

NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT (the “**Agreement**”) is entered into on this ___ day of _____, 2021 (“**Effective Date**”), by and between:

[_____], a [company] incorporated and existing within the laws of [of Denmark] having its registered office at represented by Mr. _____ hereinafter referred to as “**Disclosing Party**” (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its successors or successors-in-office, successors-in-interest and/or assigns) of the **ONE PART**:

AND

In case of partnership firm:

_____, a partnership firm represented by its partner Mr. _____ having PAN: _____ and Aadhar No.: _____ and having its office at _____ hereinafter referred to as the “**Receiving Party**” (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its successors or successors-in-office, successors-in-interest and/or permitted assigns) of the **OTHER PART**;

In case of proprietorship:

_____, a proprietorship firm represented by its proprietor: Mr. _____ having PAN: _____ and Aadhar No.: _____ and having its office at _____ hereinafter referred to as the “**Receiving Party**” (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its legal heirs, administrators, successors or successors-in-office, successors-in-interest and/or permitted assigns) of the **OTHER PART**;

In case of private limited company:

_____, a private limited company having CIN: _____, having its registered office at _____ represented by its authorized representative / director Mr. _____ authorized vide board resolution dated _____ hereinafter referred to as the “**Receiving Party**” (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its successors or successors-in-office, successors-in-interest and/or permitted assigns) of the **SECOND PART**;

(The Disclosing Party and the Receiving Party are hereinafter collectively referred to as “**Parties**” and individual as a “**Party**”)

WHEREAS:

- (A) The Disclosing Party is *inter alia* engaged in the business of _____.
- (B) The Receiving Party is *inter alia* engaged in the business of _____.
- (C) The Parties are to commence discussions in relation to the evaluation of a proposed collaboration between the Parties/ evaluation of a proposed transaction between the Parties/ evaluation of a proposed technological development/ evaluation of a proposed equity infusion by the Disclosing Party towards the share

capital of the Company] (“Purpose”). **Ikigai Law: Depending on the circumstances under which the information will be disclosed, please retain an appropriate “Purpose”.**

- (D) In connection with the Purpose, the Receiving Party acknowledges and recognizes that it may be necessary or desirable for the Disclosing Party to provide the Receiving Party with certain Confidential Information [*defined below*] in relation to the Disclosing Party’s business and other affairs.
- (E) This Agreement sets out the terms upon which the Disclosing Party agrees to provide the Receiving Party with such Confidential Information (*defined below*) and the manner in which the Receiving Party shall deal with the Confidential Information (*defined below*).

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the Parties, each intending to be legally bound hereby, do promise and agree as follows.

1. DEFINITIONS

- (a) “**Confidential Information**” shall include, without limitation, any and all information received by the Receiving Party from the Disclosing Party in connection with the Purpose regarding the Disclosing Party, its subsidiaries, affiliates, group companies, sister concerns, parent company and investors and each of their respective projects, operations, financial information and projections, financial statements and other financial information, employees lists, salaries and benefits, processes and technology, markets and marketing plans, products and product plans, services, trade secrets, Disclosing Party’s IP Rights, know-how, source codes, website credentials, software and documentation, existing computer and IT systems, commercial relationships and negotiations, the marketing of goods or services (including customer names and lists, sales targets, statistics) information pertaining to their respective personnel, funds, transactions, investments, clients or prospective clients and their operations, suppliers or prospective suppliers and their operations (and includes any copies, notes or extracts thereof) and all other data sent by the Disclosing Party pertaining to itself or any of its group companies, whether written, verbal or on magnetic or other media, on or after the date hereof,

but does not include any information which:

- (i) Was publicly available prior to receipt of such information by the Receiving Party or thereafter became publicly available (other than as a result of disclosure by the Receiving Party or any of its Representatives), or
 - (ii) Was lawfully in the possession of the Receiving Party or its Representatives prior to the Disclosing Party’s disclosure of the same as shown by the Receiving Party’s or it’s Representative’s files and records prior to the time of disclosure, or
 - (iii) Was independently developed by the Receiving Party or its Representatives without violating their obligations hereunder, or
 - (iv) Is, without breach of this Agreement, rightfully received by the Receiving Party from a third party who had the full right to so reveal such Confidential Information, or
 - (v) The Disclosing Party designates as not being Confidential Information.
- (b) “**Disclosing Party’s IP Rights**” shall mean any and all rights in and in relation to all intellectual property rights subsisting in the products, services, etc., developed, being developed or proposed to be developed by the Disclosing Party including all patents, patent applications, moral rights, trademarks, trade names, service marks, service names, brand names, internet domain names and sub-domains, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, marketing models, formulations, processes, designs, database rights, database containing details of all

customers/ clients (both actual and potential), prices offered to such customers, financial and other price sensitive information, computer programs (including all source codes), technical information, technical drawings, know-how, all pending applications for and registrations of patents, entity models, trademarks, service marks, copyrights, designs and internet domain names and sub-domains and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not, whether shared with the Receiving Party or not and including applications to register or rights to apply for registration) in each case anywhere in the world;

- (c) “**Indemnified Persons**” shall have the meaning assigned to such term in Clause 10; and
- (d) “**Representatives**” shall have the meaning assigned to such term in Clause 4 (b).

2. **INTERPRETATION**

Except where the context requires otherwise, this Agreement will be interpreted as follows:

- (a) Clauses and headings are for convenience only and do not affect the construction or interpretation of any provision of this Agreement.
- (b) All references in this Agreement to statutory provisions shall be statutory provisions for the time being in force and shall be construed as including references to any statutory modifications, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force and all statutory rules, regulations and orders made pursuant to a statutory provision.
- (c) Words denoting singular shall include the plural and vice versa and words denoting any gender shall include all genders unless the context otherwise requires.
- (d) References to clauses are, unless the context otherwise requires, references to clauses of this Agreement.
- (e) Any reference to “writing” includes printing, typing and other means of reproducing words in permanent visible form.
- (f) The terms “include” and “including” shall mean, “include without limitation”.
- (g) The headings, sub-headings, titles, subtitles to Clauses, sub-Clauses and paragraphs are for information only, shall not form part of the operative provisions of this Agreement or the Schedules, and shall be ignored in construing the same.
- (h) All references to this Agreement shall be deemed to include any amendments or modifications to this Agreement from time to time.

3. **BACKGROUND**

In furtherance of the Purpose, it is agreed by the Parties that the Disclosing Party may need to disclose, or permit the Receiving Party to obtain access to, Confidential Information. All disclosures of Confidential Information shall be made by or under the supervision of the “Principal Contacts” for each Party, as shown in Clause 14 (c) below and each Party may change its Principal Contact by notifying the other Party, in advance.

4. **CONFIDENTIALITY OBLIGATIONS**

- (a) The Receiving Party recognizes that certain Confidential Information relating directly or indirectly to the Purpose, the Disclosing Party and/or its subsidiaries, affiliates, group companies, sister concerns, parent company and investors that is non-public, proprietary or confidential in nature may be furnished in writing, verbally or graphically by the Disclosing Party to the Receiving Party, on or after the date of this Agreement and in connection with the Purpose. The Receiving Party shall and shall cause each of its Representatives to strictly and unconditionally ensure the confidentiality of such Confidential Information, using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own confidential information. The Receiving Party shall take all steps necessary to protect the confidentiality and secrecy of all Confidential Information of the Disclosing Party.
- (b) The Receiving Party, may disclose the Confidential Information only to its directors, officers, employees, agents, affiliates consultants, advisors, attorneys and prospective debt investors (“**Representatives**”), who have a “need to know” such information to accomplish the Purpose and the Receiving Party shall be obliged to ensure that all such Representatives who, prior to being provided with the Confidential Information, agree to be bound by the terms of this Agreement in writing.
- (c) The Receiving Party agrees that it will not, without the prior written consent of the Disclosing Party, make or permit to be made any copies, abstracts, or summaries of the Confidential Information.
- (d) The Receiving Party, may also use or disclose the Confidential Information provided by the Disclosing Party, if required by any governmental request, order or law, provided that the Receiving Party agrees to provide the Disclosing Party with immediate notice of such request so that the Disclosing Party may, to the extent reasonable, contest the requirement, seek an appropriate protective order and/or waive the Receiving Party’s compliance with the provisions of this Agreement. The Receiving Party shall, at the time of such disclosure, inform the relevant government of the confidential nature of the information.
- (e) The Receiving Party, agrees that it will not, use the Confidential Information provided by the Disclosing Party, in its own business or use or for any commercial exploitation save and except, the Purpose.

5. **RETURN**

The Receiving Party, agrees that, promptly upon the written request of the Disclosing Party or upon the termination of this Agreement, as the case may be, it shall return or destroy (and confirm such destruction to the Disclosing Party in writing [email confirmation permitted]) copies of all any media or material containing Confidential Information of the Disclosing Party, including all documentation, notes, plans, drawings, computer records and copies of the foregoing.

6. **NO COMMITMENT**

Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall be deemed a commitment by Disclosing Party to engage in any business relationship, contract or future dealing with the Receiving Party.

7. **NON-SOLICITATION**

During the term of this Agreement, and for a further period of [__ (___) months thereafter], the Receiving Party acknowledges and undertakes that it will ensure that neither the Receiving Party nor its Representatives, on the basis of Confidential Information, directly or indirectly without the Disclosing Party's prior written consent, solicit for purposes of employment, offer to hire, entice away or offer to enter into any contract with, or hire any employee of the Disclosing Party with whom Receiving Party or its Representatives may have had contact or who (or whose performance) became known to Receiving Party or Receiving Party's Representatives in connection with Receiving Party's evaluation of the Purpose.

8. **PROPRIETARY RIGHTS**

The Disclosing Party shall retain all right, title and interest to its Confidential Information as well as the Disclosing Party's IP Rights. The Receiving Party does not acquire any intellectual property rights or any other rights or licenses under this Agreement except for the limited right to use as necessary for the Purpose above and in accordance with this Agreement.

9. **INJUNCTIVE RELIEF**

The Parties recognize and acknowledge that the Confidential Information is of a special, unique and extraordinary character to the Disclosing Party and that disclosure, misappropriation or breach of or use in violation of this Agreement of such Confidential Information by the Receiving Party may cause serious injury to the Disclosing Party, for which money damages may be an insufficient remedy. In such an event the Disclosing Party shall be entitled to seek injunctive and other equitable relief to prevent the breach, or the further breach, of any of the terms and provisions hereof by the Receiving Party.

10. **INDEMNITY**

The Receiving Party, on behalf of itself and its Representatives, shall indemnify, defend and hold harmless the Disclosing Party, its subsidiaries, affiliates, group companies, sister concerns, parent company and investors and their respective directors, officers, representatives, employees and agents (collectively, the "**Indemnified Persons**") from and against any and all losses, liabilities, claims, damages, costs and expenses, including reasonable legal fees and expenses in relation thereto, incurred by the Indemnified Persons, as a result of, arising directly or indirectly from, or in connection with or relating to any matter inconsistent with, or any breach or inaccuracy of any representation, warranty, covenant or agreement made or failure to perform (whether in whole or part) any obligation required to be performed by the Receiving Party pursuant to this Agreement or from any litigation related claims arising out of any act or omission on the part of the Receiving Party or its Representatives. Any claim for indemnity pursuant to this Agreement shall be made by the Indemnified Persons by notice in writing to the Receiving Party. Any such compensation or indemnity shall be such as to place the Indemnified Persons in the same position as they would have been in, had there not been any such breach, omission or inaccuracy.

11. **TERM AND TERMINATION**

This Agreement shall be valid from the Effective Date unless terminated by either Party upon [15 (fifteen) days'] written notice. The Receiving Party's obligations with respect to the Confidential Information hereunder shall survive any termination of the Agreement. The Receiving Party shall immediately and forthwith cease to use the Confidential Information upon issuance of the aforesaid written notice by the Disclosing Party.

12. **DISPUTE RESOLUTION**

Any claim, dispute or difference between the Parties in respect of or concerning or connected with the interpretation or implementation of this Agreement or arising out of this Agreement

shall be referred to arbitration. All proceedings in any such arbitration shall be conducted in English. The seat and venue of the arbitration shall be [____], India and shall be governed by the (Indian) Arbitration and Conciliation Act, 1996 or any other law relating to arbitration in force in India at the relevant time. The arbitration shall be conducted by an arbitral tribunal consisting of three arbitrators, wherein each Party shall appoint one arbitrator each and the third arbitrator shall be appointed by the aforesaid two arbitrators.

13. GOVERNING LAW

This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, the Laws of India. The courts in [____] shall have exclusive jurisdiction over all matters arising pursuant to this Agreement.

14. MISCELLANEOUS

(a) Waiver: No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

(b) Cumulative Rights: All remedies of either Party under this Agreement whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.

(c) Notices

(i) Notices, demands or other communication required or permitted to be given or made under this Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or email addressed to the intended Receiving Party at its address set forth below, or to such other address or email address as a Party may from time to time duly notify to the others:

If to the **Disclosing Party**:

(i) Principal Contact: _____
(ii) Address: _____
(iii) Telephone: _____
(iv) Email: _____

If to the **Receiving Party**:

(i) Principal Contact: _____
(ii) Address: _____
(iii) Telephone: _____
(iv) Email: _____

(ii) Any such notice, demand or communication shall, unless the contrary is proved, be deemed to have been duly served at the time of delivery in the case of service by delivery in person or by post, and on transmission in the case of service by email.

(d) Severability

- (i) Each and every obligation under this Agreement shall be treated as a separate obligation and shall be severally enforceable as such in the event of any obligation or obligations being or becoming unenforceable in whole or in part.
- (ii) To the extent that any provision or provisions of this Agreement are unenforceable they shall be deemed to be deleted from this Agreement and any such deletion shall not affect the enforceability of the remainder of this Agreement not so deleted provided the fundamental terms of this Agreement are not altered.

(e) Amendment/Variation

No amendment or variation of this Agreement shall be binding on any Party unless such variation is in writing and duly signed by all the Parties.

(f) Entire Agreement

This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any prior arrangements whether oral or written, relating to such subject matter.

(g) Relationship

None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind or shall be deemed to be the agent of the other in any way.

(h) Counterparts.

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

[end of agreement]

IN WITNESS WHEREOF, each of the above named Parties have signed and executed this Agreement, and all the electronic copies hereto, on the date first above written.

SIGNED AND DELIVERED on behalf of
[_____]

Name: _____

Designation: _____

SIGNED AND DELIVERED on behalf of
[_____]

Name: _____

Designation: _____