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# Non Disclosure and Confidentiality Agreement

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INVENCO GROUP LIMITED (INVENCO)

EMC TECHNOLOGIES NZ (EMCT)

This non disclosure and confidentiality agreement ("the agreement") is entered into and is effective as of 10/09/2014 (the effective date).

Between:

**INVENCO GROUP LIMITED** with its registered office at Level 1, 111 Franklin Road, Ponsonby, Auckland, New Zealand ("INVENCO")

and

**EMC Technologies NZ** a person/company with its registered office at 47 Mackelvie St, Grey Lynn 1021 ("EMCT")

Referred to collectively as "the Parties"

For the purposes of this agreement, INVENCO is the party disclosing information and shall be referred to as the Discloser and EMCT is the party receiving confidential information shall be referred to as the Recipient and the singular shall include the plural and vice versa.

## **BACKGROUND**

- A. For the purposes of gaining better understanding of the products and services, and/or to develop new or existing business opportunities, products or services, and/or to make an investment (referred to as "the Transaction"); INVENCO may disclose certain of its Proprietary/confidential Information consisting of marketing, financial, technical and other information related to their businesses, and
- B. INVENCO is willing to disclose such Proprietary/Confidential Information to the Recipient upon the terms and conditions herein set forth and the Recipient is willing to maintain the confidentiality of such information disclosed to it by the Recipient in accordance with the terms and conditions thereof.

## **AGREEMENT**

### **1 INTERPRETATION**

#### **1.1 Definitions:** In this Agreement unless the context otherwise requires:

"**Agent**" means any Related Company (meaning as per Companies Act 1993), officer, employee, agent, contractor, or adviser of a Recipient or Discloser, as the case may be;

"**Agreement**" means this agreement including the background;

"**Information**" means any information which is made available by, or at the request of, a Discloser or its Agent; or is discovered or generated in the course of the evaluation, negotiation or completion of the Transaction; or otherwise comes to the Recipient's knowledge concerning the organisation, methods (including any secret process or formula or other trade secret), documents, personal and company contacts, intellectual property, data, analyses, reports, know how, specifications, formulae, designs, photographs, drawings, software programmes, compilations, studies, samples and any other material bearing or incorporations, business or finances of the Discloser, its customers or clients, its administration and operation and similar information concerning any Related Company or associate of the Discloser that is confidential or that the Recipient should reasonably assume is confidential, and any information notified by the Discloser as being confidential; and includes the fact of the Transaction;

a "**person**" includes any individual natural person, company, corporation, partnership, joint venture, association (whether corporate or unincorporated), trust, organisation, Government department, Minister of the Crown, state or agency of a state (in each case, whether or not having

separate legal personality), and includes a person's executors, administrators, successors and assigns;

## 2 **CONFIDENTIAL INFORMATION**

All of the Information, whether disclosed directly or indirectly to the Recipient, whether reduced to writing or not, or which otherwise becomes known to the Recipient through involvement with the Discloser or the Discloser's Agents is strictly confidential.

## 3 **NO DISCLOSURE**

3.1 The Recipient agrees that it will preserve, and will procure that its Agents preserve, the confidentiality of the Information and will take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Information and, in particular, but without in any way limiting the generality of the foregoing, will take all necessary action to prevent any unauthorised person obtaining access to the Information by direct or indirect exposure thereto or otherwise, and will not at any time (except as expressly provided otherwise in this Agreement) without the prior written consent of the Discloser:

- (a) **Permit disclosure:** directly or indirectly, distribute or permit to be disclosed or distributed any part of the Information to any person; or
- (b) **Use Information:** in any way use the Information or any knowledge or information which it may acquire as a result of receiving the Information in any way which is directly or indirectly in competition with the Discloser or which is otherwise directly or indirectly detrimental to the interests of the Discloser or for any other purpose whatsoever; or
- (c) **Assert rights:** assert any rights of any nature in respect of or contest the Discloser's ownership of the Information.

## 4 **EMPLOYEES**

4.1 **Disclosure to officers, employees and advisors:** The Recipient may disclose to any of its Agents only such part of the Information as is necessary to enable that Agent to perform his or her obligations to the Recipient.

4.2 **Confidentiality of the Information:** The Recipient will ensure all its Agents are aware of the confidentiality of the Information, the existence and terms of this Agreement and consider themselves bound by the provisions of this Agreement as if they were parties to this Agreement. The Recipient will take all such reasonable steps as are necessary to prevent any unauthorised use or disclosure of such Information by any of its Agents.

## 5 **NO CONFIDENTIALITY**

5.1 Any information, which is clearly and demonstrably:

- (a) **Independently acquired:** independently acquired or developed by the Recipient without the benefit or use of any of the Information; or
- (b) **Publicly known:** publicly known or which becomes publicly known after the date of this Agreement other than through breach or non-performance by the Recipient (or any of its Agents) of any of its obligations under this Agreement; or
- (c) **Third party:** lawfully received by the Recipient from a third person, other than the Discloser or its Agents, not owing (directly or indirectly) any obligation of confidentiality to the Discloser; or

- (d) **Approved:** approved in writing by the Discloser for disclosure (other than on a restricted basis) by the Recipient;
- (e) **Operation of law:** disclosed pursuant to any requirement or request by operation of law provided that the Recipient shall, prior to disclosure, notify the Discloser of any such requirement or request.

will not be, or as the case may be, will cease to be, subject to the restrictions contained in this Agreement.

## 6 OWNERSHIP

All Information disclosed pursuant to this Agreement shall be and remain the property of the Discloser. Nothing in this Agreement shall be construed as granting or conferring any rights by license or otherwise, expressly, impliedly or otherwise for any of the Proprietary/Confidential Information disclosed by Discloser hereunder.

## 7 AUTHORISATION

The Discloser agrees that necessary authorisations, permits or licences including export licenses as may be required will be obtained prior to the exportation or disclosure of any Proprietary/Confidential Information relating to the technology of the other party. Discloser shall notify Recipient of the need to obtain any required authorisations, permits and licenses and/or the need to comply with any relevant laws or regulations relating to the disclosure. The Discloser shall obtain the required authorisations, permits and licenses.

## 8 RETURN OR DESTRUCTION OF INFORMATION

- 8.1 **General:** Subject to clause 8.3, the Recipient will, upon demand by the Discloser, either return to the Recipient or destroy (at the Discloser's option) all the Information (including all copies or reproductions of the Information) in the possession or control of the Recipient and its Agents to whom the Information has been disclosed by or on behalf of the Recipient together with all information and documentation containing, comprising or relating in any way to the Information.
- 8.2 **Certificate:** Upon the return or destruction (as the case may be) of all of such Information, the Recipient will provide to the Discloser a certificate signed by an officer of the Recipient stating that the Information returned or destroyed comprises all the Information in the possession or control of the Recipient and the Agents to whom the Information has been disclosed by or on behalf of the Recipient and that no Information whatsoever (including any copies or other reproductions thereof) has been retained by or on behalf of the Recipient or any of its Agents.
- 8.3 **Board Papers and other Essential Records:** Nothing in this clause 8 shall require any party to destroy Board papers, minutes and associated documents or any record which the party is required by law to retain or which the party considers necessary to retain as evidence in support of the Transaction. The confidentiality of any such Information retained by the party shall be maintained in accordance with this Agreement.

## 9 INSIDE INFORMATION

The Recipient agrees, for the benefit of the Discloser, that it will not trade or enter into any commitment to trade securities in the Discloser, or advise or encourage any person to trade securities in the Discloser, or communicate any Information or cause any Information to be disclosed to any person who may advise or encourage another person to trade securities in the Discloser, without the prior written agreement of the Discloser.

## 10 INDEMNITY

The Recipient indemnifies the Discloser from and against all actions, claims, demands, proceedings, liabilities, direct (but not consequential) losses, payments, costs and expenses whatsoever suffered or incurred by the Discloser which arise from or by virtue of the unauthorised disclosure or use of the Information by the Recipient or by its Agents, or by virtue of the Recipient or any of its Agents otherwise being in breach of any of the provisions of this Agreement.

## 11 INJUNCTIVE RELIEF

The Recipient acknowledges the value of the Information to the Discloser and the potential consequences of any breach by the Recipient of this Agreement to be such that any breach of this Agreement by the Recipient should entitle the Discloser (in addition to any other remedy the Discloser might have at law) to the award of injunctive relief and damages.

## 12 ASSIGNMENT

Neither party may assign any rights under this Agreement.

## 13 CONTRACTS (PRIVITY) ACT 1982

13.1 Where this Agreement confers a benefit on a party, the parties intend to create an obligation enforceable by any Related Company of that party under the Contracts (Privity) Act 1982.

13.2 Subject to clause 13.1, where this Agreement confers a benefit upon any third party, the parties do not intend to create an obligation enforceable by that third party under the Contracts (Privity) Act 1982.

## 14 GENERAL

14.1 **Termination:** This Agreement may not be terminated except by written agreement between the parties. Upon termination the Recipient shall continue to fulfill its obligations hereunder and to maintain the confidentiality of the Information.

14.2 **Entire Agreement:** This Agreement contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.

14.3 **Amendments:** No amendment to this Agreement will be effective unless it is in writing and signed by all parties.

14.4 **Further Assurances:** The parties must each sign, execute, procure, pass and do all such further documents, acts, matters, resolutions and things as may be necessary or desirable for effecting this Agreement.

14.5 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

14.6 **Non-Merger:** The agreements, obligations and warranties contained in this Agreement will not merge on completion of the transactions contemplated by it but will remain in full force until satisfied.

14.7 **Partial Invalidity:** If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

- 14.8 **Time of Essence:** Time will be of essence in the performance by either party of its obligations under this Agreement.
- 14.9 **Rights Cumulative:** The rights of the parties under this Agreement are cumulative and are not exclusive of any other rights and remedies available to either party.
- 14.10 **Governing Law and Jurisdiction:** This Agreement will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the exclusive jurisdiction of the New Zealand courts.

**15 COUNTERPARTS AND EXCHANGES BY FAX**

This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully exercised Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the parties to the terms and conditions of this Agreement.

**EXECUTION**

**SIGNED** on behalf of  
**INVENCO GROUP LIMITED** by:




Name Matthew Gibson

Position CFO



**SIGNED** on behalf of EMCT

**NAME** by:



Name Andrew Cottle

Position General Manager