

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement") is made and entered into this  day of ,  
,  at Taguig City, by and between:

, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal place of business at Taguig, Philippines represented in this act by its **Finance Controller** (the "Disclosing Party");

- and -

at  ("Receiving Party").

NOW, THEREFORE, the Parties hereby agree as follows:

### SECTION 1. DEFINITION OF TERMS.

#### 1.1 CONFIDENTIAL INFORMATION.

"Confidential Information" means any and all knowledge, documents, materials, data, and other information, whether oral, written, electronic or otherwise, concerning the products, services, systems, methods, operations, businesses or affairs of the Disclosing Party, or those of any of its affiliates, parent companies, subsidiaries, agents, representatives, employees, corporate officers, shareholders, or clients (collectively referred to as the "Group"), that have become known or shall be made known to the Receiving Party in the course of the negotiations for, pursuant to, or in furtherance of, certain transactions identified in Section 1.3. It shall include technical, commercial and financial information about the Disclosing Party's research or development; or techniques, sales and market share data, contacts or customers; or organization and operations.

1.1.1. Notwithstanding the foregoing provisions of this Section 1.1, Confidential Information shall exclude that which the Receiving Party establishes by competent evidence:

1.1.1.1. Is already in the Receiving Party's possession before receipt from the Group and obtained from a source other than the Group and other than through the prior relationship of the Group and the Receiving Party;

1.1.1.2. Is or becomes a matter of public knowledge through no fault of the Group;

1.1.1.3. Became known to the Receiving Party after disclosure from a source, other than the Group, who had the lawful right to disclose such information, and other than from a third party who had an obligation to the Group not to disclose such information to others;

1.1.1.4. Is independently developed by the Receiving Party without the aid, application or use of Confidential Information; or

1.1.1.5. Is disclosed by the Receiving Party with the Disclosing Party's prior written approval.

- 1.1.2. All trade secrets of the Group will be entitled to the full measure of protection and benefits under applicable laws governing trade secrets. If any information that the Group deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information will, nevertheless, be considered Confidential Information under this Agreement. The Receiving Party hereby waives any requirement that the Group submit proof of the economic value of any trade secret.
- 1.2. THIRD PARTY. A "Third Party" is a person, natural or juridical, other than the Disclosing Party or the Receiving Party or their subsidiaries and affiliates or representatives as defined in Section 3.2.
- 1.3. TRANSACTIONS. The "Transactions" shall comprise the following:

(Indicate rendered services)

## **SECTION 2. TERM.**

The term for this agreement shall be Three (3) years, unless otherwise earlier terminated by the Disclosing Party upon giving written notice to the Receiving Party, commencing on the date of execution of this Agreement. The obligation of confidentiality under Sections 3.1.1 and 3.1.3 shall survive the termination of this agreement.

## **SECTION 3. CONFIDENTIALITY.**

### **3.1 CONFIDENTIALITY OBLIGATIONS.**

In consideration of the Receiving Party's exposure to confidential information of the Group, the Receiving Party shall:

- 3.1.1. Not directly or indirectly, use, communicate, disclose, divulge or disseminate, or permit to be used, communicated, disclosed, divulged or disseminated to anyone, except to the extent reasonably necessary for purposes of determining whether the Receiving Party wishes to enter into the proposed transaction, any Confidential Information as defined under this Agreement;
- 3.1.2. Protect the Confidential Information of the Group by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as the Receiving Party uses to protect its own confidential information of a like nature, and
- 3.1.3. Not disclose such Confidential Information to any Third Party, except as expressly permitted under this Agreement.

### **3.2. DISCLOSURE TO REPRESENTATIVES.**

The Receiving Party may disclose the Confidential Information to its directors, officers, employees, partners, affiliates, agents, financing sources, advisors and representatives ("Representatives"), but only to the extent necessary to perform works or services for the Receiving Party. The Receiving Party shall obtain a written undertaking from each Representative to hold such information in confidence and require such Representative to be bound by the terms of this Agreement to the same extent as if such Representative was a party hereto. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

### **3.3. COMPELLED DISCLOSURE.** If the Receiving Party becomes compelled or obligated to disclose any of the Confidential Information for the following reasons:

- 3.3.1. Pursuant to subpoena or other court process; or

3.3.2. At the express direction of any other authorized government agency with jurisdiction over the Receiving Party; or

3.3.3. As otherwise required by law

The Receiving Party will provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the Receiving Party will furnish only that portion of the Confidential Information which, in the opinion of the Disclosing Party's legal counsel, is legally required.

#### **SECTION 4. BREACH OF OBLIGATIONS.**

- 4.1. **NON-IMPAIRMENT OF BUSINESS OPPORTUNITIES.** The Receiving Party agrees that it will not, directly or indirectly, commit any act or omission that is likely to result in impairment of the business, interests, or business opportunities of the Group, such as but not limited to, making use of or otherwise appropriating Confidential Information for its own use or benefit, or use any of the Confidential Information to impair the business opportunities of the Group.
- 4.2. **DAMAGES.** The Receiving Party acknowledges that the Confidential Information subject of this Agreement is information peculiar to the business of the Group, and that the nature of the Group's business is highly competitive. Considering the foregoing, the disclosure of any Confidential Information would result in severe damage to the Disclosing Party or to any one in the Group which may be difficult to quantify or measure.
- 4.3. **INJUNCTIVE RELIEF.** The Disclosing Party and the Receiving Party each acknowledge that any violation of this Agreement in respect of any Confidential Information will cause the Disclosing Party or any or more affiliates in the Group grave injustice and irreparable injury that monetary damages cannot adequately remedy. The Parties agree that, upon any actual or impending violation of this Agreement, the Disclosing Party or any one or more of its affiliates in the Group shall be entitled to equitable relief, including injunctive relief and specific performance.
- 4.4. **LITIGATION EXPENSES.** In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that the Receiving Party or any of its representatives has breached this Agreement, the Receiving Party shall be liable to pay to the Disclosing Party or any of its affiliates in the Group the reasonable legal fees and costs incurred with such litigation, including any appeal therefrom.
- 4.5. **WAIVER.** No waiver of this Agreement, or any of its terms or conditions, shall be effective unless executed in writing by the party charged therewith. No written waiver shall excuse the performance of any act other than the act or acts specifically referred to therein.
- 4.6. **FAILURE OR INDULGENCE NOT A WAIVER; REMEDIES CUMULATIVE.** No failure or delay on the part of the Disclosing Party or any one in the Group in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence to, any breach of agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

#### **SECTION 5. MISCELLANEOUS PROVISIONS.**

- 5.1. **LIMITATION OF THE DISCLOSING PARTY'S DISCLOSURE.** All rights the Group may have in Confidential Information prior to disclosure to the Receiving Party, including, without limitation, rights of patent, copyright, and trade secret, shall remain exclusively with the Group,

and nothing in this Agreement shall be construed as granting any license, waiver, or other right in favor of the Receiving Party with respect to any Confidential Information

- 5.2. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, by fax copy with answer back, by express or overnight mail delivered by a nationally recognized courier (delivery charges prepaid), or by registered or certified mail (postage prepaid, return receipt requested) as follows:

If to the Disclosing Party: Taguig, Philippines

If to the Receiving Party:

or to such other address as the party to whom notice is given may have previously furnished to the other in writing in the manner set forth above. Any notice or communication delivered in person shall be deemed effective on delivery. Any notice or communication sent by fax copy or by air courier shall be deemed effective on the first business day following the day on which such notice or communication was sent. Any notice or communication sent by registered or certified mail shall be deemed effective upon actual receipt by the addressee or after five (5) days from date he received the first notice of the postmaster, whichever is earlier. Business day means any day other than a Saturday, a Sunday or a day on which banking institutions located in Philippines are authorized or obligated by law or executive order to close.

- 5.3. RETURN OF DOCUMENTS. Upon request from the Disclosing Party, the Receiving Party shall turn over to the Disclosing Party all records, specifications, documents, devices and other writings, items and recorded materials of any kind embodying the Group's Confidential Information including all copies or specimens thereof in the Receiving Party's possession, whether prepared by the Receiving Party or Third Parties.
- 5.4. SEVERABILITY. Should any of the terms of the Agreement to not disclose and use Confidential Information be found void, invalid, unreasonable or unenforceable by final judgment of any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of the other provisions or stipulations not affected, and the Parties agree to accept as binding, in lieu thereof, the maximum terms enforceable by law.
- 5.5. AMENDMENT, MODIFICATION, CANCELLATION. No amendment, modification or cancellation of this Agreement, or any of its terms or conditions, shall be effective unless assented to by all parties in writing.
- 5.6. GOVERNING LAW. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Republic of the Philippines as to all matters without giving effect to the conflict of laws doctrines of any state. Any suit or action of any kind relating to this Agreement or the subject matter hereof shall be brought exclusively in a court located in Taguig City, Philippines.
- 5.7. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof. No part of this Agreement may be waived, modified or supplemented in any manner whatsoever except by a written instrument signed and by duly authorized officers of the Parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands this this day  of,  
 .

,  
(Disclosing Party)

,  
(Receiving Party)

By:

By:

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Finance Controller

,  
Supplier/Vendor