

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (hereinafter referred to as the "Agreement") is made and entered into this dd/____MM/____Year____ (hereinafter, the Effective Date"), by and between **(The President of India acting through) The General Manager, Opto Electronics Factory, Raipur, Dehradun - 248 008 (UK - INDIA) a, unit of Ordnance Factory Board, Department of Defence Production, Ministry of Defence, Government of India** (hereinafter referred to as "OLF"), having a place of business at Raipur, Dehradun - 248 008 (UK - INDIA) and _____ having a place of business at _____ (hereinafter, singularly, the "Party" and, collectively, the "Parties.")

WHEREAS, the Parties have agreed to document the understandings reached between them relating to the exchange, protection and use of Proprietary Information associated with the Purpose set forth below.

Background

(A) Opto Electronics Factory, a unit of Ordnance Factory Board, is a manufacturing unit functioning under the Department of Defence Production of Ministry of Defence, Government of India.

(B) The Parties wish, and are willing, to disclose to and receive from each other such Proprietary Information for the purpose of entering into discussions regarding co-operation for specific Defence programmes for production in India (hereinafter referred to as the "Purpose"), subject to the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. Definitions and Interpretation:

1.1 In this Agreement (including the Background):

Affiliate means a company which is (a) a wholly-owned subsidiary of a Party, (b) the ultimate holding company of a Party (where that Party is the ultimate holding company's wholly-owned subsidiary) or (c) a wholly-owned subsidiary of such ultimate holding company. For this purpose, a company is a wholly-owned subsidiary of another company if it has no members except that other and/or that other's direct or indirect wholly-owned subsidiaries.

Agreement means this Proprietary Information Agreement.

Proprietary Information means any and all confidential information, including without limitation any and all specifications, drawings, sketches, models, samples, computer programs, reports, data, techniques, designs, codes, documentation, and financial, statistical or other technical information or financial, commercial or other information or trade secrets, (howsoever recorded, preserved or disclosed) disclosed by the Disclosing Party to the

Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) or, if communicated orally, described as being confidential at the time of disclosure and subsequently presented by the Disclosing Party in written, visual or machine readable form to the Receiving Party within thirty (30) days of such communication. All the protections and restrictions in this Agreement relating to the use and disclosure of Proprietary Information shall apply during such thirty (30) day period.

Proprietary Information shall also mean any information obtained by examination, testing or analysis in any way from such Proprietary information; and any derivative of any such confidential information.

Proprietary Information shall not include any information which the Receiving Party can show through documentary evidence:

- (a) is or becomes publicly available otherwise than as a result of a breach of this Agreement or the fault of the Receiving Party or a third party;
- (b) has been lawfully received from a third party without restriction as to its use or disclosure;
- (c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party;
- (d) was independently developed by or for the Receiving Party without making use of any Proprietary Information; or
- (e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party.

Disclosing Party means a Party that discloses any Proprietary Information to the Receiving Party.

Effective Date means the date of this Agreement.

Party means a party to this Agreement and Parties means both of them.

Purpose shall have the meaning given to it in the Background.

Receiving Party means a Party which receives any Proprietary• Information from the Disclosing Party.

- 1.2 Paragraph headings are for convenience only and shall not affect the interpretation of this Agreement.
 - 1.3 References to Paragraph are to the Paragraphs of this Agreement.
 - 1.4 Words in the singular shall include the plural and vice versa.
2. In consideration of the Disclosing Party agreeing to disclose Proprietary Information to the Receiving Party, the Receiving Party undertakes:

- (a) only to use, or allow to be used, any Proprietary Information to the extent reasonably necessary for the Purpose and not to use any Proprietary Information, or allow it to be used, for any other purpose except with the prior written consent of the Disclosing Party;
- (b) to keep any Proprietary Information confidential and not copy or disclose it to any person or party except as permitted under this Agreement, save that the Receiving Party may disclose Proprietary Information where required by law, court order or any government or regulatory body provided that the Receiving Party will, where possible without breaching any legal or regulatory requirements, give the Disclosing Party advance notice of the disclosure requirement and will cooperate with the Disclosing Party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure to the extent reasonably practicable;
- (c) only to disclose any Proprietary Information to its directors, persons employed in or by its business, its professional advisers or any of its Affiliates, its inhouse consultants, in each case, which have a need-to-know such Proprietary Information for the Purpose provided that the Receiving Party shall make each such person or party agree to observe terms no less stringent than those contained in this Agreement and the Receiving Party shall be responsible for such person or party's compliance;
- (d) not to disclose any Proprietary Information to any third party (other than as permitted under this Agreement) except as required for the Purpose and with the prior written consent of the Disclosing Party provided that the Receiving Party procures such third party's written undertaking to the Disclosing Party to observe terms no less stringent than those contained in this Agreement;
- (e) not to copy, reproduce or reduce to writing any Proprietary Information, or any part thereof, or allow any person or party receiving such Confidential Information from the Receiving Party to do so, except as is reasonably necessary for the Purpose;
- (f) to establish and maintain adequate security measures to safeguard the Proprietary Information from unauthorised use, reproduction, disclosure or access (such measures being at least equivalent to those it applies for the protection of its own Proprietary Information);
- (g) to notify the Disclosing Party as soon as reasonably practicable if it becomes aware of, or reasonably suspects, the possession, use or knowledge of any Confidential Information by a third party other than in accordance with the terms of this Agreement; and
- (h) to not directly or indirectly reverse engineer, disassemble, decompile, or otherwise attempt to discover the trade secrets embedded in the Proprietary Information.

3. The Parties agree that nothing in this Agreement shall affect either Party's obligation to comply with all applicable national and international export, import and security laws and regulations.
4. The individuals identified below are designated as the primary point of contact for receiving Proprietary Information exchanged between the Parties pursuant to this Agreement.

| <u>SELLER</u> | <u>BUYER</u> |
|----------------------|---|
| | The General Manager, Opto Electronics Factory, Raipur, <u>DEHRADUN</u> – 248 008 (UK - INDIA) |

The individuals identified below are designated as the primary point of contact for receiving notices under this Agreement.

| <u>SELLER</u> | <u>BUYER</u> |
|----------------------|---|
| | The General Manager, Opto Electronics Factory, Raipur, <u>DEHRADUN</u> – 248 008 (UK - INDIA) |

Either Party may change their designated point of contact upon written notice to the other Party.

5. Either Party shall be allowed to make copies of any Proprietary Information disclosed by the other so long as the markings on the original information are affixed to all copies (including partial copies) and provided such copies are necessary to fulfil the Purpose of this Agreement. The Receiving Party shall maintain the confidentiality of all Proprietary Information with regard to all such copies. Nothing in this Agreement shall be deemed to replace or prejudice any governmental security classification referenced on any part of the Proprietary Information and the Receiving Party undertakes to respect and observe any such classification and to treat the same with such degree of care and security as is required by the relevant governmental authority in the country of the Disclosing Party
6. Nothing in this agreement shall, by express grant, implication, estoppel or otherwise, create in the Receiving Party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, software documentation or other intellectual property of the Disclosing Party, the ownership of which shall remain vested in the Disclosing Party at all times.

7. Proprietary Information received hereunder shall be protected by the Receiving Party during the term of this Agreement and for a period of five (5) years from the date of expiration or termination of this Agreement.
8. The Receiving Party acknowledges and agrees that due to the unique nature of the (Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligation hereunder, that any such breach will result in irreparable harm to the disclosing Party, and, therefore, that upon any such breach or any threat thereof, the disclosing Party shall be entitled to seek appropriate equitable relief in addition to remedies it might have at law. The Receiving Party shall notify the Disclosing Party in writing immediately upon the occurrence of any unauthorized release of Proprietary Information, whether inadvertent or otherwise, and shall use reasonable efforts to prevent or limit any further dissemination of such Information.
9. In the event that any of the provisions of the Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, that portion shall be severed and a new enforceable provision shall be negotiated by the Parties and substituted therefore to accomplish the intent of the severed provision as nearly as practicable. The remaining provisions of the Agreement shall remain in full force and effect.
10. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party, and no failure or delay in enforcing any right will be deemed a waiver.
11. All documentation, correspondence and communications relating to this Agreement shall be in the English language.
12. Export regulations may apply to any authorized release of a disclosing Party's Proprietary Information by the receiving Party. This Agreement does not authorize export of technical data. The Receiving Party shall control access to information received hereunder in accordance with all applicable laws and regulations.
13. Upon the expiration or termination of this Agreement, the receiving Party shall cease all use of Proprietary Information received hereunder and
 - (a) the Receiving Party shall on written demand by the Disclosing Party:
 - (i) return to the Disclosing Party any Proprietary Information (and any copies thereof) reduced to any permanent form disclosed by the Disclosing Party under this Agreement;
 - (ii) permanently delete all electronic copies of Proprietary Information from any computer systems, save that the Receiving Party shall not be obliged to erase Proprietary Information held in any archived computed system in accordance with its security and/or disaster recovery procedures;
 - (iii) provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this Paragraph 13(a) have been complied with;

- (b) if the Disclosing Party has not made a demand under Paragraph 13(a) within three (3) calendar months of expiry or termination, the Receiving Party may destroy, erase or procure the destruction or erasure of, such Proprietary Information (and any copies thereof) in accordance with its usual business practices; and
14. Neither Party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder to any third party (except to a legally recognized successor in interest to all or substantially all of the Party's assets) without the prior consent in writing from the other Party, which consent shall not be unreasonably withheld.
15. This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement cannot be changed in any respect except as agreed in a writing of subsequent date that is duly executed by authorized representatives of both parties.
16. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Copies or facsimiles of this Agreement with signatures shall be given and shall have the same effect as instruments with original signatures.

IN WITNESS THEREOF, the Parties have caused this Proprietary Information Agreement to be executed in duplicate originals by their duly authorized representatives as of the Effective Date.

| <u>SELLER</u> | <u>BUYER</u> |
|----------------------|---|
| | The General Manager, Opto Electronics Factory, Raipur, <u>DEHRADUN</u> – 248 008 (UK - INDIA) |