

## **Non-Competence Agreement**

This **Non Competence and Non-Disclosure Agreement** (hereinafter referred to as this "Agreement") are made on this **DDMMYYYY**:

### **BY AND BETWEEN:**

**Company Name**, a company incorporated under the provisions of the LAW and having its registered office at Address, City - Pincode, State, India, (hereinafter referred to as the "**Company**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest, administrators and permitted assigns), of the FIRST PART and

Name, a citizen of India and presently residing at address, city – Pincode, (hereinafter referred to as the "**Employee**").

### **WHEREAS:**

1. The Company is in the business of .....
2. The Company, in the course of its business, has acquired or may acquire confidential property, information and trade secrets, made or will make discoveries and improvements or developments, which it desires to keep confidential.
3. The Company undertakes several assignments on behalf of clients that involve the development of Intellectual Property (as defined hereinafter) and which also entail confidentiality obligations. The Company must respect the Intellectual Property and confidentiality obligations of its clients and therefore, in turn the employees are also expected to respect the same.

4. The Company wishes to safeguard its goodwill, business and proprietary information to which the Employee may have access.
5. The Company desires to engage the Employee on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Company and the Employee hereby agree as follows:

## 1. **DEFINITIONS AND INTERPRETATION**

In this Agreement unless the context otherwise requires:

1.1 **"Agreement"** means this Agreement including any Annexures and Schedules attached to this Agreement and as may be amended and modified from time to time.

**"Business"** means .....

1.2 **"Compensation Letter"** means the letter issued by the Company to the Employee setting out the details and manner of the compensation, as amended from time to time.

1.3 **"Competitor"** means and includes all such Persons (as defined hereinafter) whether domestic or foreign, which carry on or which are likely to carry on similar Business.

1.4 **"Confidential Information"** includes but is not limited to information which is or fairly be considered to be of a confidential nature, which is obtained whether (without limitation) in graphic, written, electronic or machine readable form or orally, by the Employee; and whether or not the information is expressly stated to be confidential or

marked as such, in writing, and also includes all Intellectual Property, but is not limited to:

1.4.1 Information of value or significance to the Company or its competitors (present or potential) such as:

1.4.1.1 Customer data, in particular, names, addresses, sales figures and sales conditions of the Company and its clients.

1.4.1.2 Distribution data, in particular, names, addresses, sales figures and sales conditions of distributors, agents and licensees of the Company.

1.4.1.3 Manufacturing data, in particular, procurement and manufacturing procedures, the fees, discounts, commissions and other credits relating to the software.

1.4.1.4 Supplier's data, in particular, names, addresses, sales figures, and sales condition of suppliers of software and hardware to the Company, whether in India or abroad.

1.4.1.5 Business data, particularly data relating to new products, promotion campaigns, distribution strategies, license agreements and joint ventures in which the Company is involved.

1.4.1.6 Software data, particularly information relating to the software and the modules thereof as well as any devices designed by the Company to prevent unauthorized copying.

1.4.1.7 Research and development data, particularly information relating to the software and hardware developments of the Company.

1.4.1.8 Financial data, in particular, concerning budgets, the fees and revenue calculations, sales figures, financial statements, profit expectations and inventories of the Company.

1.4.2 Original information supplied by the Company;

1.4.3 Information not known to competitors of the Company nor intended by the Company for general dissemination, including but not limited to, policies, strategies, the identity of various product-suppliers or service-providers, billing schedules, needs of its clients, information as to the profitability of specific accounts, and information about the Company itself and its executives, officers, directors and employees;

1.4.4 Any business or technical information relating to the Company, including but not limited to financial information, equipment, documentation, strategies, marketing plans, prospective leads or target accounts, pricing information, information relating to existing, previous and potential customers and contracts disclosed by the Company to the Employee;

1.4.5 Any copies of the above-mentioned information; but does not include:

- a) that which is in the public domain other than by the Employee's breach, of this Agreement, or of any other confidentiality agreement;
- b) that which was previously known as established by written records of the Employee prior to receipt from the Company;

- c) that which was lawfully obtained by the Employee from a third Party; and
- d) that which was developed independently by the Employee who had no access to the Confidential Information provided by the Company.

1.5 **"Intellectual Property"** includes:

1.5.1 all patents, trademarks, business processes, domain names, works of authorship, designs, utility models, copyrights whether registered or unregistered, which are owned by the Company or acquired or developed by the Company in the course of its Business, including, but not limited to moral rights and any similar rights in any country, whether negotiable or not and also includes any applications for any of the foregoing and the right to apply for them in any part of the world; and

1.5.2 all processes, inventions, ideas, programs, codes, software, algorithms, discoveries, correspondence, trade secrets, databases, know-how, creations or improvements upon, additions or any research effort relating to any of the above, whether registrable or not.

1.6 **"Person"** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

1.7 **"Property"** includes, but is not limited to the following:

1.7.1 internal memoranda, computer equipment (including software), training materials, rules, books, and all other like property, including all copies, duplications, replications, and derivatives of such property;

- 1.7.2 Any residential accommodation, furniture, fixtures, fittings and furnishings, communication equipment, automobile and all other items; and,
- 1.7.3 any tangible expression of Confidential Information, including, without limitation, photographs, plans, notes, renderings, journals, notebooks, computer programs and samples relating thereto.
- 1.8 “**Rules**” means the Company’s manual, which lays down the policies, procedures, rules etc. in connection with the day-to-day operations of the Company, the behavior of its employees, the overall management of the Company and its clients/customers, as amended from time to time by the Company.
- 1.9 “**Termination Date**” means the date on which the employment of the Employee is ended and which shall in the case of termination by the Company be effective from the date on which the Notice Period (as defined hereinafter), if any, is over and in the case of termination by the Employee, be effective from the date on which Notice period is over or, in the event the Notice Period is waived under **Section 8.3**, the date of which the Company permits the Employee to leave service.
- 1.10 Unless the context otherwise requires, (a) words importing one gender include the other gender; (b) words importing the singular include the plural and vice versa; (c) any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment; (d) the Section headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation and (e) any reference to the Employee shall, if appropriate, include his personal representatives.

## **2. NON-COMPETITION AND NON-SOLICITATION**

- 2.1 During the term of the employment with the Company and for a period of one (1) year following the Termination Date in case of Competitors worldwide, the Employee shall not, directly or indirectly, either as an individual on his own account or as a partner, employee, consultant, advisor, agent, contractor, director, trustee, committee member, office bearer, or shareholder (or in a similar capacity or function)
- 2.1.1 Own or operate in India a business in competition with the business of the Company;
- 2.1.2 solicit the employment of or advise any other employee of the Company to terminate his contract or relationship with the Company or accept any contract (directly or indirectly) or another arrangement for providing services to any other person or organization; or,
- 2.1.3 Contact any of the existing or prospective clients of the Company, to entice such clients away from the Company or to damage in any way their business relationship with Company.
- 2.2 The Company may, however, relieve the Employee, from complying with the provisions of this Section in whole or in part.

## **3. CONFIDENTIALITY**

3.1 The Employee shall not disclose, any time, to any Person or Competitor who is not employed, part of or associated with the Company; or use for any purpose that is not within the scope of his services, any Confidential Information, except in accordance with any written exception made by the Company.

3.2 Notwithstanding the aforesaid provisions of this Section, the Employee may disclose Confidential Information were compelled to do so, by any government, judicial or quasi-judicial authority;

Provided however, that the Employee shall in such a case give the Company reasonable notice of any prospective disclosure and shall assist the Company in obtaining an exemption or protective order preventing such disclosure.

#### 4. **INTELLECTUAL PROPERTY**

4.1 All Intellectual Property conceived (whether during regular business hours or not), discovered, or made by Employee during the course of his employment with the Company, and other ideas, techniques or principles related to the business of the Company, shall be promptly disclosed in writing to the Company.

4.2 All rights in the Intellectual Property shall belong to the Company immediately upon the formation of such rights, whether or not the final work / mark / invention in which the Intellectual Property vests is formed or completed, for the full term of each and every such right, including renewal or extension of any such term. The Employee shall perform all acts, including execution of documents and assistance in legal proceedings that are necessary to defend or establish the rights of the Company in the Intellectual Property in any country.



- 4.3 The Employee irrevocably assigns to the Company, the Intellectual Property in all works developed during the course of his employment, free from encumbrances of any kind.
- 4.4 The Employee explicitly waives all moral rights in any of the works developed for the company during the course of his employment with the Company.
- 4.5 The Employee represents and warrants that he has not violated the Intellectual Property rights of any Person and covenants that he shall not violate the Intellectual Property rights of any person in the course of his employment with the Company.

Provided that in the event the Company is held liable for the violation of any Intellectual Property rights by the Employee, the Employee undertakes to indemnify the Company against any and all losses, liabilities, claims, actions, costs and expenses, including reasonable attorney's fees and court fees resulting therefrom.

## **5. DISPUTE RESOLUTION**

- 5.1 The Company and the Employee hereby agree that they intend to discharge their obligations in utmost good faith. They therefore agree that they will, at all times, act in good faith, and make all attempts to resolve all differences howsoever arising out of or in connection with this Agreement by discussion failing which, within fifteen (15) days of the commencement of the discussions.

5.2 The Parties shall be bound to submit all disputes and differences howsoever arising out of and in connection with this Agreement to the courts of INDIA, provided that:

5.3 Notwithstanding anything contained in this Agreement the Company may approach any court within INDIA for injunctive relief when it feels that any of the terms of this Agreement are breached or likely to be breached by the Employee.

## **6. MISCELLANEOUS**

6.1 Entire Agreement: This Agreement constitutes the entire agreement between the signatories and shall supersede all negotiations, preliminary agreements, and all prior and contemporaneous discussions and understandings of the signatories in connection with the subject matter hereof.

6.2 Amendments: No change, modification, or termination of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all signatories to this Agreement.

6.3 Severability: If any paragraph, sub-paragraph, or provision of this Agreement, or the application of such paragraph, sub-paragraph, or provision, is held invalid by a court of competent jurisdiction, the remainder of this Agreement, and the application of such paragraph, sub-paragraph, or provision to persons, or circumstances other than those with respect to which it is held invalid shall not be affected.

6.4 Parties to Act with Due Diligence and in Good Faith: The Parties hereto shall dutifully perform all covenants of this Agreement in letter and spirit and shall otherwise act with due diligence and in good faith.

## **7. GOVERNING LAW AND JURISDICTION**

- 7.1 This Agreement shall, in all respects, be governed by and construed in all respects in accordance with the laws of INDIA.
- 7.2 In relation to any legal action or proceedings to enforce this Agreement, the Employee irrevocably submits to the exclusive jurisdiction of any competent court and waives any objection to such proceedings on grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

**IN WITNESS WHEREOF**, the signatories have executed this Non-Competence and Non-disclosure Agreement as of the day and year first above written.

**For Company Name**

**Candidate Name**

\_\_\_\_\_

Name:

\_\_\_\_\_

Title: