

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (hereinafter, the “**Agreement**” is entered into on this [.] day of [.], 20[.] (hereinafter, the “**Effective Date**”)

BY AND BETWEEN

Name:

Address:

Represented by:

(hereinafter referred to as the “**First Party**”, which expression shall, where the context admits, include its successors and permitted assigns), of the ONE PART; **AND**

Name:

Address:

Represented by:

(hereinafter referred to as the “**Second Party**”, which expression shall, unless repugnant to the meaning or context hereof, be deemed to include its successors and permitted assigns); ON THE SECOND PART.

The Party of First and the Second Part are individually referred to as “**Party**” individually and collectively referred to as “**Parties**”.

WHEREAS the Parties intend to participate in discussions in order to explore a potential business relationship and the Parties may share information that is confidential and proprietary either during the discussions or during the course of the business relationship, for the purpose of enabling the parties to interact and work productively (hereinafter referred to as the “**Purpose**”);

WHEREAS the Parties desire to protect such Confidential Information and ensure that it is not disclosed to any third party with the permission of the Party.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. CONFIDENTIAL INFORMATION

- a. For purposes of this Agreement, “**Confidential Information**” means and includes all information or material that has or could have commercial value or other utility in the business in which Parties are engaged and any data or information that is proprietary to the Parties and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to:
 - i. Any Trade Secrets, Proprietary documents, business plans, process, structure or practices;
 - ii. Any marketing strategies, plans, financial information, or projections; operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies;
 - iii. Any information related to the cost of project execution or delivery of service;
 - iv. Plans for products or services, and client or partner lists;
 - v. Any algorithm, software, design, process, procedure, formula, source code, object code, flow charts, databases, improvement, technology or method;
 - vi. Any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications;
 - vii. Any invoices, bills, e-mail communications, mobile text communications, and any other communication related to the projects, products or services undertaken by either of the Parties for the other Party or on the behalf of the other Party or its vendors;
 - viii. Any other information that should reasonably be recognized as confidential information of the other Party.
- b. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The

Parties acknowledge that the Confidential Information is proprietary to the other Party, has been developed and obtained through great efforts by the Party and that Parties regard all of their Confidential Information as trade secrets.

- c. The Parties shall use the Confidential Information solely for and in connection with the Purpose.
- d. Notwithstanding any other provision of this Agreement, the Parties acknowledge that Confidential Information shall not include any information that:
 - i. Is or becomes legally and publicly available to either Party without breach of this Agreement;
 - ii. Was rightfully in the possession of either Party without any obligation of confidentiality; or
 - iii. Is disclosed or is required to be disclosed under any relevant law, regulation or order of court, provided the other Party is given prompt notice of such requirement or such order and (where possible) provided the opportunity to contest it, and the scope of such disclosure is limited to the extent possible.

2. NON-DISCLOSURE

- a. The Parties shall use the Confidential Information only for the Purpose and not disclose any or part or summary or extract of the Confidential Information to any third party, including third parties affiliated with the other Party, without that Party's prior written consent, which prior consent the Party may refuse to give without assigning any reasons.
- b. The Parties shall hold and keep in strictest confidence any and all Confidential Information and shall treat the Confidential Information with at least the same degree of care and protection as it would treat its own Confidential Information.
- c. Either Party shall not disclose the sale of materials of the other Party to any individual/person/any client of the other Party.
- d. Either Party shall not copy or reproduce in any way (including without limitation, store in any computer or electronic system) any Confidential Information or any documents containing Confidential Information without the Party's prior written consent. The Party shall immediately upon request by the other Party deliver to the

Party owning the Confidential Information that has been disclosed to the other Party, including all copies (if any) made in terms of these.

- e. Either Party shall not commercially/non-commercially use or disclose any Confidential Information or any materials derived therefrom to any other person or entity other than persons in the direct employment of the other Party who have a need to have access to and knowledge of the Confidential Information solely for the Purpose as defined above, and such persons are under similar obligation of confidentiality and non-disclosure as these presents. In the event that any employees, agents or affiliates of either Party disclose or cause to be disclosed the Confidential Information, that Party shall be liable for such disclosure.
- f. The Parties may not disclose Confidential Information to any third party under any circumstances regardless of whether the third party has executed a Non-Disclosure Agreement with the Party.
- g. Both Parties agrees to notify the other Party immediately if it learns of any use or disclosure of the Party's Confidential Information in violation of the terms of this Agreement.
- h. The Parties further acknowledge and agree that no representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by either Party, or by any of its respective directors, officers, employees, agents or advisers, as to, or in relation to, the accuracy of completeness of any Confidential Information made available to the other Party or its advisers; it is responsible for making its own evaluation of such Confidential Information.
- i. During the term of this agreement, either Parties may use the association with the other Party only towards the purpose as envisaged under their business association under this Agreement.
- j. Both the Parties hereby acknowledge, understand and agree that they shall not approach the clients of the other Party in any manner for whom one Party has delivered a product or a service on behalf of the other Party, for an existing project or for any future projects.

3. PUBLICATIONS

Neither Party shall not make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents/provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement, without the prior written approval of the other Party. Further, neither Party shall use any photographs/video/other materials belonging or related to the other Party in promotional content through electronic, print or other mediums.

4. TERM

- a. This Agreement shall be effective from the date hereof and all non-disclosure provisions shall continue to be in force at all times even after the cessation of the discussions or business relationship between the parties.
- b. Upon any demand made by either Party, the other Party shall immediately cease any and all disclosures or uses of Confidential Information, and at the request of the Party, shall promptly return or destroy all written, graphic or other tangible forms of the Confidential Information and all copies, abstracts, extracts, samples, notes or modules or like thereof, in accordance with this clause and Section 6 of this Agreement. The obligations of the Parties with respect to disclosure and confidentiality shall continue to be binding and applicable without limit in point in time except and until such information enters the public domain.

5. TITLE AND PROPRIETARY RIGHTS

- a. Notwithstanding the disclosure of any Confidential Information by one Party to the other Party, the original Party shall retain title and all intellectual property and proprietary rights in the Confidential Information.
- b. No license under any trademark, patent or copyright, or application for same, which are now or thereafter may be obtained by the one Party is either granted or implied by the conveying of Confidential Information, to the other Party.
- c. Neither Party shall conceal, alter, obliterate, mutilate, deface or otherwise interfere with any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the other Party on any copy of the Confidential

Information, and shall reproduce any such mark or notice on all copies of such Confidential Information.

- d. Likewise, the other Party shall not add or emboss its own or any other any mark, symbol or logo on such Confidential Information.

6. RETURN OF CONFIDENTIAL INFORMATION

Upon written demand of the either Party, the other Party shall:

- a. Cease using the Confidential Information;
- b. Return the Confidential Information and all copies, abstract, extracts, samples, notes or modules thereof to the Party that makes such demand, within seven (7) days after receipt of notice; and
- c. Upon such return, certify in writing that the other Party has complied with the obligations set forth in this paragraph.

7. REMEDIES

- a. The Parties acknowledge that if either Party fails to comply with any of its obligations hereunder, the other Party may suffer immediate, irreparable harm for which monetary damages may not be adequate.
- b. The Parties acknowledge that damages are not a sufficient remedy for the other Party for any breach of any of the Party's undertakings herein provided; and the Parties further acknowledge that the affected Party is entitled to, without limitation to the other rights guaranteed under this Agreement, to specific performance or injunctive relief (as appropriate) as one of the remedies for any breach or threatened breach of those undertakings by the defaulting Party, in addition to any other remedies available to the affected Party in law or in equity.

8. ENTIRE AGREEMENT, AMENDMENT AND ASSIGNMENT

This Agreement constitutes the entire agreement between the Parties relating to the matters discussed herein and /supersedes any and all prior oral discussions and/or written correspondence or agreements between the Parties. This Agreement may be amended or modified only with the mutual written consent of the parties, by way of an

addendum. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable.

9. DISPUTE RESOLUTION

- a. **Mediation.** The Parties agree to first mediate any disputes or claims between them in good faith and resolve the disputes amicably and share the cost of mediation equally.
- b. **Arbitration.** In the event that mediation fails, any controversy or claim arising out of or relating to this Agreement or breach of any duties hereunder shall be settled by Arbitration in accordance with the Arbitration and Conciliation Act of India, 1996. All hearings will be held in [.] India and shall be conducted in English. The parties shall each appoint an arbitrator who shall then appoint a sole arbitrator to preside over the Arbitration proceedings.

10. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of India. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of [.] India, for the adjudication of any dispute hereunder or in connection herewith.

11. MISCELLANEOUS

- a. No failure or delay by either Party in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.
- b. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- c. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.

d. All obligations respecting the Confidential Information provided hereunder shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed these presents the day, month and year first hereinabove written.

(First Party)

Name:

Designation:

(Second Party)

Name:

Designation:

WITNESSES:

1.....

Name:

Address:

2.....

Name:

Address: