Non Disclosure and Confidentiality Agreement

This Non-Disclosure and Confidentiality Agreement is entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is effective as of the ( Effective Date) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between **CLOVER INFOTECH PRIVATE LIMITED,** a Company incorporated and Registered under the provisions of the Companies Act, 1956 bearing CIN No. U72200PN2000PTC014922 and having its registered office at Clover Centrum, no 5, Galaxy Society, 245 Boat Club Road, Pune - 411001, hereinafter referred to as “**CIPL**” which expression unless repugnant to context or meaning thereof shall mean to include its successors and assigns of the First Part.

AND

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.** hereinafter referred to as “ **CLIENT** ” which expression unless repugnant to context or meaning there of shall mean to include its successors and assigns of the Second Part.

AND WHEREAS in consideration on these presents and to protect and preserve each party’s confidential and proprietary information that may be exchanged to the other party in the course of such discussions, both the parties hereby agrees and covenants to protect, preserve and not to disclose such confidential and proprietary information to any third party on the terms and conditions mentioned herein as:

1. **Definition of Confidential information**

For the purposes of and throughout this Agreement,

“Confidential Information” means and includes without limitation, any information disclosed, either directly or indirectly, in writing or orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment) during the course of the discussions for a (the “Discussions”) by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) including (a) confidential and proprietary trade secrets of the Disclosing Party and/or all other information belonging or relating to the Disclosing Party’s business that is not generally known; (b) the Disclosing Party’s products, processes, methodologies, systems techniques, programs, data, software, know-how, documentation of developed systems, improvements, developments, techniques, business or marketing plans, strategies, forecasts, licenses, prices or lists of the Disclosing Party, business and financial affairs, personnel matters, operating procedures, organization responsibilities, marketing matters and any policies or procedures; (c) confidential information of third parties; and (d) the terms and conditions of this Agreement.

Confidential Information excludes information that: (i) can be shown with documents as already known to the Receiving Party at the time that it is disclosed to Receiving Party; (ii) is in or comes to public domain through no fault, wrongful act or breach of this Agreement on the part of the Receiving Party; (iii) has been independently developed by Receiving Party without breach of this Agreement or infringement of the proprietary rights of Disclosing Party; (iv) has been rightfully received from a third-party without restriction on disclosure and without breach of this Agreement; (v) has been approved in writing for disclosure by Disclosing Party; (vii) has been disclosed pursuant to a requirement of government agency or law; (viii) has been disclosed in written, graphic or other tangible form unless clearly designated in writing as “confidential” or “proprietary”;

Proprietary Information shall include any and all patent, trademark, copyright, trade secret and other proprietary rights of any kind whatsoever, any and all works in any medium whatsoever that refer to, relate to, incorporate, include, analyze or utilize such Proprietary Information, including but not limited to improvements and modifications thereto and derivations there from.

**2. Grant of Access and Limitation on Use**

Each party as a Receiving Party expressly agree to use any Confidential Information disclosed by the other party only as provided in this Agreement, and understand that any unauthorized disclosure or misuse of the Confidential Information of the other party may result in substantial and irreparable damage to such party.

Each party as a Receiving Party further agree and undertake to hold the Confidential and Proprietary Information in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose such information to any third party or to use such information for any purposes whatsoever.

Each party, as a Receiving Party agrees:

1. That all Confidential Information acquired by the Receiving Party from the other party will be and will remain the exclusive property of the source.
2. That information provided by the other party is only for the purposes of examining potential of CIPL for EPBX System Comprehensive AMC work. The Receiving Party will not use any or all of the Confidential Information in any other manner whatsoever.
3. That without the prior written consent of the other party, the Receiving Party will not in any manner or at any time disclose, disseminate, publish or otherwise provide, either orally or in written manner, to any employee, agent, contractor, firm, corporation, organization, or entity any Confidential Information, except to such Receiving Party’s employees, agents or contractors who have an express need to know such information in order to carry out their duties.
4. That the Receiving Party will treat the other party’s Confidential Information with the same procedures and precautions each party uses to protect its own information that it does not wish to be disclosed form unauthorized disclosures or other misuse.
5. The Parties agree that they do not intend nor will they, directly, or indirectly, export or transmit any Confidential Information or Materials to any country to which such export or transmission is restricted by regulation or statute.
6. To return promptly to the Disclosing Party or destroy any copies of such Confidential Information in written, graphic or other tangible form at the Disclosing Party’s request.
7. That the obligations set forth in this Section 2 with respect to Confidential Information will extend for a period of six (6) months following the date of initial disclosure of that Confidential Information, and that obligation will continue notwithstanding the termination of employment, partnership or business relationship with the Receiving Party or any and all individuals who received the Confidential Information in terms of this Agreement for a period of six (6) months from the Termination of this Agreement.

**3. Ownership of Confidential Information**

All Confidential and Proprietary Information remains the property of the Disclosing Party including (a) copyrightable or copy righted material, any translations, abridgments, revisions or other form in which an existing work may be recast, transformed or adapted; (b) patentable or patented material, any continuation, reissuance or improvement thereon; and (c) material which is protected by trade secret and, any new material derived from such existing trade secret material, including new material which may be protected by, copyright, patent and/or trade secret law. By disclosing information to the other party, a party does not grant any express or implied right to the other party to or under the original party’s patents, copyrights, trademarks or trade secret information.

**4. Assignment**

This Agreement and the rights, interests, benefits, duties and obligations hereunder shall not be assigned or transferred in any way by either party. Any act in derogation of the foregoing shall be null and void and without effect. Furthermore, this Agreement may be amended only by written agreement executed by both parties.

**5. Governing Law and Jurisdiction.**

This Agreement will be governed in accordance with the laws of India and the Courts in Mumbai alone shall have the Jurisdiction.

**6.**  **Entire Agreement**

This Agreement is the entire agreement between the parties hereto with respect to the nondisclosure of Confidential Information described in the Agreement and supersedes all prior agreements, representations and understandings whether oral or written with respect to the Subject matter hereof.

1. **Term and Termination**

This agreement will remain in force for a period of 6 Months for the period from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This Agreement may be terminated by either party upon (30) day’s prior written notice to the other party. Upon expiration or earlier termination of this Agreement, both parties agree to return promptly to the other party all copies of any documents, materials, notes, data, programs, or software containing Confidential Information in each party’s possession or control. Each party agrees to confirm to the other party in writing that all such copies have been returned or destroyed. Notwithstanding the expiration or early termination of this Agreement, the obligations of confidentiality set forth in Paragraph 2 of this Agreement will survive such expiration or earlier termination for a period of six (6) months, and will be binding on agents, successors and assigns of the other party including its past and/or present employees to whom the Confidential and Proprietary Information was disclosed in terms of this Agreement.

**8**. **Limitation of Liability and Disclaimer of Damages**

8.1 **Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, CLOVER INFOTECH PVT LTD. AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL SOWs, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNT THAT CLIENT PAID TO CLOVER INFOTECH PVT LTD. UNDER THE MOST APPLICABLE SOW GIVING RISE TO THE LIABILITY DURING THE SIX (06) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY.

8.2 **Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN SOW, IN NO EVENT WILL CLOVER INFOTECH PVT LTD. BE LIABLE TO CLIENT OR ITS AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF CLOVER INFOTECH PVT LTD. OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

**9. Non Competition and Non Solicitation**

Both parties agree and undertakes not to compete with each other in securing any business, contracts from any third parties or to develop any relationship with any third party, to provide any services in respect of which Confidential and Proprietary information has been exchanged between the Parties. During the period of One year from the date of this Agreement, Both parties agree not to enter into any contract of employment or consultancy, whether on permanent or temporary basis with any employee of the other party. During the term of this Agreement and for one year thereafter, neither the Client nor any of the client’s vendors nor Clover Infotech Pvt. Ltd. shall knowingly solicit, hire or engage any of the other party's employees for one year following the termination of such employee's employment with the other party, without such other party's prior written consent. In case of such hire, the other party will be entitled to claim an amount of one annual salary of the said consultant from the Hirer.

**10. Miscellaneous**

This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties.

None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of either party.

If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorney’s fees.

All obligations created by this Agreement shall survive change or termination of the Parties’ business relationship.

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IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized

representatives to execute and enter this Agreement

**For Clover Infotech Pvt Ltd.** **For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Authorized Signatory Authorized Signatory

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