

Non-Disclosure Agreement

MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement made and entered into on this day of2020 (Effective Date”) by and between

The Open University of Sri Lanka, a university established under the universities Act No. 16 of 1978 and having its main address at No.21,Nawala, Nugegoda, Sri Lanka (Hereinafter referred to as “the OUSL” which term shall mean and include the said Open University of Sri Lanka its successors and assigns)

AND

ABC Pvt Ltd, a company duly incorporated under the laws of Sri Lanka bearing Company Registration Number

..... and having its registered office at Sri Lanka (hereinafter referred to as “ABC” which term shall as herein used where the context so requires mean and include the said ABC Pvt Ltd, its subsidiaries, affiliates, successors and permitted assigns)

(Hereinafter individually referred to as the “Party” and collectively referred to as the “Parties”).

WHEREAS, both OUSL and ABC acknowledge that they will each be given access to and obtain knowledge of Confidential Information (as defined below) owned by the other and/or its subsidiaries and affiliates (as may be applicable), through discussions, including meetings, visits, correspondence, presentations and exchange of any related material from time to time for the purpose of assessing the desirability or viability of furthering the business relationship or contractual relationship between the Parties.

WHEREAS in consideration of the mutual disclosure of Confidential Information, OUSL and ABC agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Confidential Information**” means technical, customer, supplier, personnel, financial, commercial and or business information, data any other information or knowledge communicated at any time before or after the date of this Agreement, including information of a proprietary, private or confidential nature in written, graphical, oral or otherwise tangible or intangible form whether communicated in writing, orally, graphically or by inspections, relating directly or indirectly to the business or affairs of OUSL, on the one hand or the OUSL on the other hand. Confidential Information shall include, without limitation, any information or knowledge pertaining to (i) business plans or concepts, business strategies, products, packaging, formulae,

specifications, designs, procedures, processes, schematics, models or samples; (ii) retail store operations; (iii) merchandising, advertising, distribution or sales plans, processes, methods or figures; (iv) customer, employee or supplier information; or (v) any financial information; (vi) records, data, databases, computer and software programs, systems, projects, proposals, notes, reports, drawings, materials, product , compounds and compositions; (vii) trademarks, trade names, intellectual property, patents, inventions, know how, trade secrets; and (viii) such other information relating to the business of OUSL, the ABCI, Affiliates and any information ascertained by the inspection, evaluation and tests or analysis of samples.

“Affiliates” shall mean any one or more business entities which, directly or indirectly, are controlling, controlled by, or under common control (“Affiliates”). Control shall mean the ownership of 33% or more of the share capital of a company or having management control of a company

“Disclosing Party” means the party disclosing the Confidential Information. For the purpose of this Agreement OUSL and ABC shall be both the “Disclosing Party” and the “Receiving Party”.

“Receiving Party” means the party receiving the Confidential Information.

2. USE, DISCLOSURE AND REPRODUCTION

2.1 The Receiving Party acknowledges and agrees:

2.1.1 That all Confidential Information acquired by the Receiving Party from the Disclosing Party shall be and shall remain the exclusive property of the Disclosing Party.

2.1.2 To receive in confidence any Confidential Information and apply security and disclosure standards in relation to the Confidential Information which are the same as the standards that it applies to its own most commercially sensitive Confidential Information, but not less than reasonable care and to limit access to such Confidential Information to authorized employees, and agents (that are bound by confidentiality with the Receiving Party) on a need to know basis in order for the Parties to participate in the Purpose described above and not to disclose such Confidential Information to others [including consultants, advisors and other entities and persons who are not full time, regular employees of the Receiving Party or authorise anyone else to discuss such Confidential Information with others without the prior written approval of the Disclosing Party. The Receiving Party shall obtain written undertakings to whom Confidential Information is disclosed, maintains the confidentiality of such Confidential Information notwithstanding termination or expiration of the term of employment, consultancy, advisory services or any other relationship including but not limited to that of authorized agency/distributorship or that as the principal of the Receiving Party pursuant to which same was received.

- 2.1.3 To use such Confidential Information only for the purpose of work services or analysis related to the matter of mutual interest described above.
- 2.1.4 Notwithstanding the term hereof to treat all confidential information as confidential as provided herein.
- 2.1.5 The disclosure of Confidential Information or the execution of this Agreement shall not be construed as a right to license, to make, use or sell any Confidential Information, intellectual property, patents or products derived from the Disclosing Party.
- 2.1.6 To return promptly to the Disclosing Party, or to destroy any copies of such Confidential Information in written, graphic or other tangible form at the Disclosing Party's request.
- 2.1.7 Neither the Receiving Party nor its Affiliates, associate and/ or its holding company and all its officers, employees, representatives, consultants or professional advisers shall by any means re-engineer, modify, copy or part with possession of the whole or any part of the Confidential Information.
- 2.1.8 To keep all materials containing Confidential Information in a safe and secure place and return them to the Disclosing Party immediately on determination of this Agreement and/or the discussions in relation to the Purpose and/or on the Disclosing Party's prior request or to destroy any copies of such Confidential Information in written, graphic or other tangible form.
- 2.1.9 That its employees, agents, representatives, consultants shall at all times maintain confidentiality of the Confidential Information of the Disclosing Party at all times. In the event that such employees, agents, representatives, consultants are no longer in the employment/ service of the Receiving Party, the Receiving Party shall ensure that such employees, agents, representative and consultant maintains the Confidential Information contained herein and shall not use/ disclose such Confidential Information for the benefit of itself or any third party.
- 2.1.10 To authorize only such employees who have seen and understood this Non-Disclosure Agreement to enter the premises of the Disclosing Party.
- 2.1.11 To instruct and permit the employees mentioned in 2.1.10. to provide a declaration of confidentiality, on entrance to the premises of the Disclosing Party.

2.2 The following obligations do not apply to Confidential Information which:

- 2.2.1 As shown by reasonably documented proof, was in the Receiving Party's possession prior to receipt thereof from the disclosure; or
- 2.2.2 As shown by reasonably documented proof, was received by the Receiving Party in good faith from a third party not subject to a confidential obligation to the Disclosing Party; or

- 2.2.3 Now is or later becomes publicly known through no breach of confidential obligation by the Receiving Party; or
- 2.2.4 Is disclosed pursuant to a requirement imposed by a government agency or is otherwise required to be disclosed by operation of law, except that prior to any disclosure pursuant to this subsection, the Receiving Party shall notify the Disclosing Party and shall give the Disclosing Party an opportunity to participate in objecting to production of the Confidential Information; or
- 2.2.5 Was developed by the Receiving Party prior to having access to any of the Confidential Information received from the Disclosing Party; or
- 2.2.6 Is authorized in writing by the Disclosing Party to be released or is designated in writing by Disclosing Party as no longer being confidential or proprietary.
- 2.2.7 Nothing contained in this Agreement shall act to prevent either party from concurrently or otherwise discussing or planning similar endeavours with any party other than the other party. Neither party shall discuss nor disclose in writing or by any other means to any third party, any information knowingly allusive to any Confidential Information.
- 2.2.8 Neither this Agreement nor provision of Confidential Information pursuant to it shall be construed as an agreement, commitment, promise or representation by either party to do business with the other or to do anything except as set out specifically in this Agreement.

3. BREACH

- a. In the event of a breach of a term of this agreement by such employees, agents, representative, and/or consultants, the Receiving Party shall fully indemnify the Disclosing Party and pay damages for all loss suffered irrespective of whether such loss was directly or indirectly due to the employees, agents, representative and/or consultant breach.
- b. It is agreed that a violation of any of the provisions of this Agreement by the Receiving Party will cause irreparable harm and injury to the Disclosing Party and that Disclosing Party shall be entitled to pursue, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the Receiving Party from doing or continuing to do any such act and any other violations or anticipatory violations of this Agreement.

4. NON COMPETITION CLAUSE

The Parties agree that during the term of this Agreement and the expiry of this Agreement, the Parties shall not either directly or indirectly attempt to register or use the Disclosing Party's Confidential Information or any intellectual property including any patent, copyright and industrial

design or etc. or technology in whole or in part without the prior written consent of the Disclosing Party.

5. GOVERNING LAW

This Agreement shall be construed in accordance with the substantive Laws of Sri Lanka

6. ENTIRE AGREEMENT/MODIFICATIONS

This Agreement contains the entire understanding between the Parties with respect to nondisclosure of Confidential Information pertaining to the matter of mutual interest stated above and supersedes all prior agreements and understanding with respect to this subject. This Agreement may be amended only by written agreement executed by both Parties. This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. This Agreement shall be binding on successors and permitted assigns of the Parties.

7. CONFIDENTIALITY PERIOD / TERMINATION

Unless terminated earlier in writing by mutual agreement, this Agreement shall remain in force for a period of three (3) years from the date hereof. The Termination or the prior determination of this Agreement shall however not affect the obligations of Confidentiality agreed to by the Participant in terms hereof and such obligation shall continue without a point in time notwithstanding the termination hereof.

8. DISPUTE RESOLUTION

Any dispute or difference of whatever nature arising between the parties hereto shall be first settled by mutual negotiations and each of the parties submit to the exclusive jurisdiction of the courts of Sri Lanka as regard to any claim or matter arising under this Agreement.

9. WARRANTY

ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS". The Disclosing Party makes no representation, warranty or guarantee whatsoever about the Confidential Information. The Parties hereto warrant to each other that their authorized signatories are entitled

to sign on their behalf and the rights and obligations of each of the Parties hereto shall be legally valid and binding and enforceable on them.

10. COUNTERPARTS

This Agreement shall be signed in two counter parts each of which together will be deemed to be an original and both of which will constitute one and the same document. Signing of this Agreement and transmission by facsimile document transfer will be acceptable and binding upon the Parties hereto and the duly executed original copy shall be returned within fifteen (15) days of faxing this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have placed their hands hereunto as of the date mentioned above.

The common seal of OUSL is affixed in the presence of
(Vice Chancellor) and (Registrar) who do hereby attest the sealing hereof

1..... 2.....

Witnesses:

- 1.
- 2.

The common seal of the ABC (Pvt)Ltd is affixed in the presence
of..... (Designation) and (Designation) who do hereby attest the
sealing hereof Witnesses

1..... 2.....

Witnesses:

- 1.
- 2.