

Mutual Non-Disclosure Agreement

THIS AGREEMENT is made and effective this [redacted] day of [redacted], 2018 (“Effective Date”), by and between [redacted] (“Company Name”), a [redacted] (“State of Incorporation”) corporation with offices located at [redacted] (“Address”) (“COMPANY” or “Party”), and ROHDE & SCHWARZ USA, INC. (“R&S” or “Party”), a Delaware corporation with offices located at 6821 Benjamin Franklin Drive, Columbia, MD 21046. Both companies jointly hereinafter called the “Parties”.

WHEREAS the Parties

- have been discussing and expect to discuss further in greater detail the following business matter (the “Subject Matter”): “[redacted]”,
- may, in the course of their discussions of the Subject Matter, disclose or cause to be disclosed, either orally, visually or in writing, proprietary and/or confidential information which may include financial data, business and other plans, ideas, discoveries, inventions, specifications, formulae, models, requirements, standards, trade and manufacturing secrets, drawings, samples, devices, computer programs, software of any kind, demonstrations, trade secrets, technical information, owner and maintenance manuals, product internal photographs as well as any and all intellectual and industrial property rights contained therein or in relation thereto, title to which belongs to the disclosing Party or which the disclosing Party has a right to disclose (the “Information”);
- wish to define and protect their rights with respect to the Information.

NOW THEREFORE the Parties agree as follows:

1. Either Party may, at its discretion, provide Information or cause Information to be provided to the other Party in connection with the Subject Matter.
2. The receiving Party shall protect the Information from disclosure to anyone other than its employees who are legally bound by a written agreement to maintain the Information in strict confidence and secrecy and who have a strict need to know the Information, or any part thereof, pursuant to advancing the Subject Matter of this Agreement, using the same degree of care as the receiving Party uses with its own valuable proprietary information, however, in no case below the due diligence of a reasonable businessman. The receiving Party will not use the Information for any purpose other than to advance the mutual interest of the Parties in the Subject Matter; provided, however, that in no event will the receiving Party reveal any Information to any third party without the express written consent of the disclosing Party. In addition, the Parties shall not disclose or intimate to any third party that the Subject Matter is under discussion between the Parties. However, either Party shall have the right to reveal Information to its Affiliates, defined to include any entity: (i) which directly or indirectly controls a Party; (ii) which is under the same direct or indirect ownership or control of a Party; or (iii) which is directly or indirectly owned or controlled by a Party; and/or (iv) in some cases for a Party, entities, such as factories or other manufacturing or distribution entities, that are performing services under contract for a Party - on a need-to-know basis - without the express written consent of the other Party. Such company shall be told of the restrictions placed on such Information and be bound to keep such Information likewise confidential.
3. The receiving Party shall not copy the Information without the prior written approval of the disclosing Party, except for copies required by the receiving Party for its internal use. All copies shall contain the same proprietary and confidential notices and legends which appear on the original Information.
4. Information orally or visually provided to the receiving Party must be designated by the disclosing Party as confidential and proprietary at the time of such disclosure and must be reduced to writing marked with a confidential and proprietary notice and provided to the Receiving Party within thirty (30) calendar days after such disclosure.

5. The receiving Party has no obligation with respect to any Information which
 - was already known by the receiving Party without restriction prior to receipt from the disclosing Party, as evidenced by prior existing records of the receiving Party, or
 - is or becomes generally known to the public through no wrongful act of the receiving Party, as evidenced by documents which are generally published, or
 - is lawfully received from a third party without similar restriction and without breach of these confidentiality undertakings, or
 - is independently developed by the receiving Party, or
 - is required to be disclosed by any order of a court of competent jurisdiction or governmental body, provided that the receiving Party has given the disclosing Party timely notice of such required disclosure and has exhausted all reasonable means of maintaining the confidentiality of such information.
6. The communication of the Information supplied pursuant to this Agreement does in no event confer or imply the grant or agreement to grant any license (patent, copyright or other) or other rights to the receiving Party. The communication of Information does not permit or entitle the receiving Party to use, lease, sell, disclose, or otherwise dispose for the benefit of any party or person other than the disclosing Party, the analysis, products, sub-assemblies, assemblies, or components, manufactured, designed or otherwise generated on the basis or by making use of the Information or by using the Information in combination with other information.
7. The disclosing Party has endeavored to provide the receiving Party with the proper information for the purposes set forth herein. The disclosing Party, however, makes no representations or warranties that the Information disclosed to the receiving Party
 - is complete, exact, accurate, fit or sufficient for any particular purpose or for any use of the results based on the Information, or
 - will not infringe on proprietary rights of a third party.
8. The term of this Agreement shall commence on the Effective Date and shall have a term of two (2) years. Either Party may terminate this Agreement at any time by giving thirty (30) days' prior written notice to the other Party. Upon the termination or expiration of this Agreement, the receiving Party shall, if required by the disclosing Party,
 - either return all disclosed Information and copies to the disclosing Party, or
 - destroy all disclosed Information and copies and provide the disclosing Party with a certificate of destruction, duly executed by an authorized officer of the receiving Party.
9. The obligations contained in this Agreement shall continue for a period of two (2) years from the date of disclosure, even if the Agreement is terminated or expires in accordance with its terms. If a contract is entered into by the Parties in respect of the Subject Matter, this Agreement shall be deemed incorporated into such contract, unless the contract explicitly provides otherwise with specific reference to this Agreement. In any such case, each Party shall use Information disclosed only to the extent necessary for the performance of the contract.
10. This Agreement shall be construed in accordance with and governed by the substantive laws of the State of Maryland. In addition, the Parties shall comply with all applicable United States and foreign export control, sanction, embargo, and anti-corruption laws that may apply in the performance of this Agreement.
11. Any disagreement or dispute that arises in connection with this Agreement and that the Parties are unable to settle amicably shall be finally and conclusively settled in accordance with the Arbitration Rules of the State of Maryland, then in effect. The number of arbitrators shall be three (3), unless the Parties agree upon a single arbitrator. The place of arbitration shall be the State of Maryland. The arbitration proceedings shall be conducted in the English language.

12. Either Party's right to apply for temporary injunction at the competent courts shall remain unaffected.
13. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any term of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, this clause shall be deemed substituted by a valid clause coming closest to the legal and economic content of the invalid clause.
14. No failure on the part of a Party to exercise, and no delay by such Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by a Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver or assent by a Party to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other condition hereof.
15. Nothing contained in this Agreement shall be deemed to grant to either Party the right to make commitments of any kind for, on behalf of, or for the account of the other Party without the other Party's prior written consent.
16. The Parties agree to perform their respective obligations hereunder without any charge or expenses to each other.
17. No amendment to the terms and conditions of this Agreement shall be valid unless made in writing and signed by an authorized representative of each Party. This Agreement may not be assigned without the prior written agreement of the other Party.
18. This Agreement shall be binding upon the Parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and place signed below.

COMPANY: **(Company Name)**

Signature: _____
By: **(Name)** _____
Title: **(Position)** _____
Date: _____

ROHDE & SCHWARZ USA , INC.

Signature: _____
By: _____
Title: _____
Date: _____

