

Technology Partner Mutual Non-Disclosure and Confidentiality Agreement



THIS AGREEMENT, dated as of the (Date) is made by and between Hanwha Vision America, a corporation having a principal place of business at 500 Frank W. Burr Blvd., Suite 43, Teaneck, NJ 07666, and (legal registered name of the organization) a corporation having a principal place of business at (address).

- 1. Definition of Confidential Information.** "Confidential Information" as used in this Agreement shall mean any and all technical and nontechnical information including, without limitation, patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and includes, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party that may disclose such information to either party in the course of the other party's business. Information disclosed in written or tangible form by the disclosing party (Discloser) shall be considered Confidential Information by the receiving party (Recipient), if such information is conspicuously designated as "confidential," "proprietary," "private," "restricted," "sensitive," "secret" or "internal use only" at the time of disclosure or if provided orally, identified as confidential at the time of disclosure, and confirmed in writing within thirty (30) days of disclosure.
- 2. Nondisclosure and Nonuse Obligation.** Each of the parties agrees that it shall not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, firm, or business, except to the extent necessary for negotiations, discussions, and consultations with personnel or authorized representatives of the other party, and any purpose the other party may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations, or agreements in progress between the parties shall not be released to any form of public media without written approval of both parties. Each of the parties agrees that it shall treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information, and each of the parties represents that it exercises reasonable care to protect its own Confidential Information. Parties also agree that it shall disclose Confidential Information of the other party only to those of its employees who need to know such information and certifies that such employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. Recipient agrees to assist Discloser in remedying any such unauthorized use or disclosure of the Confidential Information.
- 3. Exclusions from Nondisclosure and Nonuse Obligations.** Each party's obligations under Paragraph 2 (Nondisclosure and Nonuse Obligations) with respect to any portion of the other party's Confidential Information shall terminate when the party seeking to avoid its obligation under such Paragraph can document that: (a) it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; (b) it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent

to the time it was communicated to Recipient by Discloser; (c) it was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; (d) it was communicated by Discloser to an unaffiliated third party free of any obligation of confidence; or (e) the communication was in response to a valid order by a court or other governmental body, was otherwise required by law, or was necessary to establish the rights of either party under this Agreement.

- 4. Independent Development.** Discloser understands that Recipient may currently or in the future be developing information internally or be receiving information from other parties that may be similar to Discloser's information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that Recipient shall not develop products, or have products developed for it, that, without violation of this Agreement, compete with the products or systems contemplated by Discloser's Confidential Information. The burden of proving noncompliance with this Agreement shall in all cases be on Recipient.
- 5. Term.** This Agreement shall govern all communications between the parties that are made during the period from the effective date of this Agreement to the date on which either party receives from the other written notice that subsequent communications shall not be so governed, provided, however, that each party's obligations under Paragraph 2 (Nondisclosure and Nonuse Obligations) with respect to Confidential Information of the other party that it has previously received shall continue in perpetuity unless terminated pursuant to Paragraph 3 (Exclusions From Nondisclosure and Nonuse Obligations).
- 6. Return of Confidential Information.** All Confidential Information of Discloser remains the property of Discloser and will be returned to it or destroyed at its request. Within thirty (30) days of receiving such a request from Discloser, Recipient will comply with the request and provide a written certification, signed by an officer, of its compliance.
- 7. No License or Warranty.** No license under any patents, copyrights, mask work rights, trademarks or other proprietary rights is granted to Recipient by the disclosure of or access to Discloser's Confidential Information under this Agreement. All Confidential Information is provided "as is", without any express or implied warranties, including but not limited to a warranty that it is accurate or complete or a warranty against infringement.
- 8. No Inducement or Commitment.** Neither the disclosure nor access to Confidential Information under this Agreement constitutes an inducement or commitment to enter into any business relationship. If the parties desire to pursue business opportunities, the parties will execute a separate written agreement with respect to such opportunities. Without limiting the foregoing, to the extent the parties agree to effect a business transaction under such separate agreement, the parties may reference and incorporate this Agreement therein to continue each of the Recipient's obligations of confidentiality hereunder and thereunder, regardless of the initial Purpose or in continuation of the Purpose to effect the business transaction stemming therefrom.
- 9. Assignment & Binding Effect.** Neither party may assign this Agreement without the other party's prior written consent, except that no such consent is needed in the event of a party's assignment or transfer of the majority of its stock or all or substantially all of its assets, as part of a merger, acquisition or asset sale. This Agreement benefits and binds the parties to this Agreement and their respective successors and permitted assigns.
- 10. Injunctive Relief.** Notwithstanding any other term of this Agreement, it is expressly agreed that a breach of this Agreement will cause irreparable harm to Discloser and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser will be entitled to injunction or other equitable remedies or both in the event of any threatened or actual violation of any of the provisions of this Agreement.

11. Miscellaneous.

- a. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.
- b. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the state of New York, exclusive of its choice of law principal. The state and federal courts located in New York City, New York have exclusive jurisdiction and venue over any dispute arising out of or relating to this Agreement. Each party consents to the personal jurisdiction and venue of these courts.
- c. **Severability.** Should any provisions of this Agreement be held by a court of law to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.
- d. **Entire Agreement.** This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.
- e. **Rule of Construction.** The parties acknowledge and agree that each party has negotiated and reviewed the terms of this Agreement and has contributed to its revision. The parties further agree that no rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Legal registered name of the organization:

Hanwha Vision

Signed by:

Signed by:

Print name:

Print name:

Date:

Date:

Title:

Title:

Address:

Address:

Email: