

## NON-DISCLOSURE AGREEMENT<sup>1</sup>

This Non-Disclosure Agreement (“**Agreement**”) is made and executed at [●] on this [●] day of [●] 2021 (the “**Execution Date**”):

### BY AND BETWEEN

[●], a company incorporated under the laws of India, bearing Corporate Identification Number (CIN) [●], and having its registered office at [●], represented herein by its authorised signatory (hereinafter referred to as “**Company**”, which expression shall unless repugnant to the context or meaning thereof mean and include its successors-in-interest and permitted assigns) of the **FIRST PART**; [Stoicus Note: Please insert details of the Company as applicable.]

### AND

[Mr. / Ms. [●], a citizen of [India], presently residing at [●] and holding [PAN card / social security identification] bearing number [●] (hereinafter referred to as the “**Recipient**” which expression shall unless it be repugnant to the context and meaning thereof be deemed to mean and include his heirs, legal representatives and permitted assigns) of the **SECOND PART**. [Stoicus Note: Please retain this paragraph and delete the paragraph below if this Agreement is being executed with an individual.]

[●], [a company incorporated] under the laws of [●], having its principal place of business at [●], and represented herein by its authorised signatory (hereinafter referred to as the “**Recipient**”, which expression shall unless repugnant to the meaning and context thereof be deemed to mean and include its successors in interest and permitted assigns) of the **SECOND PART**. [Stoicus Note: Please retain this paragraph and delete the paragraph above if this Agreement is being executed with a company / incorporated entity.]

The Company and the Recipient shall hereinafter be individually referred to as a “**Party**” and collectively as the “**Parties**”.

### WHEREAS:

- A. The Company is engaged in the business of [●] [Stoicus Note: Details of the Company's business to be inserted.] (“**Business**”).
- B. The Recipient has been engaged by the Company as a [●] for the purposes of [●] (“**Arrangement**”). [Stoicus Note: Please insert a brief description of the relationship / arrangement between the Recipient and the Company.]

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<sup>1</sup> For an editable word version of this template, please email us at [reachout@stoicuslegal.com](mailto:reachout@stoicuslegal.com). You can also schedule a free 15 minute conversation with our Founder, Kaushik Rajan (<https://stoicuslegal.com/founder/> and <https://www.linkedin.com/in/kaushik-rajani-99023713/>), at [kaushik.rajani@stoicuslegal.com](mailto:kaushik.rajani@stoicuslegal.com) / +91 9167 6869 81.

- C. In connection with the Arrangement, the Recipient shall have access to the Confidential Information, proprietary and / or other non-public information and Intellectual Property of the Company, or as may be provided from time to time, by the Disclosing Party (*as defined hereinbelow*) to the Recipient.
- D. The Parties seek to enter into this Agreement to record the terms and conditions applicable in relation to: (i) the disclosure of the Disclosing Party's Confidential Information, proprietary and / or other non-public information to the Recipient; (ii) the usage of any such information by the Recipient; (iii) access to and ownership of Intellectual Property; (iv) the restrictions and safeguards placed in relation to such Confidential Information, proprietary and / or other non-public information and Intellectual Property; and (iv) the manner in which the Recipient shall treat such information as being disclosed to the Recipient by the Disclosing Party.

Capitalised terms used herein shall have the meaning ascribed to them wherever defined under this Agreement.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE IN THIS AGREEMENT, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE HERETO AS UNDER:**

## **1. CONFIDENTIALITY**

- 1.1. The Recipient hereby acknowledges and agrees that any Confidential Information (*as defined herein below*) that the Company its subsidiaries, affiliates, representatives, officers, directors, employees or any other person related to it (collectively, the “**Disclosing Party**”) may disclose to the Recipient shall be dealt with in accordance with the terms of this Agreement.
- 1.2. For the purposes of this Agreement, the term “**Confidential Information**” shall mean all information, data, documents, agreements, files and other materials, whether disclosed orally or disclosed or stored in written, electronic or other form or media, regarding the Disclosing Party, its Business, its subsidiaries, affiliates, representatives, officers, directors, employees or any other person related to it, which is obtained from or disclosed by the Disclosing Party on, before or after the Execution Date, including without limitation, the Disclosing Party's products, services, processes, trade secrets, operations, Intellectual Property, know how, ideas, concepts, records, plans, accounts, drawings, financial and business models, legal and regulatory affairs, relationships with customers, vendors, suppliers or any third parties, methods, operations, practices, business plans, models and strategies, technical or non-technical data, patterns, compilations, computer programs and software, techniques, acquisition targets, customer, supplier or vendor information and data, historical or prospective financial information, budgets, cost and expense data, pricing information, personnel records, employee compensation data, policies and procedures, and contracts including such other information that, by its nature or the circumstances surrounding its disclosure, should reasonably be regarded as confidential, irrespective of whether it is

designated as confidential. Confidential Information also includes: (i) any information, data or inference which is or has been derived from any Confidential Information; (ii) notes, analysis, compilations, studies or other material or documents prepared by the Recipient which contain, reflect or are based on the Confidential Information; and (iii) any trends or predictive behaviour that emerges from the conduct of the Business by the Company, irrespective of whether this is specifically disclosed to the Recipient or whether the Recipient arrives at such conclusion independently. [***Stoicus Note: It is critical to get this definition right. We have made it as all-encompassing as possible; however, it would be advisable to explain your business to us in case this needs any minor tweaks.***]

- 1.3. The Recipient shall not divulge or disclose any Confidential Information to any person, without the prior written consent of the Company, except when such disclosure is required by law and is made in accordance with Clause 2.2 below.
- 1.4. The Recipient agrees and acknowledges receiving and holding the Confidential Information in confidence. Without limiting the generality of the foregoing, the Recipient further undertakes and agrees:
  - (a) to take steps and actions to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure;
  - (b) not to use any of the Confidential Information except for the purpose of expansion of the Business and in the course of the Arrangement thereof;
  - (c) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Confidential Information except in the normal course of performing its duties and obligations to the Company;
  - (d) not to use any Confidential Information to unfairly compete with or obtain an unfair advantage *vis-a-vis* Company in any commercial activity which may be comparable to the commercial activity undertaken or contemplated by Company, or the Business; and
  - (e) to comply with any other reasonable security measures as may be imposed by the Company in connection with the Confidential Information.
- 1.5. The Recipient agrees that any information referred to in this Clause 1 hereof, which shall come into the Recipient's custody or possession, and all other tangible property of the Disclosing Party and its subsidiaries and affiliates in the custody or possession of the Recipient shall be delivered to the Company, upon the earlier of: (i) a request by the Company; or (ii) termination of this Agreement. After such request, termination or delivery, the Recipient agrees not to and shall not retain any records or copies thereof, or any such information or other tangible property.

## **2. USE OF CONFIDENTIAL INFORMATION**

- 2.1 The Recipient hereby agrees and undertakes: (i) to hold all such Confidential Information in strictest confidence; (ii) not to disclose such Confidential Information, either in whole or in part, to any person other than her employees, colleagues and agents on a 'need to know' basis for the purposes authorized hereunder, provided that each such employee, colleague or agent agrees, in writing, to maintain the confidentiality of such Confidential Information in accordance with the terms hereof; (iii) not to use such Confidential Information for any purpose whatsoever save as may be strictly necessary in connection with the Business; and (iv) to take all reasonable measures to prevent any disclosure of or unauthorized access to Confidential Information by any third party.
- 2.2 If the Recipient is required in any legal or regulatory process or proceeding, by law or by rule or regulation to disclose any Confidential Information, the Recipient shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or other remedy. In the event that the Disclosing Party chooses not to seek a protective order or said protective order or other requested relief is denied, in whole or in part, the Recipient agrees to furnish only that portion of the Confidential Information which is legally required to be disclosed and to use reasonable efforts to ensure that confidential treatment will be afforded to such Confidential Information.
- 2.3 The Recipient hereby expressly undertakes that in the event that Confidential Information disclosed by the Disclosing Party contains any personal information or sensitive personal information, such information shall be handled in accordance with the applicable laws including but not limited to the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 or such other laws that may be applicable at that time. The Recipient shall hold harmless and fully indemnify the Disclosing Party, at all times, for any non-compliance and the consequent damages, penalties, fines, etc. in this regard.

## **3. OWNERSHIP OF CONFIDENTIAL INFORMATION**

- 3.1. The Confidential Information shall, at all times, remain the sole and exclusive property of the Disclosing Party. Nothing contained herein shall be construed as granting or implying any transfer / assignment of any rights in relation to the Confidential Information to the Recipient in any manner whatsoever.
- 3.2. The Disclosing Party grants no license under any copyright, patent, trademark, trade secret or other intellectual property laws or rights by disclosure of the Confidential Information to the Recipient.

#### **4. TERM AND EXPIRY**

- 4.1. This Agreement shall become effective on and from the Execution Date and shall continue to remain in force until the termination of this Agreement (“**Term**”).
- 4.2. The confidentiality obligations of the Recipient with respect to the Confidential Information provided by the Disclosing Party during the Term of this Agreement shall survive the termination of this Agreement.

#### **5. RETURN OF CONFIDENTIAL INFORMATION**

Upon termination of this Agreement or at any time during the Term of this Agreement, the Recipient agrees that upon request of the Disclosing Party, the Recipient shall: (i) return or deliver all Confidential Information in the Recipient’s possession to the Disclosing Party; (ii) destroy all Confidential Information and other written material containing or reflecting any Confidential Information disclosed to the Recipient, or maintained in any other form, whatsoever, including electronic form, at the option of the Disclosing Party; and (iii) provide a written confirmation stating all Confidential Information has been returned, delivered or destroyed, as the case may be, to the Disclosing Party, in the form acceptable to the Disclosing Party within a period of 7 (seven) days from the date of termination of this Agreement.

#### **6. INTELLECTUAL PROPERTY**

- 6.1. For the purposes of this Agreement, “**Intellectual Property**” shall mean all of the following and all legal rights or interest in, under or in respect of the following arising under law, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired by the Company or owned by the Company: (a) all copyrights, copyrightable works and all other corresponding rights; (b) patents; (c) all trademarks, logos, designs, marks, service marks, so on and so forth; (d) the online / technology platforms, website, applications, including know-how, technical know-how, process know-how, technical data / information, technology, source code, programming code, algorithm, software, software development process, programs, interface, application programming interface (APIs), any and all features, content and so on in relation to such online / technology platforms, website, applications or any improvements, enhancements, customizations or updates thereof; (e) products, services, processes, techniques, trade secrets, confidential business information, pricing and cost information, business plans, business strategies, employee / customer / vendor / third party supplier lists and information, records, and other proprietary documentation and information; (f) any documents, notes, reports, files, training material or modules, learning videos, power point presentations, manuals, guides, technical specifications and other printed, recorded, electronic materials and/or other information or material whether or not made available to the Recipient; (g); any data and any other databases or compilations of the any of the foregoing hereof; (h) marketing / promotional / advertising strategies or materials; (i) all other proprietary rights; (j) all copies and tangible embodiments

of any of the foregoing (in whatever form or medium); and (k) all other intellectual or proprietary rights anywhere in the world including rights of privacy and publicity, whether or not requiring registration and whether or not such registration has been obtained

- 6.2. The Recipient hereby agrees that, to the extent any intellectual property laws or other laws recognise rights of copyright, trademarks, patents, author's rights or any other similar laws or rights so permit, in the event that any services are rendered by the Recipient to the Company, the work product resulting from the same, is and shall be deemed to be performed by the Recipient as 'work for hire' or 'works made for hire' for Company or works made during the Term of this Agreement and, are and shall be the sole and exclusive property of the Company and the Company shall be deemed the sole owner throughout the universe of any and all Intellectual Property rights and all other rights of whatsoever nature therein, whether or not, now or hereafter known, existing, contemplated, recognized or developed, with the right to use the same in perpetuity in any manner the Company determines in its sole discretion without any payment to the Recipient whatsoever. To the extent such laws or any rule of law does not so permit, the Recipient expressly agrees to assign to the Company any and all rights, title and interest which the Recipient has or hereafter acquires in such services and work product, including without limitation, any and all rights to copyrights, patents, trademarks and trade secrets thereto.
- 6.3. The Recipient further agrees that all Intellectual Property, including any inventions, improvements, copyrightable works, designs and all other intellectual property generated or conceived in relation to any products, services, procedures, methods or compositions resulting therefrom or relating to the Confidential Information, and the right to market, use, license and franchise the Confidential Information or the ideas, concepts, methods or practices embodied therein shall be the exclusive property of the Company and the Recipient has no right or title thereto.

## **7. INDEMNIFICATION**

The Recipient hereby agrees to indemnify, hold harmless and keep indemnified the Disclosing Party and its representatives including its directors, officers, employees, affiliates, clients, customers, personnel, agents, consultants, contractors, sub-contractors and professional advisers, at all times, from all losses, claims, damages, proceedings, penalties, expenses and / or liabilities of any nature whatsoever suffered or incurred by them as a result of a breach of the terms of this Agreement by the Recipient.

## **8. REMEDY FOR BREACH**

In case of breach or threatened breach of any obligation under this Agreement by the Recipient, the Disclosing Party shall be entitled to appropriate equitable relief in addition to any other relief under law or otherwise, keeping in view the unique nature of the Confidential Information and the fact that any such breach may result in irreparable harm and / or injury to

the Disclosing Party, the quantification or estimation or determination of such harm / injury would be impossible and for which any remedy would be inadequate. As such, the Disclosing Party shall be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by the Recipient of any of the covenants in this Agreement, and the Disclosing Party shall have the right of injunctive relief requiring specific performance of the obligations under this Agreement, and Parties hereby consent and agree to the entry of such injunctive relief. Such remedies shall not be deemed to be exclusive remedies for the breach of this Agreement but shall be in addition to all other remedies available to the Disclosing Party at law or in equity.

## 9. GOVERNING LAW AND JURISDICTION

- 9.1. This Agreement and any information disclosed hereunder shall be governed by and be construed in accordance with the laws of India.
- 9.2. The Parties hereby acknowledge, agree irrevocably and unconditionally submit to the exclusive jurisdiction of the courts situated at [●], in the event of any dispute or difference arising out of or in relation to this Agreement. [*Stoicus Note: One can choose their home jurisdiction – this is also a matter of convenience.*]

## 10. MISCELLANEOUS

- 10.1. Assignment: The Recipient shall not be entitled to assign or transfer her rights or obligations under this Agreement to any third party without the prior written consent of the Disclosing Party.
- 10.2. Severability: If any provision of this Agreement is found by a court of competent jurisdiction to be, or becomes, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision shall not be affected or impaired in any way.
- 10.3. Waiver: No waiver of any right under this Agreement by the Disclosing Party or the failure by the Disclosing Party to exercise any remedy it may have in relation to a breach by the Recipient of this Agreement, shall operate to prevent the Disclosing Party from exercising such right later or from exercising such remedy later, either for the same or another breach. Furthermore, the failure of the Disclosing Party to insist upon strict adherence to any term of this Agreement, whether on one occasion or more than one occasion, shall not be considered a waiver of such Disclosing Party's rights or deprive such Disclosing Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 10.4. Variation: This Agreement shall not be amended, supplemented, altered or modified except by a written instrument executed by and between the Disclosing Party and the Recipient.





- 10.5. Survival: Those clauses that by its nature should survive termination of this Agreement shall remain in effect after the termination of this Agreement including the Clauses 1, 2, 3, 4.2, 7, 9 and 10.
- 10.6. Entire Agreement: This Agreement constitutes the entire agreement of the Parties in connection with the matters addressed in this Agreement and supersedes any prior agreement of the Parties in connection with such matters.
- 10.7. Counterparts: The Parties may execute this Agreement in counterparts, which together will constitute the same Agreement.

**IN WITNESS WHEREOF**, the Parties intending to be legally bound have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

By: [Stoicus Note: please insert name of the Company.]

By the within named Recipient:

\_\_\_\_\_  
Name: [●] [Stoicus Note: Please insert name of director / authorized signatory]  
Title: [●] [Stoicus Note: Please insert designation of signatory]

\_\_\_\_\_  
Name: [●] [Stoicus Note: Please insert name of Recipient]  
Title: [●] [Stoicus Note: Please insert designation of signatory, if applicable]