

**NON DISCLOSURE AGREEMENT**

This agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ Month \_\_\_\_\_ Year between the President of India through the Director (Name of Lab/Estt), hereinafter referred to as "**First Party**" on the one part and the \_\_\_\_\_ Firm Name with address \_\_\_\_\_ ("**Second Party**") herein after referred as "**Receiving Party**" which expression shall unless it be repugnant to or inconsistent with subject or context thereof, include and be deemed to include their Heirs, Executors, Successors or Administrators and permitted assigns on the other part.

Hereafter collectively referred to as the "Parties" or individually as the "Party".

WHEREAS, First Party/Lab/Estt. (Disclosing Party) possess certain sensitive and confidential information and desires to disclose it to the Firm (the Receiving Party) to further co-development relationship between the Parties subject to the Terms and Conditions of this Agreement.

NOW IT IS AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS :

**1. Identification**

When Confidential information is disclosed in writing or other tangible form, the information shall be marked "CONFIDENTIAL" or with similar legend on each page containing Confidential information. When Confidential information is disclosed orally, visually or in any other intangible form, such information shall be identified as confidential at the time of disclosure, subsequently summarized and confirmed in writing within Thirty (30) days from the initial disclosure, referring the date of disclosure.

## **2. Standard of Care**

The Receiving Party shall protect the confidential information disclosed by the First Party with appropriate care.

- a. Receiving Party shall communicate to First Party in writing the list of nominated persons for receiving confidential information.
- b. Confidential information should not be communicated through phone, fax, or email. Confidential information should be exchanged only through signed letters.
- c. When confidential information is received by Receiving Party, the Receiving Party should acknowledge the receipt of confidential information in writing.
- d. Receiving Party should not discuss the confidential information disclosed by First Party with any Third Party, within Government Organizations or outside Government Organizations without the prior written approval of Director/First Party. The Firm agrees to promptly notify First Party of any misuse/misappropriation/loss/comprise of the confidential information.

3. Either Party's failure to enforce any provision, right or remedy under this agreement shall not constitute a waiver of such provision, right or remedy.

4. This Agreement will be construed in, interpreted and applied to accordance with the laws of India.

## **5. Confidentiality Period**

For the term of this Agreement and Ten (10) years thereafter, the Receiving Party shall neither disclose the First Party's confidential information to any Party other than its Employees who have express need to know in the context of the relevant co-development.

## **6. Exceptions**

No obligation shall be imposed regarding confidential information if the Receiving Party can demonstrate that the confidential information:

- (a) is or becomes thereafter available to the public through no breach of this Agreement;
- (b) is disclosed pursuant to governmental or judicial order requirement.

## **7. Return of Materials**

The Receiving Party shall return to the First Party, or at the discretion of the First Party certify the destruction of all copies of the First Party's confidential information upon written request of First Party.

## **8. No License**

Nothing herein constitutes a license or other transfer of rights in respect of either Party's interest in any Confidential information disclosed pursuant to this Agreement.

## **9. Term**

The Term of this agreement is Five (5) years from the effective Date, however, those Sections 5, 6, 8 and 11 hereof shall survive even after expiration or termination hereof.

## **10. Assignment, Modification and Waiver**

No assignment, modification, or waiver of any Term of this Agreement shall be effective unless set forth in writing and signed by an Authorized Representative of each Party. No failure to enforce any provision of this Agreement shall be construed as waiver.

## **11. Dispute Resolution**

Difference of opinion, if any, arising during the period of this Agreement, concerning the execution of the responsibilities will be settled on the basis of mutual consultation by the signatories or their designated nominees. The parties will make best possible efforts to resolve the dispute and in case of their failure to do so and reconciling the dispute mutually, the same shall be referred for Arbitration.

## **12. Arbitration**

Any question, dispute or difference arising under the Contract (except as to any matter, the decision of which is specifically provided for) shall be refereed to the Sole Arbitration of the Scientific Advisor to Raksha Mantri. It will not be valid objection that the Arbitrator is Government Servant and that he had to deal with the matters to which the Agreement relates or that in the course of his duties as a Government Servant he had expressed views on all or any of the matters, disputes or difference. The Award of the Arbitrator shall be final and binding on both the Parties. The Arbitrator shall be entitled to extend time of award by the consent of the Parties from time to time. The venue of Arbitration shall be New Delhi or any other Place as may be decided by the Arbitrator and the expenses of the Arbitration shall be at the discretion of the Arbitrator. Subject as aforesaid, the Arbitration and Conciliation Act 1996 and the Rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this condition.

## **13. Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties with respect to the matters covered by this Agreement, supersedes all prior agreements and understandings with respect thereof, and may only be amended in writing signed by both Parties.

#### 14. Binding Effect

This Agreement shall be binding and inure to the benefit of the undersigned Parties, their Successors and Assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement to be executed as the effective date written above when signed below by their duly authorized representatives.

##### **For Lab/Estt./First Party**

Name :

Designation :

Address :

Date :

##### **For Firm/Second Party**

Name :

Designation :

Address :

Date :

**1. Definitions :**

In this Non Disclosure Agreement the following terms shall, unless the context otherwise requires, have the following meanings :

**1.1 'Disclosing Party' or 'First Party'** means DRDO Lab/Estt. disclosing Confidential Information to the Vendor/Seller/Development Partner under this Agreement.

**1.2 'Receiving Party'** means the Vendor/Seller/Development Partner receiving Confidential Information from DRDO Lab/Estt. under this Agreement.

**1.3 'Confidential Information'** means any information, which shall include but is not limited to, design, fabrication and assembly drawings, know-how, processes, product specifications, raw materials, product samples, inventions, concepts and any other technical and/or commercial information, disclosed directly or indirectly and in any form whatsoever (including, but not limited to, disclosure made in writing, oral or in the form of samples, models, computer programmes, drawings or other instruments) furnished by the Disclosing Party to the Receiving Party under this Agreement.

**1.3.1** Such Confidential Information shall also include but shall not be limited to:

**1.3.1.1** information disclosed by the Disclosing Party/First Party in writing marked as confidential at the time of disclosure;

**1.3.1.2** information disclosed by the Disclosing Party/First Party orally which is slated to be confidential at the time of disclosure;

**1.3.1.3** information disclosed in any other manner is designated in writing as Confidential Information at the time of disclosure; or

**1.3.1.4** notwithstanding sub-clauses 1.3.1.1, 1.3.1.2 and 1.3.1.3 of this definition, any information whose nature makes it obvious that it is confidential.

**1.3.2** Such Confidential Information shall not include any information which:

**1.3.2.1** is, at the time of disclosure, publicly known; or

**1.3.2.2** becomes at a later date, publicly available otherwise than a wrongful act or negligence or breach of this Agreement of or by the Receiving Party; or

**1.3.2.3** the Receiving Party can demonstrate by its written records was in its possession, or known to the Receiving Party, before receipt under this Agreement, and which was not previously acquired under an obligation of confidentiality; or

**1.3.2.4** is legitimately obtained at any time by the Receiving Party from a third Party without restrictions in respect of disclosure or use; or

**1.3.2.5** the Receiving Party can demonstrate to the satisfaction of the Disclosing Party, has been developed independently of its obligations under this Agreement and without access to the Confidential Information.

**2. Administrative Instructions:**

- 2.1** Authority of the Signatory of Receiving Party in NDA shall be established prior to signing of NDA. Preferably, a letter should be obtained from CEO/MD of the Receiving Party authorizing a named senior level official to sign NDA on their behalf. Only such authorised Senior Level Officer should sign the NDA document on behalf of Receiving Party/Second Party.
  - 2.2** The confidentiality of the documents shall also be maintained by the Consortium Partners of the Suppliers/Receiving Party.
  - 2.3** The Labs/Estts./Programmes are advised to enter into this NDA in all Contracts wherein any Confidential Information is being shared with the Receiving Party/Second Party.
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