

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

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.

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

This clause defines the mechanism of dispute resolution and an alternate to litigation. The disputing parties hand over their power to decide the dispute to the arbitrator(s). The standard text of this clause is as under:

"All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to product or performance, which cannot be settled amicably, shall be resolved by arbitration in accordance with the following applicable provision:

- a) **For Central and State PSEs :** The case of arbitration shall be referred to the Department of Public Enterprises for the appointment of sole arbitrator by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause.
- b) **For Defence PSUs :** The case of arbitration shall be referred to the Secretary Defence (R&D) for the appointment of arbitrator(s) and proceedings.
- c) **For Other Firms:** Any dispute, disagreement or question arising out of or relating to the Contract or relating to product or performance, which can not be settled amicably, shall be resolved by arbitration in accordance with either of the following provisions:

"The case of arbitration may be referred to respective CFA or a person appointed by him who will be sole arbitrator and the proceedings shall be conducted in accordance with procedure of Indian Arbitration and Conciliation Act, 1996."

Or

"The case of arbitration may be referred to International Centre for Alternative Dispute Resolution (ICADR) for the appointment of arbitrator and the proceedings shall be conducted in accordance with procedure of Indian Arbitration and Conciliation Act, 1996."

Or

"The case of arbitration may be conducted in accordance with the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules in India. However, the arbitration proceedings shall be conducted in India under Indian Arbitration and Conciliation Act, 1996."

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 :