

REQUEST FOR CONFIDENTIAL TREATMENT

July 3, 2015

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20054

Attn: Mark Neumann, Chief
Equipment Authorization & Compliance Branch
Office of Engineering & Technology
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: *EMClarity Request for Equipment Authorization*
Request for Confidential Treatment for E10G Equipment Authorization**

Dear Madam Secretary:

Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, and in response to FCC Questions of the 12 June 2015 requesting clarification of the confidentiality request, EMClarity respectfully requests that the Commission accord both short-¹ and long-term² confidential treatment to and withhold from public disclosure the response and the information contained in Exhibit 1 through Exhibit 2 and Exhibit 6 through Exhibit 9 attached to EMClarity's Form 731, Application for Equipment Authorization, ("Confidential Information"), filed on April 23, 2015 and updated as a results of questions from the FCC received on 1 June 2015 and 15 June 2015. In accordance with KDB 726920 D01, the request for long-term confidentiality treatment seeks protection once the short-term confidentiality treatment expires.

This correspondence supersedes previous requests for short and long term confidentiality made with respect to the application.

¹ Short-term confidential treatment is sought for external photos, block diagrams, schematics, test setup photos, user manual, internal photos, parts list/tune-up, and operational description. EMClarity seeks short-term confidential treatment for the Confidential Information identified herein up to and including one hundred and eighty (180) days after Commission grant of Equipment Authorization that is being requested by EMClarity.

² Long-term confidential treatment is sought for block diagrams, schematics, user manual (contains proprietary information intended for purchasers and their technicians pursuant to a non-disclosure agreement ("NDA"). All sales and distribution of the user manual must be and is under an NDA that restricts disclosure of the subject information. The NDA includes key terms such as "Company will not disclose or permit disclosure of any Confidential Information" and "Confidential Information includes ... equipment manuals"), Internal photos (the circuit boards and other internal components are not accessible to the public and will always either be deployed on top of large towers or in areas restricted to the public - for example building tops or fenced compounds), parts list/tune-up, and operational description. An example of the DNA is attached to this letter.

As explained more fully below, information contained in these documents is commercially sensitive, confidential and proprietary information that is not otherwise made publicly available and is, therefore, exempt from disclosure under the Freedom of Information Act and the Commission's rules. In accordance with Section 0.459(b) of the Commission's rules, and in support of this request, EMClarity provides the following statement of the reasons for withholding this information from inspection and the relevant facts upon which this request is based, including: (1) identification of the specific information for which confidential treatment is sought; (2) a description of the circumstances giving rise to the submission; (3) explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged; (4) explanation of the degree to which the information concerns a service that is subject to competition; (5) explanation of how disclosure of the information could result in substantial competitive harm; (6) identification of any measures taken by the submitting party to prevent unauthorized disclosure; (7) identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties; (8) justification of the period during which the submitting party asserts that materials should not be available for public disclosure; and (9) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

1. Identification of the specific information for which confidential treatment is sought.

EMClarity seeks confidential treatment of certain information contained in its Form 731 and in Exhibit 1 through Exhibit 2 and Exhibit 6 through Exhibit 9 attached to its Form. Exhibit 1 containing an operational description including block diagrams and internal photos. Exhibit 2 containing the user manual, Exhibit 6 being internal photos, Exhibit 7 being the parts list, Exhibit 8 being the schematics, and Exhibit 9 being an Exhibit uploaded in response to June 12 questions containing the block Diagrams.

2. Description of the Circumstances giving rise to the submission.

EMClarity is providing the Confidential Information in connection with its submission of Form 731 for equipment authorization.

3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The information and documents for which confidential treatment is requested contain commercial, scientific and financial information that would not generally be disclosed by radio manufacturers to the public or to competitors.

4. Explanation of the degree to which the information concerns a service that is subject to competition.

The radio equipment manufacturing market is highly competitive. EMClarity is a manufacturer of radio equipment with markets around the world and seeks to protect the commercial, scientific and financial information contained in its Form 731 and accompanying exhibits from its competitors.

5. Explanation of how disclosure of the information could result in substantial competitive harm.

Disclosure of this sensitive commercial, scientific and financial information, which is not normally disclosed to the public, could subject EMClarity to unfair competition or cause distortion in the market by revealing proprietary, business, scientific and commercial information to EMClarity's competitors. EMClarity's competitors might be able to use this information developing radio equipment in competition with EMClarity without sustaining the costs incurred previously by EMClarity.

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

EMClarity has not disclosed to the public any of the information for which confidential treatment is requested. In order to prevent unauthorized disclosure, the documents have been stamped CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

EMClarity has not previously disclosed information contained in these documents to the public.

8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

EMClarity requests that the information for which long-term confidential treatment is requested remain confidential indefinitely.

9. Other information that EMClarity believes may be useful in assessing whether the request for confidentiality should be granted.

EMClarity is providing the Confidential Information to permit the Commission to analyze and grant EMClarity's application for equipment authorization. EMClarity is committed to cooperating with the analysis, but must protect sensitive commercial, scientific and financial information from its competitors. Disclosure of the Confidential Information to the broader public would not serve the public interest and, therefore, should be limited.

Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Harris', is positioned above the printed name and title.

Richard Harris
Managing Director
EMClarity Pty Ltd

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("**Agreement**") is entered into as of _____ 2015, by and between EMClarity Pty Ltd (ACN 139 128 180 ("**EMClarity**"), and _____ of _____ (ACN _____) the "**Company**".

1. **Purpose.** The Company wishes to explore and possibly implement a business relationship between the parties (the "**Relationship**"), and EMClarity may disclose Confidential Information (as defined below) to the other party during the Relationship. This Agreement is intended to allow the parties to conduct the Relationship (which may include the sale of good by EMClarity to the Company) while protecting against unauthorized disclosure of Confidential Information.

2. **Definition of Confidential Information.** "**Confidential Information**" means all nonpublic oral, written, electronic, graphic or machine-readable information of the disclosing party that relates to the Relationship or that, although not related to the Relationship, is nevertheless disclosed as a result of the parties' discussions in that regard and that should reasonably be understood by the receiving party to be proprietary and confidential to the disclosing party, an affiliate of the disclosing party, or a third party. Confidential Information includes, but is not limited to, information relating to network routes, the location of any network or network facility, product plans, products, development plans, service descriptions, specifications and performance characteristics (including latency specifications), equipment manuals, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, regulatory information, maps, budgets, costs, pricing, business plans, agreements with third parties, services, customers, and marketing and financial information of the disclosing party.

3. **Protection of Confidential Information.**

(a) The Company will not disclose or permit disclosure of any Confidential Information of the other party except as required for the implementation of this Agreement, and to its directors, officers, employees, consultants, agents, customers and prospective customers, purchasers and prospective purchasers, auditors, attorneys, financial advisors, lenders and prospective lenders, investors and prospective investors who need to have access to the Confidential Information in connection with the Relationship, and have agreed in writing to be bound by the

confidentiality provisions set forth in this Agreement. The Company agrees to take all reasonable measures to avoid the disclosure of the other party's Confidential Information, which measures will be at least equal to the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, but in no event less than reasonable care. The Company agrees to notify the other in writing of any actual or suspected misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

(b) **Exceptions.** The foregoing notwithstanding, Confidential Information shall not include information that: (1) is or becomes generally known to the public by publication or other means other than a breach of a duty under this Agreement or other confidentiality agreement; (2) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence prior to the time of disclosure; (3) is disclosed pursuant to the prior written approval of the disclosing party; (4) is obtained through independent communications with a party that has no duty of confidentiality to the disclosing party; (5) is developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (6) is disclosed pursuant to an order or requirement of a court, administrative agency, other governmental body, or arbitration proceeding relating to this Agreement; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek an appropriate protective order or otherwise prevent or restrict such disclosure.

4. **Return of Materials.** Receiving party shall, at disclosing party's request, promptly return all originals, copies, reproductions, summaries and derivatives of Confidential Information and all other tangible materials and devices provided to the receiving party as Confidential Information or, at disclosing party's option, certify destruction of the same.

5. **No Rights Granted: Independent Contractors.** All Confidential Information is and shall remain the property of disclosing party. By disclosing Confidential Information to receiving party, disclosing party does not grant any express or implied right to receiving party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein. Nothing in

this Agreement shall (a) require either party to disclose Confidential Information or consummate the Relationship; or (b) change the relationship between the parties from that of independent contractors.

6. Term. The obligations under this Agreement shall apply to all Confidential Information disclosed EMClarity to the other during the period ending five (5) years from the date of this Agreement. The obligation to protect the confidentiality of Confidential Information shall survive the termination of discussions regarding the Relationship, and shall continue until such time as the Confidential Information becomes generally known to the public.

7. Successors and Assigns. Neither party may assign this Agreement without the prior written consent of the other. Nothing in this Agreement, express or implied, is intended to confer on any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. If the parties cannot reach a mutually agreeable and enforceable substitute for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

9. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties under this Agreement shall be governed and interpreted under the laws of the Queensland, without giving effect to principles of conflicts of law.

10. Remedies. The Parties expressly agree that (a) this Agreement's obligations are necessary and reasonable to protect a disclosing party and its business; and (b) due to the unique nature of the Confidential Information, monetary damages would be inadequate to compensate a disclosing party for a receiving party's breach of these obligations. Therefore, the parties agree and acknowledge that any violation or threatened violation would cause irreparable injury to a disclosing party and that, in addition to any other remedies that may be available in law, equity or otherwise, a disclosing party will be entitled to obtain injunctive or other equitable relief against a threatened breach of this Agreement or the continuation of any such breach by

the receiving party, without the necessity of proving actual damages.

11. General. (a) This Agreement may be amended only by mutual written consent of both parties. (b) Failure to enforce any provision of this Agreement will not constitute a waiver. (c) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. (d) This Agreement is the work product of both parties, constitutes the entire and final agreement and understanding between the parties with respect to the nondisclosure of Confidential Information, and supersedes all prior agreements between them relating to nondisclosure of Confidential Information. Any other written or oral agreements existing between the parties regarding the nondisclosure of Confidential Information are expressly canceled. (e) Neither Party will, without first obtaining the other party's prior written consent, (1) use the other party's trademark or trade name or refer to the subject matter of this Agreement or the other party in any promotional activity or otherwise; (2) disclose to others the subject matter of this Agreement; or (3) issue any publication or press release relating directly or indirectly to this Agreement in which the other party's name is used or may be inferred.

The parties have executed this Mutual Nondisclosure Agreement as of the date first above written.

EMClarity Pty Ltd

By: _____
Name: _____
Title: _____
Date: _____
Address: 101 Hyde Road Yeronga, Brisbane
Queensland 4104

The Company: _____

By: _____
Name: _____
Title: _____
Date: _____
Address: _____