

# Mutual Non-Disclosure Agreement

Between **ABC Pte Ltd** and **DEF Pte Ltd** — Singapore governed

**Effective Date:** [ ]

## Parties:

- **ABC Pte Ltd** (UEN: [ ]), registered office: [ ] ("ABC")
- **DEF Pte Ltd** (UEN: [ ]), registered office: [ ] ("DEF")

## Recitals

ABC and DEF (each a "Party" and together the "Parties") wish to explore and/or pursue a potential business relationship. In connection with that Purpose, each Party may disclose Confidential Information to the other. The Parties wish to set out their mutual obligations regarding such Confidential Information.

## 1. Definitions

1. "**Confidential Information**" means all information disclosed (whether oral, written, electronic or visual) by a Disclosing Party to the Receiving Party, including but not limited to business plans, financial information, product designs, specifications, prototypes, technical data, software (including source code), know-how, trade secrets, customer/supplier lists, pricing, marketing plans, and any information marked or otherwise identified as confidential or that by its nature ought reasonably to be treated as confidential.
2. "**Disclosing Party**" means the Party disclosing Confidential Information on a particular occasion.
3. "**Receiving Party**" means the Party receiving Confidential Information on a particular occasion.

## 2. Confidentiality Obligations

1. The Receiving Party shall: (a) keep Confidential Information strictly confidential using at least the same degree of care it uses to protect its own confidential information (and no less than a reasonable standard of care); (b) use Confidential Information only for the Purpose (as defined below); and (c) not disclose Confidential Information to any third party except as permitted by Clause 3 or with the Disclosing Party's prior written consent.
2. **Purpose:** evaluation and discussion of a possible business relationship or transaction between the Parties and any negotiations or agreements arising out of such discussions.

### **3. Permitted Disclosures**

1. The Receiving Party may disclose Confidential Information to its Representatives (employees, officers, professional advisers, contractors or agents) who have a legitimate need to know for the Purpose, provided that (i) the Receiving Party remains responsible for any breach by such Representatives, and (ii) the Receiving Party procures that such Representatives are bound by confidentiality obligations no less onerous than those in this Agreement.
2. If disclosure is required by law, regulation or court order ("Legal Compulsion"), the Receiving Party may disclose to that extent only and, where legally permitted, must give the Disclosing Party prompt written notice and cooperate in seeking a protective order or other remedy.

### **4. Exclusions**

The obligations in Clause 2 do not apply to information that the Receiving Party can demonstrate (by written records) is:

- publicly available other than by breach of this Agreement;
- already in the Receiving Party's possession prior to disclosure and without an obligation of confidentiality;
- rightly received from a third party free of restriction; or
- independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

### **5. Term**

The Receiving Party's obligations under Clause 2 commence on the Effective Date and shall continue for a period of **three (3) years** from the date of signing this Agreement. Clauses intended by their nature to survive termination or expiration (including Clauses 4, 6, 7, 8, 9, 10 and 11) shall survive.

### **6. Return or Destruction**

On written request by the Disclosing Party (or on termination/expiry of discussions), the Receiving Party shall promptly return or destroy all materials and copies containing Confidential Information, and confirm destruction in writing. The Receiving Party may retain one archival copy for legal or compliance purposes, subject to confidentiality obligations.

### **7. Mutual Remedies & Agreed Sum**

1. The Parties acknowledge that unauthorised disclosure may cause irreparable harm. In addition to any other remedy (including injunctive relief and specific performance), the

Parties agree the following mutual liquidated amount applies:

2. **Agreed Sum:** If a Party (the "Breaching Party") discloses any Confidential Information to any third party in breach of this Agreement (whether intentional or unintentional), the Breaching Party shall pay the Disclosing Party a sum of **One Hundred Thousand United States Dollars (US\$100,000)** (the "Agreed Sum") as liquidated damages for that disclosure. The Parties agree the Agreed Sum represents a genuine pre-estimate of loss and is not intended as a penalty.
3. **Intention & Construction:** Each Party expressly acknowledges that the Agreed Sum is intended as a genuine pre-estimate of damage (not a penalty), and has been agreed because actual damages for unauthorized disclosure are difficult to quantify.
4. **Severability / Alternative Relief:** If a court determines the Agreed Sum (or part of Clause 7) is a penalty and unenforceable, that determination will not affect the remainder of this Agreement. The Disclosing Party may still seek injunctive or other equitable relief and actual damages, and the Parties will negotiate in good faith a lawful alternative liquidated amount proportionate to the injury caused by disclosure.

## 8. No Licence; No Warranty

Nothing in this Agreement grants any intellectual property rights or licence to the Receiving Party. All Confidential Information is provided "as is" and without warranty as to accuracy or completeness.

## 9. Limitation of Liability

Except for liability arising from wilful misconduct, fraud, breach of Clause 2 (Confidentiality), and the Agreed Sum under Clause 7, neither Party will be liable for indirect, incidental, special or consequential losses arising from or in connection with this Agreement.

## 10. Governing Law & Jurisdiction

This Agreement is governed by and shall be construed in accordance with the laws of the Republic of Singapore. The Parties submit to the exclusive jurisdiction of the courts of Singapore in relation to disputes arising out of or in connection with this Agreement.

## 11. Miscellaneous

1. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, except to an affiliate or by operation of law in connection with a sale of substantially all the Party's business or assets.
2. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to Confidential Information and supersedes prior understandings.
3. **Severability.** If any provision is held invalid or unenforceable, it will be severed and the remainder will remain enforceable.

- 4. Waiver.** No waiver is effective unless in writing and signed by the waiving Party.
- 5. Counterparts & Electronic Execution.** This Agreement may be executed in counterparts and by electronic means (including scanned signatures); all counterparts together constitute one instrument.

## Execution

Signed for and on behalf of each Party:

### ABC Pte Ltd

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

UEN: [\_\_\_\_\_]

### DEF Pte Ltd

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

UEN: [\_\_\_\_\_]

**Practical note:** The Parties have expressly agreed the Agreed Sum (US\$100,000) is a genuine pre-estimate of loss. Under Singapore law, courts examine whether a liquidated sum is a genuine pre-estimate or a penalty. To reduce enforceability risk, maintain documentary evidence supporting the commercial basis for the amount (internal commercial rationale or negotiation record). This draft preserves injunctive and actual damage remedies if a court were to invalidate the Agreed Sum. Please obtain local legal advice before execution.

Prepared for readability. This draft is provided for convenience and does not constitute legal advice. Please have this document reviewed by Singapore-qualified counsel prior to signing.