

**CONFIDENTIALITY-CUM-NON-COMPETE AGREEMENT**

THIS CONFIDENTIALITY-CUM-NON-COMPETE AGREEMENT ('Agreement'), effective as of -/--/----('effective date'), is entered into BY AND BETWEEN:

BHARAT ELECTRONICS LIMITED (BEL), a Company incorporated under the Indian Companies Act, having its Registered Office at Outer Ring Road, Nagavara, Bangalore – 560045, India (hereinafter referred to as '**BEL**' or '**Disclosing Party**', which expression shall unless it be repugnant to the context or meaning thereof, mean and include its successors in office and assigns) of the ONE PART

**AND**

Shri/Smt/Kum.-----, former ----- (-----)/-----, Bharat Electronics Limited, Bangalore, residing at -----, -----, -----, -----, -----, -----, -----State, India (hereinafter referred to as '**ADVISOR**' or '**Receiving Party**' of the SECOND PART;

'BEL' and 'ADVISOR' are also referred to individually as 'Party' and collectively as 'Parties' as per the context)

WHEREAS, BEL has engaged the ADVISOR to render guidance to \_\_\_\_\_ (insert the Scope of Work as per the Letter of Engagement) and also take up any assignment/(s) assigned by Director (\_\_\_\_) (hereinafter referred to as '**Purpose**').

WHEREAS, it was specifically agreed between the Parties that a separate confidentiality cum non-compete agreement would be executed between the Parties.

WHEREAS, in the course of availing the advisory services, BEL may disclose its business secrets, business plans, business processes, manufacturing technologies, details of BEL's business collaborations and partnerships and other very significant confidential information for enabling and eliciting advice from 'ADVISOR'.

WHEREAS, protection of such confidential information is indispensable for safeguarding the business interests of BEL.

WHEREAS, 'ADVISOR' may require accessing the confidential information of BEL and shall use the same only for the purpose intended.

WHEREAS, any disclosure of BEL confidential information to third parties shall cause irreparable loss and damage to BEL and BEL requires absolute integrity and confidentiality of the Information acquired by 'ADVISOR' during the course of discharge of responsibilities for the said Purpose.

WHEREAS, 'ADVISOR' has understood this fact that the information acquired by such ADVISOR during the course of the said Purpose is completely confidential and inviolable and is not amenable to disclosure in any form or mode to any third party (ies) except as defined in this Agreement.

WHEREAS, the 'ADVISOR' desires to and agrees to maintain confidentiality of the aforesaid information.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants contained herein, the Parties of their own free will and volition and without any undue influence, coercion or the like hereby agree as follows:

#### **1.0 CONFIDENTIAL INFORMATION:**

'Confidential Information' for the purposes of this agreement shall comprise of all information, documents, data, materials and the BEL proprietary systems disclosed to, or accessed by, the 'ADVISOR' in connection with, or related to the Purpose in any form whether oral or written, or in any medium, including but not limited to any of the following:

- a) The engagement fees and other terms and conditions of engagement agreed upon with 'ADVISOR'.
- b) Information pertaining to any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of Disclosing Party, its affiliates, subsidiaries and affiliated companies;
- c) Details of various vendors and customers of Disclosing Party and the Products being supplied by or to such vendors and customers;
- d) Rates at which Products are being received or supplied and the quantity of such products.
- e) Any information, data, document or material concerning or related to BEL requirements, and all subsequent information, data, document or materials that may be provided to 'ADVISOR' from time to time;
- f) The documents (including all attachments) relating to specific areas of engagement, their content, and all supporting data, materials and all other information provided to 'ADVISOR' in any form or medium;
- g) Any information the 'ADVISOR' has access to during the engagement regarding BEL's finance, pricing, information technology, engineering, manufacturing, purchasing activities, manufacturing lines, manufacturing facilities, technical collaborators, manufacturing capacity and capabilities, human resource position, intellectual property rights, manufacturing

processes, stock positions, projects in progress, projects in pipe-line, projects being considered, new launch of products and services, sources of supply of raw materials and services, customers and potential customers, agents etc.;

- h) Any and all other information, data or materials that 'ADVISOR' receives access to or obtains in connection with onsite visits, meetings or in any other forms of communication whether oral or written with BEL personnel and collaborators, during presentations made to 'ADVISOR', OEMs/Technology Partners / Business Partners / other potential Partners of BEL
- i) Any and all other information, data or materials learned or acquired by 'ADVISOR' through inspection of the BEL's property regarding the BEL's products, designs, business plans, strategies and/or processes in relation to business opportunities, procurement, supply, sales, marketing plans, technical plans, architecture, financial plans, research, development, know-how, customer lists, contacts, personnel, and/or third-party confidential information disclosed to 'ADVISOR' by BEL; and
- j) Process Information in the form of 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 Disclosing Party may own or be associated with such as manufacturing information, procurement specifications, quality control specifications, inspection and test protocol inclusive of other data that Disclosing Party has ownership of/retains and is available and being used by Disclosing Party with reference to its business/Products/ R&D Efforts and general and specific information not limited to processes, machines, manufactures, composition of matter and software (whether in object, source or executable code) documentation.
- k) All the working papers and reports generated by the 'ADVISOR' including interim reports pursuant to the Purpose.
- l) Confidential information shall be deemed to include any and all information of any form developed or obtained by the Receiving Party in performance of work assigned and during the course of its execution.

## **2.0 CONFIDENTIALITY OBLIGATIONS:**

2.1 This Agreement is intended to ensure the safety and security of the Confidential Information shared with 'ADVISOR'. By signing this Agreement, the ADVISOR/Receiving Party is unequivocally agreeing that it will keep all Confidential Information (as defined above) in strict confidence and only use the Confidential Information for the Purpose. The Confidentiality Obligations assumed by ADVISOR under this Agreement shall be in addition to and not in derogation of the confidentiality obligations if any, which survive the superannuation/resignation/termination/discharge or any other mode of cessation of services of the ADVISOR from the services of its previous Employment/Engagement. The Receiving Party

hereby agrees to consider and treat as strictly confidential, during the term of this Agreement, the Confidential Information of the Disclosing Party. This paragraph shall survive any termination of this Agreement and shall bind Receiving Party, its representatives, successors, heirs and assigns.

The Receiving Party agrees in particular:

- i. not to publish in any manner or otherwise, disclose to any third party any Confidential Information or part of it, and to treat all Confidential Information at least with the same degree of care as it applies to its own Proprietary/Confidential Information against public disclosure but in no case any less degree than reasonable care;
- ii. not to use Confidential Information, even partially, for the benefit of any third party or for its own account except for the intended Purpose;
- iii. not to decompile, disassemble, decode, reproduce, redesign, reverse engineer or manufacture any confidential information, code, process, products or equipment provided by the Disclosing Party or any part thereof; and
- iv. not to make any copies of the Disclosing Party's Proprietary/Confidential Information, or translation or transfer of the same to other documents or media except those which are indispensably required in pursuit of Purpose, and shall ensure that all such copies, transfers shall be permanently deleted, destroyed once the requirement or Purpose is fulfilled.

2.2 Receiving Party shall not disclose to the public or to any third party (ies) –

- i. the fact that the engagement/ assignment described in the recitals above is taking place between them, or
- ii. the fact that Confidential Information has been made available to him/her or that he/she has inspected any portion of the Confidential Information, or
- iii. Name, geographical or business segment of operation, area of technology etc. of the OEMs / Technology Partners / Business Partners / other potential Partners of BEL and details of any agreement/MoU and the terms and conditions thereof, that may be executed by Disclosing Party with any of the OEMs/Technology Partners / Business Partners / other potential Partners of BEL pursuant to the Purpose, without the prior written consent of the Disclosing Party.

2.3 Where any disclosure is required to be made pursuant to any requirement of Law or Authoritative Order from a Competent Authority, the Receiving Party shall prior to such disclosure of any information, notify the Disclosing Party the reason(s) and proposed content of such disclosure and shall obtain written consent thereon. Furthermore, such notice shall be given sufficiently in advance to the Disclosing Party so as to enable the Disclosing Party to take all reasonable and necessary legal steps to prevent the disclosure of such information or minimize the extent of such disclosure.

2.4 Strict Compliance with provisions of Official Secrets Act, 1923:

In the course of execution of Contract, 'ADVISOR' is bound to visit Units of BEL which are "prohibited places" as defined in "Official Secrets Act, 1923". The 'ADVISOR' shall be duty bound to comply with the provisions of Official Secrets Act, 1923 in the course of performing the role of 'ADVISOR'.

### **3.0 EXCEPTIONS:**

The obligations set forth in Article 2 of this agreement shall not apply to Confidential information which:

- a) is in the public domain at the time of its disclosure by the Disclosing Party or thereafter falls into public domain without any breach of this Agreement (and, in that case, only from the date on which it fell into the public domain)
- b) was known by the Receiving Party prior to its disclosure by the Disclosing Party, provided that the Receiving Party gives proper evidence of such prior knowledge. To avoid any confusion this includes the information known or acquired by Receiving Party during his/her active Service with BEL prior to his/her engagement as 'ADVISOR' or
- c) has been rightfully obtained by the Receiving Party from a third party without any breach of a confidentiality obligation towards the Disclosing Party; or
- d) has been independently discovered or developed by the Receiving Party without using Confidential Information, so long as such independent discovery or development can be documented and verified.
- e) is required to be disclosed as per any law in force in India or under order of any competent court.

Confidential Information shall not be deemed to be or fall within exceptions (i) to (v) merely because it is embraced by more general information in the public domain or by more general information thereafter acquired or developed by the Receiving Party. In addition, any combination of features/items/information/data shall not be deemed to be within the foregoing exceptions merely because individual features/items/information/data are in the public domain or in the possession of the Receiving Party.

### **4.0 RETURN OF DOCUMENTS**

Upon the termination of this Agreement, or at the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all documents including but not limited to copies, abstract, extracts, samples, notes or modules embodying Confidential Information of the Disclosing Party, or, at the option and direction of the Disclosing Party, destroy all copies of the Disclosing Party's Confidential Information and certify in writing that such copies have been duly destroyed or where such information is stored in any of the digital storage media, delete it from such storage media irretrievably. Until that date, the Receiving Party shall keep such documents in a place permitting both their secrecy and their rapid recovery.

The return of documentation or its destruction shall not be deemed to release the Receiving Party from its obligations contained in Clause 2 above.

## **5.0 NO OTHER RIGHTS OR OBLIGATIONS**

5.1 Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information.

5.2 Nothing in this Agreement shall be construed as granting or conferring to Receiving Party rights by license or otherwise in the Confidential Information, except as expressly provided herein.

5.3 Nothing in this Agreement shall be construed as –

- a) Obliging Disclosing Party to disclose any information which it does not wish to disclose, or
- b) Obliging Disclosing Party to accept any proposal recommended by ‘ADVISOR’ or follow any advice imparted in advisory role.

5.4 All the confidentiality/ proprietary markings in the nature of logos, engineering templates, part numbers, symbols etc. provided on the original copies provided by Disclosing Party shall not be removed or altered or obliterated and shall remain unaltered on any copies made by the Receiving Party in accordance with this Agreement. The Receiving Party shall not add or emboss its own or any other any mark, which shall alter the confidential/proprietary rights of the Disclosing Party.

5.5 All Confidential Information, and any Derivative of it, whether created by BEL or ‘ADVISOR’, remains the property of BEL and no license or other rights to Confidential Information is granted to ‘ADVISOR’. For the purpose of this Agreement, “Derivative” means:

- for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted,
- for patentable or patented material, any improvement or enhancement of it; and
- for material which is protected by trade secret, any new material derived from existing trade secret material, including new material which may be protected by any copyright, patent or trade secret.

5.6 Confidential information shall be deemed to include any and all information of any form generated or obtained by the Receiving Party in performance of its work and shall be considered the property of BEL and shall be used exclusively for the purposes intended by BEL.

**6.0 ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". BEL MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE, OR PERFORMANCE.**

## 7.0 NON-COMPETITION:

7.1 ADVISOR undertakes to BEL that he/she shall not, and shall ensure that none of his/her representatives, successors, heirs and assigns shall, either on his/her own account or in association with others engage or participate directly or indirectly, whether as shareholder, director, partner, proprietor, member, agent, distributor, employee or otherwise, within India or outside India, during the period of his/her engagement in whatever capacity with BEL and for a further period of 1 (One) Year from the date of ceasing to be in such engagement, for whatever reasons:

- a) In any business which, involves, relates to or competes with BEL's Business;
- b) Establish, develop, carry on or assist in carrying on or be engaged, concerned, interested or employed in any business enterprise or venture, competing with BEL's Business;
- c) solicit, canvas or entice away (or Endeavour to solicit, canvass or entice away) from BEL's Business, or from any Affiliate of BEL, any person, firm or company who was at any time during the period of one year immediately preceding the date of cessation of engagement, a client of BEL's Business, for the purpose of offering to such client or customer, goods or services similar to or competing with those of BEL's Business;
- d) solicit, canvass or entice away (or endeavor to solicit, canvass or entice away) any of the employees including the senior employees and/or technical or sales and marketing staff from BEL or from any of its Affiliates, for the purpose of employment in an enterprise or venture competing with BEL's Business, whether or not such person would commit a breach of contract by reason of leaving service with BEL;
- e) solicit, canvass, or entice away (or endeavor to solicit canvass or entice away) any supplier of BEL or of any of its Affiliates or use its knowledge of or influence over any such supplier to or for its benefit or for the benefit of any other person carrying on business competing with BEL's business or with any business of BEL's Affiliates;
- f) act as an advisor, consultant, trustee or agent for any third person who is engaged or proposes to start any business which directly or indirectly relates to BEL's business or promote, start, engage in or do any business that directly or indirectly relates to BEL's Business;
- g) Establish after the execution hereof at any future point of time any business or trade under a name that is identical or similar to ' \_\_\_\_\_ ' or which in any way suggests any connection with ' \_\_\_\_\_ ' without written consent of BEL. For the purposes of clarification, it is agreed by the Parties that the obligation, not to use a name which is identical or similar to ' \_\_\_\_\_ ' shall not be limited to the term / period referred to in Section 7.1 above, in which case this restraint will have effect for an indefinite period.

7.2. Each of the above covenants shall be construed as a separate covenant and if one or more of the covenants is held to be unlawful, the remaining covenants shall continue to bind the ADVISOR and his/her representatives, successors, heirs and assigns.

7.3 It is expressly agreed by the Parties hereto that BEL's obligations under this Agreement shall include that ADVISOR shall not directly or indirectly in any manner whatsoever undertake any competing Business through his/her relatives. However, this clause shall not be read and

understood to constitute a bar on a relative of the ADVISOR acting purely in the capacity of an employee for a competing business. ADVISOR shall promptly inform BEL as and when he/she has knowledge of the fact that any of his Relatives are undertaking or propose to undertake any competing Business. The term 'Relative' for this purpose would mean spouse whether residing with ADVISOR or not, but include a spouse separated from the ADVISOR by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon ADVISOR, but does not include a child or step child who is no longer in any way dependent upon ADVISOR or of whose custody the ADVISOR has been deprived of by or under any law; any other person related, whether by blood or marriage, to the ADVISOR or ADVISOR's wife or husband and wholly dependent upon ADVISOR.

7.4 For the purpose of this Section, the expression 'competing with the BEL's Business or Competing Business' shall be deemed to include the following.

- a) setting up, promoting or investing in a business, venture, activity or company which entails or proposes to compete against the business of BEL by inter alia offering same or similar Service as are offered or proposed to be offered by BEL and/or its Affiliate.
- b) entering into any agreement or arrangement, with any third party which results or is likely to result in making available same or similar services as are offered or proposed to be offered by BEL and/or its Affiliate;
- c) entering into any agreement with any third party for the transfer of business knowledge or information to any third party so as to offer the third party an opportunity to compete with the Service and business of BEL by inter alia offering same or similar Service as are offered or proposed to be offered by BEL and/or its Affiliate.

## **8.0 ASSIGNMENT NOT ALLOWED**

Receiving Party shall not assign any of its rights or obligations hereunder without the prior written consent of the other party.

## **9.0 NO WAIVER OF RIGHT ON DELAY**

No delay or omission by Disclosing Party in exercising any rights under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by Disclosing Party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

## **10.0 TERM AND TERMINATION**

10.1 This agreement shall be in force till terminated expressly in writing by the Parties concerned.

10.2 This Agreement shall come into effect from the effective date first above written and shall be effective and in force between the parties for a period of one (1) year or any further extended period mutually agreed, unless terminated earlier by BEL by providing thirty (30) days' notice



to the Receiving Party. The confidentiality obligations as provided in Clause 2 shall survive such termination for a period of five (5) years. Whereas, the Non-Compete obligations of the ADVISOR are effective during the tenure of his/her engagement in whatever capacity with BEL and for a further period of 1 (One) Year from the date of ceasing to be in such engagement.

Notwithstanding the foregoing, in the event of initiation of Legal Proceedings/Investigations against the 'ADVISOR' by any Government Authority or Agency or in case of breach of any provisions of this Agreement by Receiving Party, BEL is vested with the option to terminate the Agreement without any notice.

## **11.0 PUBLICATIONS**

Receiving Party shall not make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents/provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement, without the prior written approval of BEL.

## **12.0 DISPUTE RESOLUTION**

This Agreement shall be construed and interpreted in accordance with the Laws of India and all disputes arising between the Parties hereto out of or in connection with this agreement shall be amicably settled between the Parties. Where the Parties hereto fail to settle the disputes amicably, within ninety (90) days of the written notice of its existence given by either Party to the other, then such dispute shall be settled by arbitration in accordance with the rules of Arbitration of the International Centre for Alternate Dispute Resolution (ICADR), New Delhi, and the award made in pursuance thereof shall be final and binding on the Parties. The arbitration proceedings shall take place in Bangalore and be conducted in the English Language. The Arbitration proceedings will be administered by the ICADR. The award may be entered into a court of competent jurisdiction for its execution forthwith.

## **13.0 REMEDIES FOR BREACH AND INJUNCTION**

The Parties acknowledge and agree that the Confidential Information and rights related thereto being protected by BEL hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which may not be adequately or reasonably compensated for in damages in an action at law, and further agree that the breach by 'ADVISOR' of any of the provisions of this Agreement shall cause the Disclosing Party irreparable injury and damage. In such event, the Disclosing Party shall be entitled, as a matter of right, without further notice, to require of the Receiving Party specific performance of all of the acts and undertakings required of such Receiving Party and to obtain injunctive and other equitable relief to prevent the violation or threatened violation of any of the provisions of this Agreement by Receiving Party. Neither this provision nor any exercise by Disclosing Party of

its rights to equitable relief or specific performance herein granted shall constitute a waiver by Disclosing Party of any other rights like right to claim damages, which it may have.

#### **14.0 COMPLETE AGREEMENT**

The Parties agree that this Agreement –

- is the complete and exclusive statement between the Parties with respect to the protection of the confidentiality of Confidential Information,
- supersedes all related discussions and other communications between the Parties, and
- may only be modified in writing by authorized representatives of the Parties.

If any provision of this Agreement is declared void, or otherwise unenforceable, to any extent, the Parties shall endeavor in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such provision shall be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect.

#### **15.0 SEVERABILITY**

Should any or one or several of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unaffected thereby. The Parties agree to replace such invalid, illegal, or unenforceable provision or stipulation with a legally and an effective provision whose effect is as similar as possible to the original provision, and the Parties agree that this new provision shall be deemed to have been agreed upon from the time when the original provision became invalid.

#### **16.0 AMENDMENTS**

Any amendments of, and supplements to this Agreement, if any, will be made in writing and acknowledged by the signature of a duly authorized representative of each Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives to come into effect from the effective date first above mentioned.

**‘ADVISOR’:**

**For and on behalf of:**

**BHARAT ELECTRONICS LIMITED**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_