

Mutual Non-Disclosure Agreement

This Confidential Non-Disclosure Agreement (the “Agreement”), effective as of (the “**Effective Date**”), is entered into by and between the following parties (“Parties”):

Indian Institute of Technology Madras, a statutory body constituted under the Indian Institute of Technology Act 1961, functioning at its premises at Sardar Patel road, Chennai 600036 represented by the Dean, IC & SR, duly authorized by the Director, IIT Madras hereinafter called Institute, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest, designates and permitted assigns, of the one part.

AND

.....XYZ....., a company registered in, having its Corporate Office at _____ Represented by _____ hereinafter called ‘.....XYZ.....’, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest, designates and permitted assigns of the other part.

WITNESSETH:

Whereas ...XYZ..... is in the business of Products and Services in technology areas including, among others, in India;

XYZ intends to engage in discussions with Institute with a view to explore aspects as to suitability/compatibility/commercialization/specific solutions in respect of certain ‘TECHNOLOGY’ AREAS (including), hereinafter referred to as ‘PURPOSE’

Whereas the said discussions involve the transfer and exchange of confidential information by one party called the ‘DISCLOSING PARTY’ to the other party called the ‘RECEIVING PARTY’ and Whereas the Disclosing party is the owner of such information or holding Intellectual Property Right/s therein, having acquired the same by legitimate and legal means and as such is entitled to protection of such rights and Whereas the Receiving party is under obligation to ensure such protection.

For the purposes of this Agreement, Institute hereby designates Professor, Department of to coordinate on the potential project with XYZ, who may also be the Disclosing Party and/or Receiving Party and shall sign this NDA as a Confirming Party.

Either party may either disclose or receive confidential information to/from the other, depending upon the specific context and circumstances governing the said discussions.

NOW THEREFORE in consideration of the said premises and mutual obligations described hereinafter, the said Parties hereby covenant and agree as follows:

1. **Key Definitions.**

1.1 “Purpose” means the discussions pertaining to the TECHNOLOGY specified hereinabove.

1.2 "Confidential Information" means any and all information disclosed in connection with the Purpose, including but not limited to, data or other information relating to products, plans, processes, pricing, know-how, design specifics, formulas, developmental or experimental work, computer programs, customer lists, roadmaps, development schedules, business plans, marketing plans, financial information or other proprietary material, whether disclosed in writing, orally, visually or by allowing observation or inspection. Further, to qualify as Confidential Information, the above information must be (i) marked "Confidential" or with a similar marking, or (ii) if it is disclosed orally, visually or in other non-tangible form, identified as confidential at the time of disclosure, and subsequently reduced to or summarized in writing provided to Recipient within 30 days after the disclosure, with "Confidential" or a similar marking. For avoidance of doubt, "writing" in this Section includes electronically and electromagnetically stored forms.

1.3 "Discloser" means either party, making a disclosure of Confidential Information.

1.4 "Recipient" means either party, receiving Confidential Information.

2. **Exchange of Confidential Information.**

2.1 **Discussion Period.** The period during which Confidential Information is disclosed and discussion for the Purpose may take place shall be from the Effective Date until("Discussion Period"). This Agreement shall survive the Discussion Period by a further period of 3 years from the date of end of the Discussion Period between the parties.

2.2 **Disclosure.** During the Discussion Period, Discloser may, to the extent Discloser deems necessary or advisable for the Purpose, disclose its Confidential Information to Recipient. However, nothing in this Agreement obligates either Party to disclose any specific information at any specific time.

2.3 **Continuing Provisions.** For avoidance of doubt, expiration or termination of the Discussion Period merely terminates further exchange of Confidential Information and discussion for the Purpose under this Section 2, and shall not affect the effectiveness of the other provisions of this Agreement.

3. **Protection of Confidential Information; Exclusions.**

3.1 **Confidentiality.** Recipient agrees to use at least the same degree of care in safeguarding the Discloser's Confidential Information that it uses to protect its own confidential information, which shall in no event be less than a reasonable standard of care considering the nature of the Confidential Information. Recipient shall not, without prior written consent of Discloser, disclose the Discloser's Confidential Information to any person or entity except its employees, officers and directors (collectively referred to as "**Employees**") who have a need to know, provided that each of the said disclosures may be made only during the Discussion Period.

3.2 **Limitation on Use.** Recipient may use of the Discloser's Confidential Information only to carry out the Purpose and only during the Discussion Period, and shall not use nor copy or use it for any other purposes or beyond the Discussion Period.

3.3 **Requirements for Staff.** As a condition to access to the Discloser's Confidential Information, each of the Recipient's Employees shall be bound to the same obligations as set forth in this Agreement, as if he/she were a Recipient. Recipient shall take best efforts to ensure that each of its Employee(s) complies with any of the said obligations.

3.4 **This Agreement**. Neither Party may disclose the existence and content of this Agreement or the fact that the Parties are carrying out the Purpose, without prior written consent of the other Party. However, this Section 3 shall not preclude either Party from disclosing this Agreement and making any assertions to seek remedies and reliefs against the other Party, or defending against assertions by the other Party.

3.5 **Exceptions**. The obligations and restrictions under this Agreement shall not apply to any information which:

- a. is in the Recipient's possession at the time of disclosure;
- b. is or becomes part of the public knowledge not as a result of any action or inaction of Recipient;
- c. is rightfully received by Recipient from a third party without any obligation of confidentiality;
- d. is disclosed by Discloser to a third party without any obligation of confidentiality;
- e. is independently developed by Recipient without use of the Confidential Information; or
- f. is approved for release with prior written consent of Discloser.

3.6 **Governmental Request**. Notwithstanding any provisions in this Section 3, if required by judicial or governmental authorities, Recipient may, to the minimum extent, disclose to those authorities Discloser's Confidential Information, existence and content of this Agreement and the fact that the Parties are carrying out the Purpose, provided that (i) Recipient shall immediately notify Discloser, and (ii) Recipient shall make reasonable efforts to secure confidential treatment by those authorities.

4. **Return, Destruction and Retention**.

Upon expiration or termination of Discussion Period or upon request by Discloser at any time, Recipient shall return or destroy all the Discloser's Confidential Information (including its copies), provided that Recipient may retain it in a confidential and restricted manner solely for archival purpose. For avoidance of doubt, the measures set forth in this Section shall not release Recipient from its obligations and restrictions set forth in Section 3.

5. **Ownership and Rights**.

5.1 **No License**. Except as expressly provided in this Agreement, nothing contained in this Agreement shall be construed as granting or conferring any rights, licenses or relationships by the transmission of the Confidential Information.

5.2 **Ownership and Use by Discloser**. As between the Parties, all Confidential Information shall remain the property of Discloser. Recipient agrees not to (attempt to) alter, modify, disassemble, reverse engineer or decompile any of the Confidential Information, unless permitted in writing by Discloser.

6. **Disclaimer**.

No warranties, express or implied, including but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement, are made by either discloser under this agreement. Any information exchanged under this agreement is provided on an "as is basis".

7. **General**.

7.1 **Reference by a Final Agreement**. Nothing in this Agreement shall obligate either Party to enter into any business relationship as a result of pursuit of the Purpose. However, if the Parties enter into such relationship and the final agreement incorporates this Agreement by reference, then (i) the

Purpose shall be automatically redefined so that the Parties may use Confidential Information in achieving the objectives of that final agreement, and (ii) in case of inconsistency of any provision between this Agreement and that final agreement, the provision of the latter shall prevail.

- 7.2 **Injunctive Relief.** It is acknowledged by the Parties that, if Recipient fails to comply with any of its obligations under this Agreement, Discloser will suffer immediate, irreparable harm due to the unique nature of the Confidential Information, and that monetary damages will be inadequate to compensate Discloser for any such breach. Accordingly, each Party may enforce this Agreement by seeking injunction, interdict or other similar remedies, in addition to any other available legal remedies. The prevailing Party shall be entitled to reasonable attorneys' fees and all costs incurred in enforcing this Agreement.
- 7.3 **Governing Law; Dispute Resolution.** This Agreement shall be governed by the laws of India, without regard to principles of conflicts of laws. All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration in India. . The parties agree to submit to the exclusive jurisdiction of the courts at Chennai, India.
- 7.4 **Entire Agreement; Amendment.** This Agreement sets forth the entire understanding between the parties concerning the treatment of Confidential Information; it supersedes all other oral or written representations and understandings. This Agreement may be amended or modified only in writing signed by the duly authorized representative of the Parties.
- 7.5 **No Waiver.** The failure to enforce any right shall not be deemed a waiver of such right or any other right, including the right to remedy a subsequent breach of the same obligation.
- 7.6 **Headings.** Headings have been included for convenience of reference only, and are not part of this Agreement.
- 7.7 **Agreement Scope.** This Agreement shall govern Recipient to the extent that the received Confidential Information is concerned, but shall not bind any individual, division or entity who has had no access to it. This Agreement shall not limit (i) independent development by Recipient of any technology and/or products involving technology or information of a nature similar to the received Confidential Information, unless such development is done by breach of this Agreement, and (ii) either Party from entering into any business relationship with any other parties.
- 7.8 **No Agency, Partnership, etc.** This Agreement shall not be construed as creating employment, consortium, agency, partnership, distributorship, joint venture or other business relationship between the parties or their representatives.

8. **Intellectual Property**

8.1 **Background IP:**

The Background IP belonging to each party shall continue to belong to the respective parties.

8.2 **Emergent IP**

During and as a result of information exchange/s between the parties herein in respect of the PURPOSE as specified in this agreement, should there arise ideas, including implementations and/or other manifestations thereof, that prima facie seem patentable or warrant such other IP protection, each party agrees and undertakes to jointly own and protect such IP with the other, naming only those individuals as inventors therein, who contributed to the inventing or creative process. Costs and revenue sharing in respect of filing, prosecution, marketing and

commercialization of such IP shall be covered in a separate agreement for the purpose, at a later date.

9. **Assignment.**

Neither Party may assign any rights or delegate any duties hereunder without the prior written consent of the other Party, provided, however, that either Party may assign all rights and duties of this Agreement, as part of transfer of all the assets for the business to which the Purpose is related, to a legal entity in which that Party owns or controls, directly or indirectly, more than fifty percent (50%) of the stock or other equity interests entitled to vote for the election of directors or equivalent governing body (“Subsidiary”). This Agreement shall be binding upon the successors and assigns of both parties.

IN WITNESS OF THE FOREGOING, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**INDIAN INSTITUTE OF
TECHNOLOGY MADRAS, XYZ
(INSTITUTE)**

Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: DEAN, IC & SR _____	Title: _____
Date: _____	Date: _____

CONFIRMING PARTY

Signature: _____
Printed Name: _____
Title: _____
Date: _____