

# NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT

between

**LUICHART TECHNOLOGY LIMITED**, (Luichart), incorporated in Scotland under the Companies Acts (No. SC204825) and having its registered office at 130 St Vincent Street, Glasgow, Scotland, G2 5HF mailing address: **272 Bath Street, Glasgow, G2 4JR**

and

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WHEREAS:

Luichart and \_\_\_\_\_ wish to disclose information to each other relating to their respective products and businesses for the purpose of identifying any possible areas of co-operation for the joint development, marketing and distribution of standalone Luichart or combined Luichart products and services in the UK and Overseas markets.

**IT IS AGREED** as follows:

- 1 In this Agreement:
  - 1.1 “Authorised Representative(s)” means those employees, officers and directors of the receiving party or of any member of its Group together with its professional advisers;
  - 1.2 “Confidential Information” means any information or data relating to the disclosing party, any member of the disclosing party’s Group or to their respective businesses which is in written, electronic or other visual or machine readable form or which is communicated orally, including but not limited to, any kind of commercial or technical information, business, financial and marketing information, computer software and know-how which is made available to the receiving party in connection with the Purpose. This will also deem to include any method of delivery of information by any form of emergent technology;  
  
PROVIDED THAT Confidential Information does not include any information that the receiving party is able to demonstrate:
    - 1.2.1 is already in the public domain or which becomes available to the public through no breach of this Agreement by the receiving party or its Authorised Representatives;
    - 1.2.2 was in the possession of the receiving party prior to receipt from the disclosing party;
    - 1.2.3 is independently developed by the receiving party without any use of Confidential Information;
    - 1.2.4 is approved for release by the written agreement of the disclosing party; or
    - 1.2.5 is required to be disclosed by law or the rules of any governmental or regulatory authority;
  - 1.3 “Group” means the group of companies comprising the company in question together with its holding companies, subsidiaries and affiliates
2. For a period of five years following the date of this Agreement the receiving party shall procure that the members of its Group and its Authorised Representatives shall:-
  - 2.1 keep the Confidential Information confidential and shall not disclose it to anyone other than to its Authorised Representatives who need to know such information for the purposes of considering or advising in relation to the Purpose; and
  - 2.2 use the Confidential Information exclusively for the Purpose and shall not permit the Confidential Information to go out of its possession or control; and
  - 2.3 not make any announcement concerning, or otherwise publicise, the Purpose or any other arrangement with the receiving party in any way relating to the Purpose; and

- 2.4 procure that each Authorised Representative to whom disclosure of Confidential information is made, is made aware in advance of disclosure of the provisions of this Agreement and shall procure that each Authorised Representative adheres to these provisions as if such person were a party to this Agreement; and
- 2.5 immediately upon request by the disclosing party deliver to the disclosing party all Confidential Information (including all copies, analyses, memoranda or other notes made by the receiving party or its Authorised Representatives) and delete all electronically held Confidential Information or, with the consent of the disclosing party, destroy the same and confirm in writing to the disclosing party with a certificate confirming that the provisions of this clause 2.5 have been complied with.
3. The obligations of confidentiality contained in this Agreement shall apply mutatis mutandis to any sample, prototype or other such article received from or on behalf of the disclosing party ("Sample"). The receiving party shall not dismantle, decompile, analyse or reverse engineer any Sample without the prior written consent of the disclosing party and any information derived therefrom shall be deemed to be Confidential Information. Any Sample shall be returned to the disclosing party immediately on request.

4.1 In this Clause 4:

"Intellectual Property Rights" means patents, copyright, moral rights, design rights, topography rights, database rights, trade mark and service mark rights, rights in inventions, know-how, trade secrets and Confidential Information and all similar proprietary, industrial, intellectual or commercial rights and forms of protection having equivalent effect anywhere in the world;

"Patents" means all patents granted or applied for under the Patents Act 1977 and any amending legislation including but not limited to the Copyright Designs and Patents Act 1988;

"Inventions" means any new invention involving an inventive step that is capable of industrial or commercial application and is otherwise capable of registration under section 1 of the Patents Act 1977 or any subsequent amending or repealing legislation.

- 4.2 No right or licence is granted to the receiving party in relation to the Confidential Information otherwise than as set out in this Agreement. More particularly the receiving party shall not acquire and shall not claim any right title or interest in the Intellectual Property Rights of the disclosing party by virtue of the disclosure of Confidential Information pursuant to this Agreement and the use thereof for the Purpose.
- 4.3 The disclosing party hereby grants to the receiving party during the continuance of this Agreement a non-exclusive licence to use such of its Intellectual Property Rights as are reasonably necessary solely for the Purpose. Any such licence shall terminate immediately upon the making of a request by the disclosing party pursuant to Clause 2.5 hereof. All rights not hereby specifically and expressly granted to the receiving party are reserved to the disclosing party.
5. The receiving party acknowledges that damages would not be a sufficient remedy for any threatened or actual breach of this Agreement and that the disclosing party will be entitled to other remedies, including but not limited to, injunctive relief and specific performance.
6. The receiving party acknowledges that neither the disclosing party nor any of its Authorised Representatives makes any express or implied warranty about, or accepts responsibility for, the accuracy or completeness of any of the information supplied under this Agreement.

- 7. Neither party shall assign this Agreement without the prior written consent of the other party by hand, fax (supported by positive transmission report) or post (recorded delivery, with proof of posting) and shall be deemed served on the date of despatch.
- 9. This Agreement shall be governed by and construed in accordance with the laws of Scotland: IN WITNESS WHEREOF this Agreement is executed by the parties in duplicate as follows: -

**SIGNED** for and on behalf of **LUICHART TECHNOLOGY LIMITED**

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_

by \_\_\_\_\_ Director, before the following witness: -

Witness.....

Full Name.....

Address .....

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.....

Occupation.....

**SIGNED** for and on behalf of \_\_\_\_\_ and associated companies

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_

by \_\_\_\_\_ , Authorised Signatory, before the following witness: -

Witness.....

Full Name.....

Address .....

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Occupation.....