**MUTUAL NON-DISCLOSURE AGREEMENT**

**Explanatory Note**

This model non-disclosure agreement assumes a company is entering into a commercial or strategic relationship or collaboration or a supply of good or services with a third party partner, vendor or supplier and, in connection therewith, both parties will be providing confidential information about itself to the other party. The non-disclosure agreement should be entered into by the parties before the distribution of the confidential information.

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**NON-DISCLOSURE AGREEMENT**

**This Agreement** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_20**[●]**

**BETWEEN**:

1. **[●]** (Company Registration Number: **[●]**), a company incorporated under the laws of Singapore whose registered office is at **[●]** (the "**Party A**"); and
2. **[●]** (Company Registration Number: **[●]**), a company incorporated under the laws of **[●]** whose registered office is at **[●]** (the "**Party B**"),

(collectively, the "**Parties**" and each, a "**Party**”).

**WHEREAS:**

1. The Parties are considering [insert description of the nature of the business relationship] (the "Proposed Transaction").
2. It is envisaged that each Party will disclose Confidential Information (as defined below) (the "Disclosing Party") to the other Party ("Receiving Party") in connection with the Parties and for the purposes of the Proposed Transaction (the "Purpose").
3. The Confidential Information belongs to the relevant Disclosing Party and each Party has agreed to enter into this Agreement and comply with the terms set out in this Agreement concerning the disclosure, use and protection of the Confidential Information.

**It is agreed** as follows:

# Definitions

In this Agreement unless context required otherwise:

"**Affiliates**" means, in relation to a person, any person which is directly or indirectly Controlled by, or under common Control with, or in Control of, that person, in each case from time to time; and "**Control**" of a person (including its correlative meanings "**Controlled by**", "**Controlling**" and "**under common Control with**") means having the right or power to, directly or indirectly, (i) exercise more than 50 per cent. of the voting rights attributable to the shares of such person (being a corporation), (ii) appoint or remove a majority of the members of or otherwise control the votes at the board of directors (or equivalent body) of such person, or (iii) direct or cause the direction of the management or policies of such person;

"**Applicable Law**" means, in relation to a person, all laws, by-laws, rules, regulations, binding notifications, orders, ordinances, protocols, codes, decrees, directions or judgments of any Governmental Authority in force from time to time and to which such person is subject;

"**Confidential Information**" means: (i) the discussions and/or negotiations relating to the Proposed Transaction (including the existence and contents of this Agreement and the fact that discussions are taking place) and any terms, conditions, facts or other matters with respect to the Proposed Transaction; and (ii) any and all Proprietary Information of the Disclosing Party disclosed, made available, furnished or communicated (whether orally or in writing, machine readable form, text, drawings, photographs, graphics, designs, plans, presentations, on-site visits or any other form whatsoever) by the Disclosing Party (whether through any of the Disclosing Party's Representatives (as defined below) or otherwise), directly or indirectly to the Receiving Party (or to the Receiving Party through the Receiving Party's Representatives), whether on, before or after the date hereof, in connection with the Purpose, but shall not include any such information:[[1]](#footnote-2)

1. which is, or subsequently becomes, publicly available (other than as a result of a breach of this Agreement);
2. which relates to a Party and such Party has given its prior written consent to the disclosure or use of such information;
3. which is independently developed by the Receiving Party (or its Representatives) or is lawfully in its possession prior to the disclosure to it of the information, in each case as evidenced by written records; and/or
4. which becomes available to the Receiving Party or any of its Representatives on a non-confidential basis from a person (other than from the Disclosing Party or any of its Representatives) provided that such person is not known by the Receiving Party or any of its Representatives (having made reasonable enquiries of such person) to be bound by any confidentiality agreement, or other confidentiality or non-disclosure obligation in respect of such information;

"**Disclosing Party**" is as defined in the Recitals;

"**Governmental Authority**" means any national, supranational or supervisory or other government, governmental (whether trade, administrative, statutory or regulatory) body, agency, commission or authority or any court, tribunal, arbitral or judicial body, including any Tax Authority and any governmental department;

"**Proposed Transaction**" is as defined in the Recitals;

"**Proprietary Information**" means any and all: (i) information which is proprietary and confidential to the Disclosing Party; (ii) of the technology, designs, trade secrets or confidential operations, processes or inventions carried on or used by the Disclosing Party; (iii) information concerning or relating in any way whatsoever to the organisation, business, finances, transactions, dealings or affairs of the Disclosing Party (including without limitation its future plans and targets); (iv) information which relates to the Disclosing Party's principals', clients' or customers' transactions or affairs; (v) of the Disclosing Party's manuals, internal documentation, budgets, financial statements, dealer or distributor lists, customer lists, marketing studies, and any drawings, notes, memoranda and the information contained therein; and (vi) information and material which is disclosed by the Disclosing Party in confidence or is by its nature intended to be exclusively for the knowledge of the recipient, whether or not such information is marked "**confidential**" or "**proprietary**";

"**Purpose**" is as defined in the Recitals;

"**Receiving Party**" is as defined in the Recitals;

"**related corporation**" shall have the same meaning in this Agreement as its definition in the Companies Act, Chapter 50 of Singapore;

"**Representatives**" means, in respect of a Party, such Party's: (i) directors, officers and employees; (ii) Affiliates; (iii) Affiliates' directors, officers and employees; (iv) **[bankers]** and **[financing sources (debt and equity)][[2]](#footnote-3);** and (v) professional advisers and consultants.

"**Tax**" means all forms of taxation, duties, rates, levies, contributions, withholdings, deductions, liabilities to account, charges and imposts whether imposed in Singapore or elsewhere in the world; and

"**Tax Authority**" means any governmental, state, federal, provincial, local governmental or municipal authority, body or official whether of Singapore or elsewhere in the world, which is competent to impose or collect Tax;

# Confidentiality Obligations

* 1. Subject to Clause 2.5 and Clause 4, in consideration of the Disclosing Party directly or indirectly disclosing or making available the Confidential Information to the Receiving Party, the Receiving Party hereby agrees to, and agrees to **[use its best endeavours to]** procure that its Representatives will, hold the Confidential Information in strict confidence and maintain the confidentiality of any and all such Confidential Information and to not directly or indirectly disclose or make available the Confidential Information or any part thereof to any person.
	2. Subject to Clause 2.5 and Clause 4, the Receiving Party shall not, and shall procure that its Representatives shall not, make use of the Confidential Information or any part thereof (including to modify, de-compile, re-engineer or reverse engineer any executable codes or copy or reproduce the Confidential Information in any form whatsoever) for any purpose other than the Purpose, or except as permitted by this Agreement.
	3. The Receiving Party acknowledges and agrees that the Confidential Information disclosed to it may include personal data, including sensitive personal data, and it agrees to comply with (and cause its Representatives to comply with) (and assist the Disclosing Party in its compliance with) all applicable privacy and data protection laws with respect to such personal data.
	4. The Receiving Party shall use the same degree of care (but no less than a reasonable degree of care) to prevent the unauthorised access, use, dissemination and publication of the Confidential Information as the Receiving Party uses to protect its own confidential information.
	5. The Receiving Party may disclose Confidential Information to its Representatives for the Purpose, provided that the Receiving Party shall procure that each Representative receiving the information agrees to comply with the provisions of this Clause 2 in respect of such information as if it were a party to this Agreement.[[3]](#footnote-4)
	6. The Receiving Party shall ensure that only such of its Representatives whose duties require them to possess the Confidential Information shall have access to the Confidential Information. Each of such Representatives shall be informed of the confidential nature of the Confidential Information before it is disclosed by the Receiving Party and it shall be the responsibility of the Receiving Party to ensure that such Representatives comply with the provisions of this Agreement as if they were the Receiving Party. Any default or breach by any of the Receiving Party's Representatives of any term of this Agreement shall be deemed a default or breach by the Receiving Party, except where such Representative has: (i) entered into a separate confidentiality agreement with the Disclosing Party in respect of the Proposed Transaction; or (ii) confirmed in writing to the Disclosing Party that it shall be bound by the confidentiality provisions of this Agreement.
	7. The Receiving Party shall inform the Disclosing Party promptly on becoming aware that Confidential Information has been disclosed to, or otherwise obtained by, an unauthorised third party.

# Acknowledgements

* 1. The Receiving Party acknowledges and agrees that:
		1. the Confidential Information and any copies thereof remain the property of the Disclosing Party and the disclosure of the Confidential Information to the Receiving Party or its Representatives does not give such parties any licence or other right in respect of any Confidential Information beyond the terms of this Agreement;
		2. any Confidential Information made available to the Receiving Party or its Representatives prior to, in the course of, or for the purpose of, discussions or negotiations relating to the Proposed Transaction shall not constitute, or be taken as, a recommendation or inducement or form part of an offer by the Disclosing Party, to enter into the Proposed Transaction, nor shall any such Confidential Information contained therein form the basis of, or be relied upon in connection with, any contract, and the Receiving Party shall independently and without reliance upon the Disclosing Party make its own analysis and appraisal of the Disclosing Party; and
		3. the Receiving Party shall be responsible for making its own assessment and decision on the Confidential Information and on the Proposed Transaction.

# Disclosure Due To Court Action

 In the event that the Receiving Party (or any of its Representatives) is obligated or requested to disclose any Confidential Information where the disclosure is required by Applicable Law, any Governmental Authority or any recognised securities exchange on which the shares of the Receiving Party are listed or where the disclosure is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement, such Receiving Party shall, to the extent permitted under Applicable Law, promptly give notice in writing to the Disclosing Party of any such request or requirement so that it is given the opportunity to object to such disclosure. Should any such objection be unsuccessful or should the Disclosing Party decide not to object to any such disclosure, the Receiving Party or any of its Representatives (as applicable) shall disclose only that portion of the Confidential Information which is so requested or required, and shall take all reasonable measures to ensure that any Confidential Information which is so requested or required to be disclosed will be accorded confidential treatment.

# Announcements

No release or announcement to the press, whether oral or in writing, relating to any matter contemplated under this Agreement shall be made by a Party unless the other Party otherwise agrees in writing and only at such time and in such form as is approved by the other Party.

# Assignment

All rights and obligations hereunder are personal to the Parties and a Party may not assign or transfer all or part of its rights or obligations under this Agreement without the prior written consent of the other Party.

# Indulgence, Waiver, etc.

No failure on the part of any Party to exercise and no delay on the part of any Party in exercising any right hereunder will operate as a release or waiver thereof, nor will any single or partial exercise of any right under this Agreement preclude any other or further exercise of it.

# Remedy

The Receiving Party acknowledges the competitive value and confidential nature of the Confidential Information and that the Disclosing Party could incur losses if information contained therein is disclosed to any third party by the Receiving Party (or its Representatives) in breach of this Agreement. The Receiving Party (and its Representatives) further acknowledge and agree that monetary damages alone may not be a sufficient remedy for the Disclosing Party in the event of any breach of this Agreement and hereby agrees that the Disclosing Party shall be entitled to seek specific performance or injunctive relief for any threatened or actual breach of this Agreement by the Receiving Party or its Representatives from any court in any jurisdiction in addition to all other remedies available to it.

# Term

This Agreement takes effect from the date hereof and will automatically terminate on the earlier of:

* + 1. the date of execution of the definitive agreement in relation to the Proposed Transaction; or
		2. the date falling **[●]** (**[●]**) months[[4]](#footnote-5) after the date of this Agreement,

provided that, in either case, the termination of this Agreement shall be without prejudice to any accrued rights and liabilities as of the termination date and provided that the provisions of this Agreement shall continue to apply in respect of any Confidential Information that may be retained by the Receiving Party in accordance with Clause 10 (or otherwise).[[5]](#footnote-6)

# Return of Confidential Information

At the written request of the Disclosing Party, the Receiving Party (and its Representatives) shall: (i) promptly return all documents and materials containing Confidential Information of the Disclosing Party; or (ii) permanently erase and destroy any and all documents and material containing Confidential Information of the Disclosing Party, (in each case, including material in any media, any copies, analysis, memoranda or other notes made by the Receiving Party, its directors, officers, employees, agents and/or any of its other Representatives) and erase and remove any of the same stored within any computer or other electronic system whether or not in machine-readable form. The Receiving Party shall provide written confirmation (email being sufficient) of such erasure or destruction (as applicable), provided that the obligation set out in the foregoing part of this Clause 10 shall not apply to any copies of any Confidential Information that the Receiving Party or its Representatives are required to retain to comply with any Applicable Law or *bone fide* internal compliance policy and any such Confidential Information retained by the Receiving Party shall continue to be held in compliance with this Agreement.

# Variation

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party.

# Severance

 If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any Applicable Law to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and it shall in no way affect or prejudice the enforceability of the remainder of such provision or the other provisions of this Agreement.

# Counterparts

 This Agreement may be executed by the Parties hereto in separate counterparts, each and all of which when so executed and delivered to the Parties by facsimile, or by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties hereto. Any Party may enter into this Agreement by signing any such counterpart transmitted electronically, or by facsimile, or other electronic signatures (such as DocuSign or AdobeSign), by any of the Parties to any other Party and each receiving Party may rely on the receipt of such document so executed and delivered as if the original had been received. The Parties agree that signatures executed by way of electronic means (such as DocuSign or AdobeSign) shall be recognised and construed as secure electronic signatures to the fullest extent under applicable law, and that the Parties accordingly shall deem such signatures to be original signatures for all purposes.

# Rights of Third Parties

Except as expressly provided herein, a person who is not a party to this Agreement has no rights, benefits, obligations, or liabilities hereunder or under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore.

# Costs

Each Party shall be responsible for costs incurred by it or on its behalf or by any of its Representatives in connection with the Purpose and/or the consideration and evaluation of the Confidential Information.

# Whole Agreement

This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement to the exclusion of any terms implied by Applicable Law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement.

# Governing Law

 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of Singapore.

# Dispute Resolution

* + 1. In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (the "**Dispute**").

**[OPTION 1: COURT]**

**[the Parties irrevocably agree that the courts of Singapore are to have exclusive jurisdiction to settle any such Dispute.][[6]](#footnote-7)**

**[OPTION 2: ARBITRATION]**

**[the Dispute shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre[[7]](#footnote-8) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Clause. This arbitration agreement shall be governed by Singapore law. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The award shall be final and binding on the Parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets.]**

**IN WITNESS WHEREOF** the Parties hereto have caused their duly authorised representatives to set their hands the day and year first above written.

**Party A**

Signed by **[insert name of director]**

for and on behalf of **[insert name of Party A]**

………………………..

Director

Name:

**Party B**

Signed by **[insert name of director]**

for and on behalf of **[insert name of Party B]**

………………………..

Director

Name:

1. Drafting Note: To be narrowed as necessary depending on the business of the Company, the information to be protected and the stage of the investment. [↑](#footnote-ref-2)
2. Drafting Note: Consider whether to allow disclosure to financing sources. The definition will need to be tweaked depending on the nature and structure of the Parties. [↑](#footnote-ref-3)
3. Drafting Note: If this NDA is entered into in connection with an investment by one Party into the other Party, to be considered whether back-to-back NDAs should be entered into with certain representatives (e.g. banks). [↑](#footnote-ref-4)
4. Drafting Note: This is typically between 12 – 24 months depending on the nature of the Proposed Transaction. [↑](#footnote-ref-5)
5. Drafting Note: The term of this Agreement may be amended depending on the type and nature of the Confidential Information that has been disclosed. [↑](#footnote-ref-6)
6. Drafting Note: Parties may also wish to consider the Singapore International Commercial Court as a dispute forum and its website may be accessed at: <https://www.sicc.gov.sg>. [↑](#footnote-ref-7)
7. Drafting Note: The Singapore International Arbitration Centre's website may be accessed at: <http://www.siac.org.sg/>. [↑](#footnote-ref-8)