

**MUTUAL CONFIDENTIALITY AGREEMENT
(NON-DISCLOSURE AGREEMENT)**

This Agreement is made and entered into on this [Effective Date] by and between

[Company Name] a company duly incorporated under the laws of Sri Lanka bearing Company Number, [Company Number] and having its registered office at [address], Sri Lanka (hereinafter referred to as “[Company Abbreviation]” which term shall as herein used where the context so requires mean and include the said [Company Name], its subsidiaries, affiliates, successors and permitted assigns) of the first part

AND

UNIVERSITY OF PERADENIYA established and governed under the Universities Act No. 16 of 1978 and Universities (Amendment) Act No. 5 of 1985, and having its registered office at Galaha Road, Peradeniya (hereinafter referred to as “**UoP**” which term or expression herein used shall where the context so requires or admits mean and include the said University of Peradeniya its successors and permitted assigns) of the **second part**

(each of the parties referred to above shall hereinafter individually be referred to as the “**Party**” and collectively referred to as the “**Parties**”).

WHEREAS, both [Company abbreviation] and the UoP 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 *inter alia*, discussions, 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] (“**Purpose**”)

WHEREAS in consideration of the mutual disclosure of Confidential Information, [Company abbreviation] and the UoP 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 [Company abbreviation] or its Affiliates, on the one hand or the UoP 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 [Company abbreviation], the UoP, 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 51% 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..

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

“Permitted Purpose” means [_____]

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 Permitted Purpose and not to disclose such Confidential Information to third parties (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 third parties without the prior written approval of the Disclosing Party. The Receiving Party shall obtain written undertakings to whom Confidential Information is disclosed requiring maintenance of 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 as the principal of the Receiving Party pursuant to which same was received;

- 2.1.3. to use such Confidential Information only for the Permitted Purpose;
- 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 to the Receiving Party 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, professional advisers or agents 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 Permitted Purpose;
- 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 agreed in writing to maintain the Confidential Information in terms of this Non-Disclosure Agreement to enter the premises of the Disclosing Party;

2.1.11. that it shall treat, and shall cause its directors, officers, employees, advisors auditors and agents to also treat such information as strictly confidential and to not divulge or disclose (directly or indirectly) such information to any other person or entity, except when:

(a) such disclosure is required by law or government authority or by any order of any administrative or judicial authority which, (i) is final and subject to no appeal or (ii) although not final, is executory pending any appeal, in which case prior notice of such disclosure shall be given to the other Party, and the Party that is required to make such disclosure shall consult with and agree on the form and contents of such disclosure with the other Party, to the extent lawfully permitted;

(b) the Disclosing Party has given its prior written approval.

2.2. Nothing contained in this Agreement shall act to prevent either party hereto from concurrently or otherwise discussing or planning similar endeavours with any third party Provided, neither party hereto shall discuss nor disclose in writing or by any other means to any third party, Confidential Information or any information knowingly allusive to any Confidential Information.

2.3. 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 or in any other agreement executed by the parties hereto in writing.

3. BREACH

3.1. In the event of a breach of a term of this agreement by the Receiving Party, its employees, agents, representative, and/or consultants, the Receiving Party shall fully indemnify the Disclosing Party as morefully set out in this agreement.

- 3.2. 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, 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 upon the expiry of this Agreement, the Parties shall not either directly or indirectly attempt to register or use in any manner whatsoever, the Disclosing Party's Confidential Information including but not limited to any intellectual property including any patent, copyright, industrial design, trade secret, know-how or technology in whole or in part without the prior written consent of the Disclosing Party.

5. INDEMNITY

Notwithstanding any other provision in this Agreement, the Receiving Party shall at all times keep the Disclosing Party freed and indemnified of any and all claims whatsoever that may be made against the Disclosing Party by any person whomsoever in respect of or arising from or in connection with or relating to a breach of this NDA by the Receiving Party or its representatives and the Receiving Party shall bear all expenses of litigation and other expenses of the Disclosing Party in any action, suit, or proceeding that may be brought by any such person against the Disclosing Party whether jointly with the Receiving Party or otherwise, and the Receiving Party shall meet any judgment, decree, order or award made against the Disclosing Party by such court, tribunal, forum, person or body.

6. ENTIRE AGREEMENT/MODIFICATIONS/ASSIGNMENT

This Agreement contains the entire understanding between the Parties with respect to nondisclosure of Confidential Information 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.

7. CONFIDENTIALITY PERIOD / TERMINATION

Unless terminated earlier in writing by mutual agreement, this Agreement shall remain in force for a period of [five (5) 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 parties hereto in terms hereof and such obligation shall continue without a point in time notwithstanding the termination hereof.

8. ARBITRATION AND GOVERNING LAW

In the event of any doubt, difference, dispute, controversy or claim arising from, out of or in connection with this Agreement, or on the interpretation thereof or on the rights, duties, obligation, or liabilities of any Party or on the operation, breach, termination or invalidity thereof (“Dispute”), such Dispute shall firstly be discussed among the Parties in a spirit of mutual co-operation.

If a Dispute is not settled mutually by the Parties as aforesaid, within two weeks of such Dispute being raised by a Party, it shall be settled by arbitration in terms of the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”). The Arbitral Tribunal shall be composed of three arbitrators. The claimant shall appoint one arbitrator and the respondent shall appoint the other arbitrator. The third arbitrator shall be appointed by the aforesaid two arbitrators. The chairperson of the arbitral tribunal shall be a resident of a country other than Sri Lanka or [_____]. The seat of arbitration shall be Singapore and the language of arbitration shall be English.

provided however, a Party requiring immediate relief from courts prior to the commencement of arbitration proceedings, to prevent or safeguard against all irreparable loss or harm, may apply to and obtain from court, injunctive relief by way of an enjoining order, injunctions, writs, or similar orders and the other Party shall not object to such court exercising jurisdiction in respect of such matters.

[This NDA shall be governed by the laws of Sri Lanka.]

9. WARRANTIES AND REPRESENTATIONS

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 represent to each other that their authorised 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 may be signed in two counterparts each of which together shall be deemed to be an original and both of which shall constitute one and the same document.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have placed their hands hereunto and to one other of the same tenor as of the date mentioned above.

Signed by)
a director of [_____])
on this day of, 202.., at)

in the presence of)

Witnesses:

1. Name:
Address:
NIC/Passport No.:
Signature:

2. Name:
Address:
NIC/Passport No.:
Signature:

The common seal of XXX UoP is affixed in the presence of **Prof./Dr./Mr/Mrs. (Designation)** and **Prof. /Mr/Mrs. (Designation)** who do hereby attest the sealing hereof

Witnesses:

1. Name:
Address:
NIC/Passport No.:
Signature:

2. Name:
Address:
NIC/Passport No.:
Signature: