# MUTUAL NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

This MUTUAL NON-DISCLOSURE and NON-CIRCUMVENTION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 202X by and between **UNIVERSITY OF MORATUWA,** established under the under the Universities Act No. 16 of 1978, with its principle office located at 255/3, Bandaranayake Mawatha, Katubedda, Moratuwa 10400, Sri Lanka and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, duly registered under xxxxxxxx with its principle office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to collectively as “the Parties”.’

[ALTERNATIVELY, if the other party is an individual]

…………………………………………. bearing the NIC No/Passport No […………………………] of ……………………………… in the Democratic Socialist Republic of Sri Lanka (hereinafter referred to collectively as “the Parties”.’

# RECITALS

1. The Parties have each developed certain confidential and proprietary information as set forth below, including, but not limited to, computer hardware, software, technology, programs, processes, business plans, pricing information, trade secrets, new products, copyrights, patentable inventions, documentation, and specifications.
2. In order to discuss pursuit of a business relationship, the Parties recognize the need for disclosure of Confidential Information and are willing to disclose such Confidential Information pursuant to the terms and conditions of this Agreement.

FOR AND IN CONSIDERATION of the mutual covenants contained in this Agreement, the Parties agree as follows:

**Section 1. Confidentiality of Information**. Each party acknowledges that all material and information which have or will come into its possession or knowledge after the date hereof, in connection with business discussions, conferences or other activities in pursuit of a business relationship between the Parties (i) is proprietary to the disclosing party, having been designed, developed or accumulated by the disclosing party at a great expense and over lengthy periods of time, (ii) is secret, confidential and unique, and constitutes the exclusive property of the disclosing party, and (iii) includes, but is not limited to, trade secrets, systems, software and hardware, concepts, designs, configurations, schedules, costs, performance features, specifications, techniques, copyrighted matter, patented or patentable inventions, plans, methods, drawings, data, tables, calculations, documents or other paperwork, computer program narratives, flow charts, source and object codes, but also includes business and marketing plans, dealings, arrangements, objectives, locations and customer information. Each party acknowledges that any disclosure of the other's Confidential Information other than for the benefit of the other party will be wrongful and will cause irreparable injury to the other party and, therefore, each party agrees to hold the other's Confidential Information in strictest confidence and not to make use of it other than for the benefit of the other party.

**Section 2. Non-Disclosure to Third Parties**. Notwithstanding, it is acknowledged that certain Confidential Information must be communicated to Third Parties, but neither party shall communicate the other's Confidential Information in any form to any third party without the other party's prior written consent. Any Confidential Information disclosed to a third party pursuant to this Section shall be provided pursuant to a non-disclosure agreement between the party providing the information and the receiving third party, which shall substantially conform, to this Agreement.

**Section 3. Authorized Disclosure**. The parties acknowledge that in order to enable them to discuss pursuit of a business relationship each may be required to disseminate the other party's Confidential Information to various of its personnel. Each party undertakes to cause any of its personnel to whom such Confidential Information is transmitted to be bound to the same obligation of secrecy and confidentiality to which the parties are bound under this Agreement.

**Section 4. Non-Circumvention.** Neither party shall use the confidential information of the other party, directly for its own benefit, or indirectly for the benefit of any other party, without the expressed written consent of the other party.

**Section 5. Right to Independently Develop.** Nothing in this Agreement limits the Receiving Party’s right to independently develop, acquire or market products, ideas, or businesses, without use of the Disclosing Party’s Confidential Information. Further, the Receiving Party shall be free to use the residuals resulting from access to or work with such Confidential Information for any purpose. The term "residuals" means information in non-tangible form that is remembered by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not be obligated to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to the Receiving Party a license under the Disclosing Party’s copyrights or patents.

**Section 6. Return of Materials.** Upon termination or expiration of this Agreement, or upon written request of either Party, each Receiving Party will promptly return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party’s Confidential Information and all copies thereof. Notwithstanding the foregoing, Receiving Party may maintain archival copies of the Confidential Information provided that such copies are maintained under strict security by Receiving Party and shall remain subject to the provisions of this Agreement notwithstanding termination or expiration of the Agreement for so long as Receiving Party retains the archival copies.

**Section 7. Survival of Terms**. The obligations of this Agreement shall terminate with respect to any particular portion of a party's Confidential Information:

1. if either party can show that the Confidential Information received from the other is or has become generally available to the public through no violation of the terms of this Agreement;
2. if such Confidential Information is in a written record in one party's files prior to receipt from the other party;
3. if either party at any time lawfully obtains such Confidential Information in writing from a third party under circumstances permitting its disclosure; or
4. if such Confidential Information is disclosed with the prior written consent of the party to whom such Confidential Information belongs, provided that any disclosure complies in all respects with the terms of such written consent.

Otherwise, the obligations of this Agreement with respect to either party's Confidential Information shall terminate five years after the date this Agreement is executed by the parties.

**Section 8. Extent of Agreement**.

1. This Agreement shall govern all communications between the Parties that are made from the date of execution of this Agreement to the date of termination of this Agreement.
2. This Agreement is not an agreement by either party to enter into any business relationship with the other or to procure any product or service from the other. Any agreement for such business relationship, purchase of other procurement shall be at the discretion of the parties and shall be evidenced by separate written agreements executed by the parties.
3. Nothing in this agreement shall prohibit or limit either party's use of information (including but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without obligation of confidence, (ii) independently developed by it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement.

**Section 9. Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of Sri Lanka.

**Section 10. Injunctive Relief**. The parties agree that in the event of any violation or threatened violation of this Agreement, the injured party shall be authorized and entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising from such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies at law or in equity to which the injured party may be entitled.

**Section 11. Valid Agreement**. Both parties acknowledge that this Agreement is valid and legally binding, that it has been executed by an authorized representative, and each party confirms and ratified the terms and conditions herein.

**Valid only upon both parties executing and delivering by fax or mail to the other party of the first party’s execution and delivery.**

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| **University of Moratuwa** | **Company / Individual** |
| **By:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **By:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Name:** | **Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Title: Vice-Chancellor** | **Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Tel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Tel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |