

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on the date of the last signature below by and between:

- (1) **UNIVERSITY OF SOUTHAMPTON**, whose administrative offices are at University Road, Highfield, Southampton, SO17 1BJ;

AND

- (2) **COMPANY / UNIVERSITY** whose principal place of business/administrative office is located at

(each a "Party", collectively referred to as the "Parties")

WHEREAS

The Parties wish to enter into discussions relating to silicon photonics device fabrication ("the Technical Area")

During such discussions the disclosure of confidential information ("Information") may become necessary.

One Party ("the Disclosing Party") is willing to disclose and the other Party ("the Recipient Party") is willing to receive Information.

To ensure that disclosed Information is treated as secret and proprietary and in consideration of such disclosure it is hereby agreed as follows.

1. CONFIDENTIAL INFORMATION

- 1.1 Information may only be used for the authorised purpose of entering discussions on a commercial relationship for silicon photonics fabrication services (the "Purpose").
- 1.2 Information means all information howsoever communicated by the Disclosing Party to the Recipient Party relating to the Purpose including, but not limited to, intellectual property, know-how, data, formulae, processes, designs, photographs, drawings, specifications, samples and any information ascertainable by the inspection or analysis of samples.
- 1.3 Information disclosed hereunder will at all times remain the property of the Disclosing Party.

2. OBLIGATIONS

- 2.1 The Recipient Party shall keep the Information in the strictest confidence, use the same or a higher degree of care it uses to handle its own information of a similar nature and in any event will use its best efforts to ensure that Information is not disclosed, in whole or in part, to any third party, except where expressly permitted by this Agreement.
- 2.2 The Recipient Party will notify the Disclosing Party of any breach or intended breach of the obligations contained in this clause 2 or clauses 1 or 3.

3. LIMITATIONS ON USE

- 3.1 The Recipient Party shall not, without the prior written consent of the Disclosing Party disclose Information to any other party save for its employees, consultants and contractors, and then only on a need-to-know basis, who have been made aware that the Information is confidential and to whom disclosure is necessary for the Purpose. The Recipient Party will procure an undertaking from each individual recipient to be bound by the obligation of confidentiality contained herein.
- 3.2 Information shall not be disclosed to any affiliate or subsidiary of the Recipient Party without the prior written consent of the Disclosing Party.
- 3.3 The Recipient Party shall not make commercial use of Information during such time that it remains confidential and proprietary to the Disclosing Party by virtue of the obligations contained herein.
- 3.4 The Recipient Party shall, if so requested by the Disclosing Party at any time, return to the Disclosing Party on demand any or all Information whereupon the Recipient Party's rights to use the Information

Please insert Inteum reference here.

for the Purpose shall cease. Upon such request all Information shall be returned within 14 days by the Recipient Party who shall not be permitted to keep copies or duplicates of all or any Information, except one single, secure copy to the extent reasonable to permit the Recipient Party to keep evidence that it has performed its obligations herein. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient Party.

4. EXCEPTIONS

4.1 The confidentiality and non-use obligations of this Agreement shall not apply to:

4.1.1 Information which at the time of disclosure was in the public domain; or

4.1.2 Information which, after its disclosure hereunder, enters the public domain by lawful and proper publication; or

4.1.3 Information which the Recipient Party can establish by reasonable proof was in its possession or was known to it at time of disclosure hereunder or was subsequently developed by the Recipient Party without utilisation of Information; or

4.1.4 Information which the Recipient Party receives from any third party legally in possession of the Information not owing an obligation of confidence to the Disclosing Party and without any restriction on its disclosure; or

4.1.5 Information which is approved for release or use by the prior written authorisation of the Disclosing Party; or

4.1.6 Information which the Recipient Party is required by law to disclose.

5. TERM

5.1 This Agreement shall take effect from [XXX] ("the Effective Date") and shall automatically terminate one (1) year after the Effective Date unless extended in writing by both Parties.

5.2 This Agreement shall be terminable by either Party by thirty (30) days prior written notice or by mutual agreement in writing or immediately if either Party has reason to believe that the other is in breach of any of the obligations contained herein.

5.3 Clauses 2, 3 and 4 hereof shall continue to remain in force for a period of five (5) years from the date of the Recipient Party's receipt of the Information regardless of the expiry or termination of this Agreement.

6. NO GRANT

6.1 This Agreement shall not be deemed to confer or imply the grant or agreement to grant by the Disclosing Party to the Recipient Party any of the Disclosing Party's rights under copyright, patent or any other intellectual property right. In particular no licence is granted either directly or indirectly under such rights.

6.2 The Disclosing Party makes no representation or warranty as to the adequacy, or accuracy of any Information disclosed hereunder nor for its fitness for purpose.

6.3 The Disclosing Party shall not be liable for any loss or damage, both direct and indirect, suffered by the Recipient Party as a result of its use of the Information.

7. NO WAIVER

It is further understood and agreed that any failure by the Disclosing Party in exercising any right, power or privilege under this Agreement shall not act as a waiver hereunder nor shall any single or partial exercise thereof preclude any further exercise of any right power or privilege.

8. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall create, imply or evidence any partnership, joint venture or relationship of principal and agent between the Parties.

9. VARIATION

This Agreement may only be amended or varied by written instrument signed by both Parties hereto.

Please insert Inteum reference here.

10. NOTICES

All notices shall be made by letter addressed, except as each Party may change in writing, to the destination and named recipient pursuant hereto, as follows:

University of Southampton:

[The other party's name]:

For the Attention of:

For the Attention of:

Director
Research & Innovation Services
University of Southampton
Highfield
Southampton
SO17 1BJ

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the jurisdiction of the English Courts.

12. AGREEMENT

12.1 This Agreement:

12.1.1 constitutes the entire agreement between the Parties for the disclosure of Information;

12.1.2 may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single agreement. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF or JPEG) will take effect as the delivery of an executed original counterpart of this Agreement.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement in a manner binding upon them the day and year last below written.

Signed on behalf of
University of Southampton

Signed on behalf of
<<insert company/university>>

Name:

Name:

Position:
Research & Innovation Services

Position:

Date:

Date: