



## Unilateral Non-Disclosure Agreement

This Unilateral Non-Disclosure Agreement (“**Agreement**”), is made and entered into as of (“**Effective Date**”), by and between Rohde & Schwarz USA, Inc., a Delaware corporation, located at 6821 Benjamin Franklin Dr., Columbia, MD 21046 (“**Disclosing Party**”), and **PARTY B NAME**, a **STATE OF ORGANIZATION ENTITY TYPE** located at **ADDRESS** (“**Receiving Party**”). Disclosing Party and Receiving Party are each referred to herein as a “**Party**” and, jointly, the “**Parties**”.

### RECITALS

- A. Disclosing Party possesses certain Confidential Information (as hereinafter defined).
- B. Receiving Party desires to receive, review and evaluate the Disclosing Party’s Confidential Information in connection with entering into a potential business relationship related to **DESCRIPTION OF PURPOSE** (the “**Purpose**”), subject to and under the protection of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants and agreements contained herein, the Parties agree as follows:

### AGREEMENT

1. Confidential Information. As used herein, the term “**Confidential Information**” shall mean any and all financial, technical, commercial or other information including, but not limited to, trade secrets, customer information, know-how, inventions, samples, processes, documents and software concerning the business or affairs of Disclosing Party or its Affiliates that has been or may hereafter be provided or shown to the Receiving Party or its employees, officers, directors, representatives, agents, or advisors (collectively, “**Representatives**”), irrespective of the form of the communication, by Disclosing Party, and also includes all notes, analyses, compilations, studies or other material prepared by Receiving Party or its Representatives containing or based, in whole or in part, on any information provided or shown by Disclosing Party. As used herein, the term “**Affiliate**” means any entity that, directly or indirectly through intermediaries, controls, is controlled by, or is under common control with, the Party. This Agreement imposes no obligation on Disclosing Party to disclose its Confidential Information or to negotiate for, enter into, or otherwise pursue the Purpose.

2. Confidentiality Obligations. Receiving Party shall use Disclosing Party’s Confidential Information solely for the Purpose, and, subject to Section 3, shall not reproduce, disclose, sell, transfer, use or convey in any other manner, in whole or in part, such Confidential Information other than to its Representatives who: (a) need to know such Confidential Information in the course of the performance of their duties in furtherance of the Purpose; (b) are informed of its confidential nature; and (c) are bound by written confidentiality obligations no less protective of Confidential Information than the terms of this Agreement. Receiving Party shall safeguard the Confidential Information against unauthorized use, access, or disclosure with at least the same care as Receiving Party uses to protect its own Confidential Information of a similar nature, but with at least due care of a prudent business entity. Receiving Party shall not exploit Disclosing Party’s Confidential Information for its own benefit or the benefit of another, shall refrain from using such Confidential Information to the detriment of Disclosing Party, and shall be responsible for any breach of this Agreement by its Representatives. Receiving Party must notify Disclosing Party in writing

within three (3) days of any use, access, or disclosure that violates this Agreement. The confidentiality obligations of this paragraph do not apply where Receiving Party proves by documentary evidence that Confidential Information: (i) was or becomes generally available to the public other than as a result of disclosure by Receiving Party or its Representatives; or (ii) was or becomes available to Receiving Party or its Representatives on a non-confidential basis from a source other than Disclosing Party, *provided* that such source is not bound by a confidentiality agreement with Disclosing Party or otherwise prohibited from making available the information to Receiving Party or its Representatives by a contractual, legal or fiduciary obligation.

3. Compliance with Legal Requirements. If Receiving Party is or becomes legally compelled to disclose any of Disclosing Party's Confidential Information due to mandatory legal provisions or any order of a court of competent jurisdiction or a governmental authority, Receiving Party shall, if not prohibited by law, promptly notify Disclosing Party in order to permit Disclosing Party to seek a protective order or take other appropriate action. Receiving Party shall also cooperate in Disclosing Party's efforts to obtain a protective order or other reasonable assurance regarding the timing, confidential treatment, and content of any legally compelled disclosure. If, in the absence of a protective order, Receiving Party, in the written opinion of its counsel addressed to Disclosing Party shall be compelled as a matter of law to disclose the Confidential Information, Receiving Party, shall disclose to the party compelling disclosure only the part of the Confidential Information as, in the opinion of such counsel, is required by law to be disclosed; *provided* that Receiving Party shall exercise its reasonable efforts to obtain an order or reasonable assurance that confidential treatment shall be accorded to such Confidential Information. Notwithstanding the foregoing, Receiving Party shall not be restricted from lawfully reporting waste, fraud, or abuse to the appropriate regulatory authority.

4. Destruction. Upon written notice from Disclosing Party, Receiving Party shall promptly: (a) return or destroy all Confidential Information of Disclosing Party received under this Agreement, retaining no copies thereof; (b) destroy all notes, analyses, compilations, studies or other material prepared by Receiving Party or its Representatives containing Disclosing Party's Confidential Information; and (c) certify to Disclosing Party in writing that it has fully complied with these obligations; *provided* that Receiving Party may retain Confidential Information to the extent required by applicable law. Receiving Party shall continue to be bound by this Agreement for such retained Confidential Information until its destruction.

5. Export Compliance. Confidential Information exchanged hereunder may be subject to export restrictions. Receiving Party shall not export, re-export, or transfer, directly or indirectly, any Confidential Information received hereunder, to any country or user to which such actions are restricted by the United States or other applicable local country law or regulation without first obtaining any required governmental license or other authorization.

6. Ownership. Disclosing Party retains all right, title, and interest in and to all its Confidential Information, and neither the entry into this Agreement nor the disclosure of Confidential Information will be construed as a license, assignment, lease, sale, or other transfer of any such right, title, or interest in or to the Confidential Information. Receiving Party is not entitled to apply for patents or other statutory protection of industrial property rights based on or using the Confidential Information received under the Agreement.

7. Disclaimer. DISCLOSING PARTY IS PROVIDING THE CONFIDENTIAL INFORMATION ON AN “AS IS” BASIS FOR USE BY RECEIVING PARTY AT ITS OWN RISK. DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Term. This Agreement shall become effective on the Effective Date and shall continue for a period of three (3) years from the Effective Date, unless Disclosing Party earlier terminates this Agreement by providing thirty days prior written notice to Receiving Party. The rights and obligations of the Parties under this Agreement shall survive termination for a period of five (5) years after the date of termination; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations will survive such termination until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Receiving Party or its Representatives.

9. Governing Law & Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without giving effect to any provisions thereof that would permit the application of the laws of another jurisdiction. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be finally and exclusively resolved by arbitration administered by the American Arbitration Association (AAA) using its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be Maryland. Since time is of the essence, arbitration hearings shall take place within 90 days of filing, with an award and reasoned opinion to follow within 30 days. Claims shall be heard by a single arbitrator who shall agree to these limits prior to accepting the appointment and who shall have expertise in the industry of electronics. The cost for the arbitration are to be borne by the losing Party or by both Parties according to their win/loss ratio. Cost shall include, besides the cost of the AAA and the arbitrator’s fees, appropriate cost for counsel and expenses of the Parties. Notwithstanding the requirement to arbitrate, Disclosing Party has the right to seek injunctive and other temporary relief that will remain in effect until the final enforcement of the arbitration award, for which each Party unconditionally submits to the exclusive jurisdiction and venue of the federal or state courts of Maryland.

10. Injunctive Relief. Receiving Party acknowledges and agrees that any breach of this Agreement will cause irreparable harm to Disclosing Party for which money damages would be an inadequate remedy and that, in addition to remedies at law and equity, Disclosing Party is entitled to seek equitable relief as a remedy for any such breach or potential breach, including without limitation, injunctive relief, without proof of actual damages and without the posting of bond or other security. Such remedy shall not be the exclusive remedy for such breach, but shall be in addition to all other remedies available at law or in equity.

11. Notices. Each Party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by facsimile or email, or by recognized overnight courier services, and addressed to the other Party at the addresses set forth above (or to such other address that the receiving Party may designate from time to time), and are effective upon actual receipt.

12. Entire Agreement & Severability. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings or agreements whether written or oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by both Parties. If any provision of this Agreement is held fully or partially invalid, the remaining provisions shall continue to be in full force and effect.

13. Relationship of the Parties. This Agreement is not intended to be, nor shall it be considered as, a “team” arrangement, joint venture, partnership or other formal business organization, and unless otherwise agreed, no Party shall have the right or obligation to share any of the profits or bear any of the risks or losses of any other Party. At all times the Parties shall remain independent contractors with each responsible for its Representatives.

14. Successors and Assigns. This Agreement shall be binding upon the Parties and inures to the benefit of the each Party’s respective successors and permitted assigns; provided, however, this Agreement may not be assigned by Receiving Party without the written consent of Disclosing Party.

15. Waiver. No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Unilateral Nondisclosure Agreement as of the Effective Date.

Rohde & Schwarz USA, Inc.

By \_\_\_\_\_

Name:

Title:

**PARTY B NAME**

By \_\_\_\_\_

Name:

Title: