


GIGA-BYTE TECHNOLOGY CO., LTD.

NON-DISCLOSURE UNDERTAKING

Purpose. Whereas **Giga-byte Technology Co., Ltd.**, (“GIGABYTE”), a Taiwanese company located at No. 6, Bao Chiang Road, Hsin-Tien Dist, New Taipei City, Taiwan, R.O.C. will be providing samples of the GIGABYTE Intel® X299 Chipset series motherboards (“Samples”) to [redacted] (*Name of the Company*) (“Company”), a [redacted] (*Nationality*) company, with its principle place of business at [redacted] (*Complete Address, including City and Country*), to selected worldwide customers, media, beta testers, and service providers. GIGABYTE requires all information remain confidential, and Company agrees to strictly keep the confidentiality of Confidential Information and undertakes to comply with the following terms. This Non-Disclosure Undertaking, effective as of the date of the signature set forth on the execution page hereto (“Effective Date”) or the disclose date of Confidential Information which GIGABYTE has disclosed or wishes to disclose to Company, whichever occurs earlier.

1. Definitions.

“Confidential Information” means any information related to the appearance, specifications, features, capabilities, pricing or general existence of the Samples. “Confidential Information” shall also include technical data, or know-how considered proprietary by GIGABYTE including, but not limited to, GIGABYTE’s research, products, software, services, development, inventions, processes, specifications, designs, drawings, diagrams, engineering, marketing, techniques, mask works, design tapes, documentation, customer information, pricing information, procedures, data, concepts, and financial, marketing, sales, manufacturing, operations, strategic planning, budgeting and other information, all of which are disclosed by GIGABYTE to Company. “Confidential Information” shall further include all notes, analysis, compilations, forecasts, translations, studies, memos, or any other documents prepared by GIGABYTE to Company, which contain or in any other form reflect said information including the results of any employment of the technology. All information that is imparted orally or in writing regardless of its form and regardless of it being labeled as “confidential” or “proprietary” shall be considered as “Confidential Information”.

2. Use Limitations.

Company agrees that, for a period of five (5) years from the date of disclosure of any Confidential Information, and notwithstanding any termination or expiration hereof, it will hold in strict confidence and not use such Confidential Information for any purpose other than the Purpose. Except as expressly authorized in writing by GIGABYTE, Company will not (i) copy or modify any Confidential Information, or any copy, adaptation, transcription, or merged portion thereof, or (ii) reverse-engineer or reverse-compile object code versions of software programs.

3. Obligation of confidentiality.

Company shall use the same care and discretion to avoid disclosure, publication and/or dissemination of Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate, but in no case will Company use less than a reasonable standard of care and discretion. Company shall use Confidential Information solely for the Purpose for which it was disclosed, and will be responsible for any breaches of this Undertaking by its affiliated companies. Company will restrict the possession, knowledge, development, and use of Confidential Information to its employees, agents, and subcontractors and entities that it wholly controls or that wholly control it (collectively, “Personnel”) and who have a need to know Confidential Information in connection with the Purpose. Personnel will have access only to the Confidential Information they need for such purposes and Company will ensure that its Personnel comply with this Undertaking. When a Company receives Confidential Information, it must protect that information for five (5) years after disclosure. Company agrees to advise GIGABYTE promptly in writing of any unauthorized disclosure, misappropriation or misuse of the Confidential Information of which it may become aware.

Furthermore, specific to the Samples, Company shall comply with the following conditions:

- a) No disclosure of product model name, product specs, features, or naming/description of GIGABYTE Intel® X299 series Chipset motherboards and Intel® Core™ X-Series Processors
- b) No public of demos of any kind
- c) No disclosure of either motherboard or CPU and/or their color box pictures
- d) No transferring or showing samples to any 3rd parties
- e) No disclosure of benchmark results
- f) No demos of performance measuring software
- g) No public release of reviews, articles and write-ups, including via third-party media
- h) No form of advertising or promotions
- i) No sales or shipments to end users

When a Company receives a Sample, it shall adhere to the above guidelines until Intel publicly announces the Intel® X299 Chipset series motherboards. If Company is uncertain if Intel’s official announcement has been made, it shall confirm first with GIGABYTE before making any disclosures.

4. Exclusions.

The obligations under Sections 2 and 3 above shall not apply to Confidential Information which Company shows with supporting documentation as:

- a) Now or hereafter publicly known through no wrongful act of Company (provided that this provision shall not excuse a breach that has taken place before the Confidential Information becomes publicly known); or
- b) Approved for release by written authorization of GIGABYTE ; or

- c) Disclosed pursuant to the requirement or demand of a lawful governmental or judicial authority, but only to the extent required by operation of law, regulation of court order, provided that Company shall promptly notify GIGABYTE of such requirement or demand so as to afford GIGABYTE an opportunity to object to, prevent or otherwise limit same.
- d) Notwithstanding the foregoing, Confidential Information shall not be deemed to be in the public domain merely because any part thereof is known by certain people in the e, embodied in a product or because individual features, components or combinations or in thereof are now or become known to the public.

5. Ownership of Confidential Information.

All Confidential Information remains the property of GIGABYTE. GIGABYTE does not grant any express or implied license or other rights in the Confidential Information, except the limited right to use Confidential Information for the Purpose in accordance with this Undertaking.

6. Return of Materials.

Any Samples, materials or documents of GIGABYTE which are furnished to Company, and all copies thereof, will be owned by GIGABYTE. If return is requested by GIGABYTE, Company shall return the Samples, materials or documents within 5 working days.

7. Indemnity

The Company shall defend and hold harmless GIGABYTE against losses and liabilities to Intel arising out of disclosure or use of any Confidential Information by any Representatives of the Company other than as authorized in this undertaking.

8. Injunctive Relief.

Company acknowledges that Confidential Information has been developed or obtained by GIGABYTE by the investment of significant time, effort and expense, and that such Confidential Information provides GIGABYTE with a significant competitive advantage over its competitors. Company understands and agrees that, because of the unique nature of the Confidential Information, GIGABYTE will suffer immediate, irreparable harm in the event Company fails to comply with any of its obligations under this Undertaking, that monetary damages will be inadequate to compensate GIGABYTE for such breach and that GIGABYTE shall have the right to enforce this Undertaking by injunctive relief or other equitable remedies.

9. Jurisdiction and Venue; Attorneys' Fees.

This Undertaking shall be governed by and construed in accordance with the laws of Taiwan, without reference to its conflict of laws provisions. The expressly parties agree that litigation under this Undertaking will be brought in to the courts of the country stipulated above. GIGABYTE will be entitled to pursue remedies for breach of contract in the courts at Company's place of business or any other appropriate jurisdiction. In the event of any litigation between the parties, the prevailing party shall be entitled to reasonable attorneys' fees and all costs of proceedings incurred in enforcing this Undertaking.

10. Term and Termination.

This Undertaking is applicable only to confidential information disclosed by GIGABYTE and received by Company during the one-year (1) period commencing from the Effective Date. The obligations under Section 2 and Section 3 will survive termination of this Undertaking.

11. General.

This Undertaking sets forth the entire understanding and undertaking of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. If any portion of this Undertaking is determined to be invalid or unenforceable, the remainder shall be enforceable to the maximum extent possible. It is further understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. This Undertaking may be amended or modified only in writing signed on behalf of both parties. This Undertaking shall be binding upon the successors and assigns of both parties.

12. Export and Re-Export.

Company recognizes that the communication or transfer of any Confidential Information (or the supply of certain devices using such Confidential Information) to or from certain countries (or persons located therein) may be prohibited or restricted or subject to prior approval of one or more governments. Company agrees not to use, export, import, re-export, transfer or otherwise communicate any of GIGABYTE's Confidential Information to or from any country (or any person located therein) except in compliance with, and with all licenses and approvals required under, applicable U.S. and/or foreign export laws and regulations (including, without limitation, those of the U.S. Department of Commerce).

13. Non-Limitations.

Nothing in this Undertaking or in any disclosure of Confidential Information hereunder shall be construed as:

- a) Constituting or implying any representations or commitments as to the development or availability of commercial products, features or services;
- b) Soliciting any business or organizational changes or incurring any obligations of any kind not specified herein;

14. No license.

No license, title or right with respect to any Proprietary Information is granted by GIGABYTE to Company under any patents, patent applications, trademarks, copyrights or trade secrets.

15. Warranty.

Company assumes all risk, known or unknown, incident to its use of the Confidential Information, and GIGABYTE shall have no liability of any kind to Company or any third parties arising out of such use. COMPANY ACCEPTS THE CONFIDENTIAL INFORMATION IN "AS IS" CONDITION. GIGABYTE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION, AND DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

16. Notices.

Any notice required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery, by certified mail, postage prepaid, return receipt requested, or the day after delivery to a recognized overnight courier, to the addresses abovementioned:

undertaking hereby,

(Name of the Company)

By: _____

Name: _____

Title: _____

Date: _____