

NON-DISCLOSURE & NON-COMPETE AGREEMENT

This NON-DISCLOSURE & NON-COMPETE AGREEMENT has been entered into this day of.....20..... .

BETWEEN

ABC, an Indian firm having its registered offices at (hereinafter called "COMPANY" which expression unless repugnant to the context shall mean and include its subsidiaries, and its successors and assigns)

AND

Name of Individual or Entity, residing at....., (hereinafter referred to as "Party" which expression unless repugnant to the context shall include all beneficiaries of the said Party)

1. Definitions

Intellectual Property: Includes existing and future Intellectual Property in the nature of unregistered or registered rights to any and all patents, copyrights, trademarks and other confidential and/or proprietary information limited to that forming part of the subject-matter of the agreement, and inclusive of all intellectual property that is the subject of ownership by Company and/or its subsidiaries, venture partners and predecessors in interest, business and/or title, arising out of the performance of this agreement and/or other business arrangements, inclusive of but not limited to any oral arrangement which Company may have entered into with the Party or other party.

Confidential Information: means, trade secrets, know-how, patents, utility models, formulations, processes/methods of preparation, test data, conducted inhouse or by/through collaborative/venture efforts, inclusive of any and all improvements/ modifications, alterations substantial or otherwise etc., that may have been effected to the said Confidential Information by Company. Also as used in this agreement, the term "Confidential Information" means (i) the terms and conditions of this Agreement inclusive of but not limited to any other prior confidentiality agreement whether explicit or implied by terms and relationship of Party with the company and his stated or present functions, that is subsisting on the date of this agreement; (ii) Company's, business plans, strategies, methods and/or practices; (iii) any information relating to Company or its business that is not generally known to the public, including but not limited to information about Company's personnel, products, customers, marketing strategies, services or future business plans, and (iv) Process Information defined as data/test data/ reports/studies in-house or contracted/ details/ quantified steps/ process details whether affixed on paper or transferred by way of oral and/or practical instruction with reference to any product which company may own or be associated with such as manufacturing information, procurement specifications, quality control specifications, inspection and test protocols inclusive of other data that Company has ownership of/retains and is available and being used by Company with reference to its business/ products/ R&D efforts and general and specific information not limited to processes, machines, manufactures, composition of matter, know-how, methods, techniques, systems, software (whether in object, source or executable code) documentation, data (irrespective of whether human or machine-readable) pertaining to the company's products, manufacture and sale of products envisaged by company's know-how or any other improved know-how.

Party: In relation to this agreement, means any individual under a contract of services or contract for services, who was or is an employee of Company, whose status is permanent or contractual in nature on the date of commencement of this agreement or the company's venture partners or its subsidiaries or beneficiaries

or by any other entity or person either retained by company or associated with the company.

Compete: In relation to this agreement means the indulging in of any activity, by Party, commercial in nature or otherwise, that may result in a diversion/drop in sales, market share, direct or indirect, with the business of the Company.

WHEREAS,

- a. Party during his/her normal course of business has access to the Confidential Information in either its disembodied form or in the form of the final preparation/process/method etc., that company treats as being in the nature of Confidential Information.
- b. The unauthorised disclosure by Party, of the said Confidential Information could expose the Company to irreparable harm in monetary terms as well as in terms of reputation and goodwill.
- c. Company thus wishes to safe guard against the wrongful or inadvertent disclosure of its Confidential Information.

2. Acknowledgement of Confidentiality

Party hereby acknowledges that the Confidential Information disclosed to or accessed by the Party is in the nature of Confidential and Proprietary Information.

3. Agreement not to Disclose or Assign/License

- a. Party hereby agrees that he/she shall hold in confidence and hereby agrees that he/ she shall not assign, license, sell, use, commercialize or disclose except under terms of employment or association with the Company, any Confidential Information, Intellectual Property of the company, to any person or entity, or else under provision governed by this memorandum except as Company may approve in writing.
- b. Party undertakes to use at least the same degree of care in safeguarding the Confidential Information/ Intellectual Property as he/she uses or would use in safeguarding his/her own Confidential Information, and shall take all steps necessary to protect the Confidential Information from unauthorized or inadvertent disclosure.

4. Remedies for Breach of Confidentiality

- a. Party agrees and acknowledges that any disclosure of any Confidential Information prohibited herein or any breach of the provisions herein may result in irreparable injury and damage to Company which will not be adequately compensable in monetary damages, that Company will have no adequate remedy at law therefor, and that Company may, in addition to all other remedies available to it at law or in equity, obtain such preliminary, temporary or permanent mandatory or restraining injunctions, orders or decrees as may be necessary to protect Company against, or on account of, any breach by the Party, employee/exemployee of the provisions contained herein.
- b. Party agrees to reimburse the reasonable legal fees and other costs incurred by Company in enforcing the provisions of the proposed transaction.

5. Non-compete

- a. Party inclusive of his/ her direct beneficiaries in business, interest and title in recognition of the vesting of exclusive rights to the Confidential and Proprietary Information of the Company hereby agrees not to directly or indirectly compete with the business of the Company and its successors and assigns during the term of the agreement.
- b. Subsequent to the termination or expiration of terms of employment/ association with the Company, the party undertakes and agrees not to compete with the Company for a period of five years.

c. Following the expiration or termination of this contract and notwithstanding the cause or reason for termination, the Party undertakes and agrees not to compete with the business of the company using the company's Confidential Information in its embodied or disembodied form.

6. Jurisdiction

Any action arising out of or pertaining to this agreement shall be initiated and maintained in a court of competent jurisdiction at the High Court of at (place).

7. General Provision

- a. This document constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral.
- b. This Agreement is expressly limited to its terms and may be modified or amended only by writing signed by both parties.
- c. Neither this Agreement nor any rights or obligations inherent in Company's Confidential Information, know-how, trade secrets and other property and/or Intellectual Property hereunder may be transferred or assigned without Company's written consent respectively. Any attempt to the contrary shall be void.

8. Term

- a. This agreement shall extend for the full and total period of the employment/ association of the Party with the company and its successors in business, interest and title. The said agreement in relation shall, after the period of employment/ association comes to an end, extend for a period of five years from the date of end of such relationship.
- b. In relation to the preservation of Confidential Information and Intellectual Property owned by the company, this agreement shall extend in perpetuity.

9. Severability

The provisions of this agreement shall be deemed severable, and the unenforceability of any one or more of its provisions shall not affect the enforceability of any of the other provisions. If any provision is declared to be unenforceable, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. The parties hereto consider the restrictions contained to be reasonable as to protect Company's interests and rights.

10. Force Majeure

Neither party will be responsible for any failure to perform its obligations under this agreement due to causes beyond its control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods or accidents.

11. Notice

All notices and communications required or permitted under this agreement shall be in writing and any communication or delivery shall be deemed to have been duly made if actually delivered, or after days after mailing, if mailed by registered post addressed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above their duly authorised representatives.

Company
.....

Address:.....

Dated.....

Party

Address:.....

Dated.....

Witness:

Witness:
