

## NON-DISCLOSURE AGREEMENT

This Agreement is entered into on this 26 day of May, 2016, between:

[Company Name] duly incorporated registered and existing under the laws of India whose registered office is at [ADDRESS]; referred to hereinafter as

**(COMPANY)**

AND residing at \_\_\_\_\_

\_\_\_\_\_ referred to hereinafter as

**("Second Party")**

Hereafter, referred to individually as a "Party" and collectively as the "Parties". For purposes of this Agreement, the party receiving Confidential and Proprietary Information (as defined herein below) and such party's Affiliates, as applicable, shall be referred to as the "Receiving Party" and the party providing the Confidential and Proprietary Information, and such party's Affiliates, as applicable will be referred to as the "Disclosing Party".

WHEREAS, COMPANY is engaged in the business of "Ecommerce".

WHEREAS, Second Party is engaged in the business of Software and website development.

Both parties are entering into this Agreement in order to define their respective rights and obligations with respect to the Confidential Information of the other. From time to time, both will be in possession of Confidential Information.

AND WHEREAS, the parties wish to protect any such Confidential and Proprietary Information in accordance with the terms and conditions of this agreement (the "Agreement").

NOW, THEREFORE, in consideration of receipt of Confidential and Proprietary Information it is agreed as follows:

### A. Definition of "Confidential and Proprietary Information"

The Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): commercial, financial and/or technical information, operations, plans, proposals, intentions, know-how, trade secrets, copyright and other intellectual property rights, software, technology or operational measures, market opportunities, strategies, customers and potential customers, customer data, brokers, suppliers, competitors and potential competitors, financing sources, bank and trust contracts, business and/or financial affairs; marketing and development plans; business models, pricing policies, financial information, trade secrets and products (prototype or otherwise), personal data. ("Confidential Information");

Intellectual Property Rights include, but not limited to, trademarks, copyrights (including rights in computer software), patents, service marks, trade names, trade secrets, internet domain names, and all other corresponding or similar rights (whether registered, pending registration or unregistered, anticipated research or development) which may subsist anywhere in the world ("Intellectual Property Rights"). For ease of reference, Confidential Information and Intellectual Property Rights has been collectively referred to as "Confidential and Proprietary Information".

B. Information not categorised as "Confidential and Proprietary Information" The obligation imposed, under this Agreement, on either Party shall not apply to information which:

- a) a Party can demonstrate by prior existing records of such Party, was within that Party's legitimate possession prior to the time of disclosure;
- b) was within the public domain prior to disclosure, or comes into the public domain through no wrongful act, fault or negligence on the part of the Receiving Party;
- c) is independently developed by the Receiving Party without reference to or reliance upon Confidential and Proprietary Information of the other Party;
- d) is or becomes lawfully available to a Party on a non-confidential basis from an independent source who is free to divulge such information; or
- e) is disclosed by a Party with the other Party's prior written approval.

#### C. Restriction on Disclosure

Except as otherwise expressly permitted under this Agreement, Receiving party shall not

- a) disclose, duplicate, copy, transmit or otherwise disseminate in any manner whatsoever any Confidential and Proprietary Information of the other Party;
- b) use the Confidential and Proprietary Information of the other Party (i) for Receiving Party's own benefit or that of any third party, (ii) to the Disclosing Party's detriment, or (iii) for any purpose other than performance under this Agreement;
- c) commercially exploit or embody any Confidential and Proprietary Information of the Disclosing Party in any of its products/services; acquire any right in, or assert any lien against, the Confidential and Proprietary Information of the Disclosing Party; or refuse for any reason to promptly return all Confidential and Proprietary Information of the Disclosing Party if requested to do so.

#### D. Permitted Disclosures Receiving party is permitted to:

- a) Disclose relevant aspects of the Disclosing Party's Confidential and Proprietary Information to the Receiving Party's directors, officers, employees, consultants, attorneys and auditors solely to the extent necessary for achieving the Purpose; provided, that before disclosing any Confidential and Proprietary Information of the Disclosing Party, all persons or entities receiving Confidential and Proprietary Information shall bound by obligations of confidentiality towards the Receiving Party consistent with the terms of this Agreement.
- b) Disclose relevant aspects of the Disclosing Party's Confidential and Proprietary Information if legally compelled or required to disclose any Confidential and Proprietary Information of the Disclosing Party in connection with any legal or regulatory proceeding or otherwise. In such case, the Receiving Party will immediately notify the Disclosing Party so as to allow the Disclosing Party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure or waive compliance with the terms of this Agreement.

#### E. Effects of Unauthorised Disclosure

- a) The Receiving Party will be liable for the acts and omissions of, and any unauthorized disclosure or use of Confidential and Proprietary Information by, any person or entity that received Confidential and Proprietary Information from or through the Receiving Party.
- b) The Receiving Party shall indemnify and hold Disclosing Party harmless from and against any and all loss, liability, claim and expense, including all court costs and expenses and legal fees and expenses, which Disclosing Party suffers as a result of a violation of this Agreement by the Receiving Party.
- c) The Receiving Party acknowledges the competitive value and confidential nature of the Disclosing Party's Confidential Information and that disclosure thereof to any third party could be harmful to the Disclosing Party, competitively or otherwise. Unauthorised disclosure of confidential and proprietary Information will cause Disclosing Party suffer irreparable loss for which monetary damages may be inadequate and insufficient.

Accordingly, Disclosing Party may seek to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, and without prejudice to such other rights as may be available under this Agreement or under applicable law

- d) The Receiving Party will promptly report to the Disclosing Party any breaches in security that may affect the Disclosing Party or its Confidential Information and will specify the corrective action to be taken.

F. Return of documents upon written demand by COMPANY, the Second Party shall:

- a) return all Confidential and Proprietary Information supplied which the Second Party has in his possession or under his control;  
b) destroy or have destroyed all copies made of the Confidential and Proprietary Information; and  
c) promptly thereafter provide a certificate signed by an officer of the Second Party certifying compliance with the obligations point (a) and (b) above.

H. Term

This Agreement shall continue for a period of Two years from its execution, unless earlier terminated in writing by both Parties. Upon the expiration or termination of this Agreement, the obligations of each party shall continue with respect to Confidential Information of the other party disclosed hereunder until such time as the respective Confidential Information becomes publicly known and made generally available through no action or inaction of the receiving party or until Two (2) years after the date of initial disclosure of such Confidential Information to the Receiving Party hereunder ("Confidentiality Period"), whichever occurs earlier.

I. Governing Law and Jurisdiction

This agreement shall be governed by and construed in accordance with the law of India. The Courts in the city of Bangalore shall finally settle any and all disputes arising out of or in connection with this Agreement.

J. Arbitration

Indian law shall govern this Agreement. If any disputes or differences arise between the Parties hereto as to the interpretation or the performance of this Agreement, the same shall be referred to arbitration before a sole arbitrator appointed mutually and in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended or re-enacted, from time to time. The arbitration shall be conducted in the English language and any awards shall be reasoned. The venue of arbitration shall be Bangalore. Both parties will bear equal cost of arbitration.

K. Miscellaneous

- a) No failure or delay by the Disclosing party in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.  
b) This Agreement shall not be assignable or transferable by either Party without the written consent of the Other Party.  
c) This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof, and constitutes the entire agreement between the Parties with respect to the subject hereof. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorised representative of each Party and no failure or delay in enforcing any right will be deemed a waiver.

- d) In the event that a Court or other tribunal of competent jurisdiction to be unenforceable shall hold any of the provisions of this Agreement, the remaining portions hereof shall remain in full force and effect.
- e) The Parties recognize that it may be both necessary and desirable to exchange the name and contact address or introduce their customers, clients and/or persons/companies during the tenure of this Agreement. Either Party agrees that under no circumstances, it would circumvent or bypass the other party, directly or indirectly to contact or associate with the other party's customers, clients and/or persons/companies/agencies that are made known during the period of this Agreement, during the term of the association.
- f) Both the Parties agree that they shall not do any actions, either directly or indirectly that may negatively affect the business interests of the other party.
- g) Neither Party may use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed
- h) Each Party agrees and acknowledges that any breach of this Agreement may cause continuing and irreparable loss, harm or damage to the other party for which monetary damages may be inadequate and insufficient. The Parties therefore agree that they shall be entitled to obtain injunctive or other equitable relief to remedy any threatened or actual breach of this Agreement by the other party.
- i) Nothing in this Agreement shall be deemed, by implication or otherwise, to convey to Receiving Party any license or other rights under any patents, patent applications, copyrights, trademarks, trade secrets, inventions or any other intellectual property owned by Disclosing Party, nor shall this Agreement be deemed a commitment of any kind by either Party to enter into any further agreement with the other. If the Parties enter into any such further agreement, this Agreement shall not terminate but shall continue in full force and effect according to the terms and conditions hereof.

The duly authorised representative of each Party has executed IN WITNESS WHEREOF this Agreement on the day and year first above written.

For COMPANY

For Second Party

Signature

Signature

Name:

Name:

Designation:

Designation:

Company Name:

Date:

Place:

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