipei District Court as the court of first instance.

## **12. COPIES**

This Agreement shall be executed in two identical effective copies, and each party holds one effective copy.

## **13. EFFECTIVE DATE**

This Agreement becomes effective on the date when the authorized officers on behalf of each Party have signed and dated this Agreement.

**(Customer Name)**

**Pan Taiwan Enterprise Co., Ltd.**

Authorized signature:

Authorized signature:

Name:

Name:

Title:

Title:

Date Signed:

Date Signed: