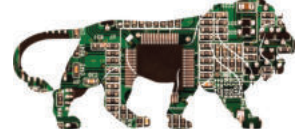


Appendix H: Confidentiality and Non-Disclosure Agreement (CNDA)



(For Indian Companies)

Between

Laboratory Name, City

Defence Research Development Organisation (DRDO)

Ministry of Defence, Government of India

And

Company Name, City

This Confidentiality and Non-Disclosure Agreement is entered into on the Day of Month in the Year (Two Thousand)

Between

The President of India, acting through and represented by the **Director, Lab Name, City** a constituent laboratory under the **Defence Research and Development Organisation**, Ministry of Defence, Government of India and the **Director, Industry Interface and Technology Management (DI²TM)** at DRDO HQ, DRDO Bhawan, New Delhi – 110011 (Hereinafter referred to as “DRDO”, which expression shall whenever the context so requires or admits, mean and include its successors in office and/assigns).

And

“Name of the Company”, a company formed in accordance with the laws of India and having their registered office at **Company Address (Hereinafter referred to as Company Name, which expression shall whenever the context so requires or admits, mean and include their heirs/ successors, respective executors, administrators, legal representatives, and/or permitted assigns)**.

“DRDO” and **“Company Name”** are individually referred to as **“Party”** and jointly as **“Parties”**.

WHEREAS

(A). DRDO has developed a technology called - **“Technology Name”, Technology Description**

(Hereinafter referred to as **“Technology”** for which the present agreement of Confidentiality and Non-disclosure is executed)



- (B). The Parties intend to provide each other with certain information pertaining to their operations and the Parties are in the process of discussing certain matters with a view to concluding a business agreement ("**the potential agreement**"), which discussions have required and will require the disclosure to one another of information of a proprietary, secret and confidential nature. Whether or not the Parties conclude the potential agreement will not affect the validity of this Agreement.
- (C). The Parties wish to record the terms and conditions upon which they shall disclose the Confidential Information to each other, which terms and conditions shall constitute a binding and enforceable Agreement between the Parties and their agents.

NOW THEREFORE in consideration of the foregoing and the respective covenants and Agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to legally bound hereby, the Parties agree as follows:

1. Disclosing and Receiving Parties

The Party disclosing the Confidential Information shall be known as the "**Disclosing Party**" and the Party receiving the Confidential Information shall be known as the "**Receiving Party**".

2. The Confidential Information

"Confidential Information" shall, for the purpose of this Agreement include, without limitation, any technical, commercial, financial information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, and data in whatever form, disclosed to or assessed by the Receiving Party during the course of its relationship with the Disclosing Party.

3. Disclosure of Confidential Information

- 3.1 The Disclosing Party shall disclose the Confidential Information to the Receiving Party only to the extent deemed necessary or desirable by the Disclosing Party in its discretion.
- 3.2 The Receiving Party acknowledges that the Confidential Information is a valuable, special and unique asset proprietary to the Disclosing Party.
- 3.3 The Receiving Party agrees that it will not, during or after the course of their relationship and/or the term of this Agreement as described in Clause 9, disclose the Confidential Information to any third Party for any reason or purpose whatsoever without the prior



written consent of the Disclosing Party, save in accordance with the provisions of this Agreement. For avoidance of doubt, in this Agreement “Third Party” means any Party other than the Receiving and Disclosing Parties (their holding and subsidiary companies or agents who shall be deemed to be bound by the provisions of this Agreement).

- 3.4 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the Confidential Information may be disclosed by the Receiving Party to its professional advisors on a need-to-know basis; provided that the Receiving Party takes all the necessary steps to ensure that such professional advisors agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to Third Parties. For purposes of this clause, the Receiving Party’s professional advisers and employees, directors or managers shall be deemed to be acting, in the event of a breach, as the Receiving Party’s duly authorised agents.
- 3.5 The Receiving Party agrees not to utilise, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever without the prior written consent of the other/the Disclosing Party.

4. Title

All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party:

- 4.1 To be proprietary to the Disclosing Party; and
- 4.2 Not to confer any rights on the Receiving Party of whatever nature in the Confidential Information.

5. Restrictions on disclosure and use of the Confidential Information

The Receiving Party undertakes not to use the Confidential Information for any purpose other than:

- 5.1 That for which it is disclosed as specifically directed by the Disclosing Party; and
- 5.2 In accordance with the provisions of this Agreement.

6. Standard of Care

Both Parties agree that they shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that each Party applies to safeguard its own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.



7. Return of material containing or pertaining to the Confidential Information

- 7.1 Either Party may, at any time, request the other to return any material and/or data in whatever form containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement and may, in addition request the other to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material and/or data.
- 7.2 As an alternative to the return of the material and/or contemplated in Clause 7.1 above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and/or and furnish the Disclosing Party with a written statement to the effect that all such material has been destroyed.
- 7.3 The Receiving Party shall comply with any request by the Disclosing Party in terms of this clause, within 7 (seven) days of receipt of any such request.

8. Excluded Confidential Information

The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any Confidential Information that:

- 8.1 Is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party
- 8.2 Is or has become publicly known, otherwise than as a result of a breach of this Agreement by the Receiving Party
- 8.3 Is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement
- 8.4 Is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Receiving Party shall advise the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the greatest extent possible in the circumstances
- 8.5 Is received from a Third Party in circumstances that do not result in a breach of the provisions of this Agreement.

9. Term of Agreement

- 9.1 This Agreement shall be effective on and from the date of signature of the last signing Party and shall be effective for a period of..... months (the "Term").



- 9.2 In the event that the Parties extend the “Term” by mutual and written agreement, then the provisions of this Agreement shall endure for a further period of months mutatis mutandis.

10. Breach

In the event that the Receiving Party should breach the provisions of this Agreement and fail to remedy such breach within seven (7) days from date of a written notice to do so, then the Disclosing Party shall be entitled to invoke all remedies available to it in law including, but not limited to, the institution of urgent interim proceedings and/or an action for damages.

11. Enforcement

The failure by the Disclosing Party to enforce or to require the performance at any time of any of the provisions of this Agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this Agreement or any part thereof or the right of the Disclosing Party to enforce the provisions of this Agreement.

12. Headings

The headings of the clauses of this Agreement are used for convenience only and shall not effect the meaning or construction of the contents of this Agreement.

13. Representations and Warranties

Each Party represents that it has authority to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

14. Entire Agreement

This Agreement contains the entire Agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior Agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.



15. Assignment

This Agreement shall not be assigned by the company to any person, save and except with the prior consent of DRDO in writing, and that the DRDO shall be entitled to decline consent without assigning any reason.

16. Dispute Resolution

In event of any dispute or difference between the Parties hereto, such disputes and differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then, the unresolved dispute and difference shall be referred to arbitration of the Sole Arbitrator to be appointed by the Secretary, Department of Defence Research & Development on the recommendation of the Secretary, Department of Legal Affairs ("Law Secretary"), Government of India. The provisions of Arbitration and Conciliation Act, 1996 (No. 26 of 1996) shall be applicable to the arbitration under this clause. The venue of such arbitration shall be at Delhi or any other place decided by the arbitrator and the language of arbitration proceedings shall be English. The arbitrator shall make a reasoned award (the "Award"), which shall be final and binding on the Parties.

17. Governing law

This Agreement and the relationship of the Parties in connection with the subject matter of this Agreement and each other shall be governed and determined in accordance with the laws of the Republic of India.

18. Force Majeure

Neither Party shall be responsible or liable to the other Party for any failure to perform any of its covenant or obligations hereunder if such failure results from Force Majeure, i.e., unforeseeable events or circumstances, any acts of God and beyond the reasonable control of such Party. The Party failing to perform as a result of an event of Force Majeure shall no later than Fifteen (15) days from the occurrence of Force Majeure notify in writing to the other Party of such event of Force Majeure and shall take all action that is reasonably possible to remove such event of Force Majeure.

19. Postal addresses

- 19.1 Any written notice in connection with this Agreement shall be addressed:
- 19.1.1 In the case of DRDO



Address : Director, Industry Interface and Technology Management (DI²TM),
DRDO HQrs, 447, B Block,
DRDO Bhawan, Rajaji Marg,
New Delhi - 110 011

19.1.2 In the case of The Company

Address: Company Address.....
.....

and shall be marked for the attention of **Name**, nominated by the **Company**

19.2 A Party may change that Party's address, provided it gives a 30 (thirty) days prior notice in writing to the other Party.

19.3 If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 20 (twenty) days after the date of posting.

19.4 If any notice is sent by telefax, it will be deemed, until and unless the contrary is proved, to have been received on the date recorded on the transmission slip.

19.5 If any notice is delivered by hand, it will be deemed to have been received on proof of the date of delivery.

20. Severability

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

21. Amendments

No amendment/ modification/ alternation of any of the terms of this Agreement shall be valid till it is reduced to writing and duly signed by the Parties. Any amendment shall be subject to final approval by the Director, DI²TM, DRDO HQrs.



IN WITNESS HEREOF, the parties have set their hands to it on the Day, Month and Year..... (Two Thousand)

Signed For and on behalf of the President of India	Signed by on and behalf of M/s “Name of the Company”, City
By :	By :
Name :	Name :
Title : Director, Name of Lab, City	Title :
Date :	Date :
By :	
Name :	
Title : Director, DI ² TM, DRDO HQrs, New Delhi	
Date :	

In the presence of :

Witness	Witness
By : _____	By : _____
Name: _____	Name: _____
Title: _____	Title: _____
Organisation: _____	Organisation: _____
By : _____	
Date : _____	

