

NON – DISCLOSURE AGREEMENT

This Agreement is entered into on _____ (the 'Effective Date')

BETWEEN:

Avya Inventrax Private Limited. India, DBA Inventrax a SCM Operational Technology and Traceability solutions provider of **Planning, Execution** and **Control** software for manufacturing, distribution & logistics services, having its Corporate Office at, D.no- 50-94-14/3, 1st & 2nd Floor, Shanthi Puram, Visakhapatnam – 530016, AP, India, hereinafter referred to as **Inventrax**, which expression shall unless repugnant to the meaning and context mean and include its successors and permitted assigns(hereinafter referred to as "**Inventrax**").

AND

_____, residing/having registered office at _____, (hereinafter referred to as _____), which expression shall, unless it be repugnant to the context or the meaning thereof be deemed to mean and include his legal heirs, executors and administrator.

In this Agreement, unless the context otherwise requires, **Inventrax** and _____ shall hereinafter be jointly referred to as the ("**Parties**") and individually as the ("**Party**").

The Party disclosing the Confidential Information under this Agreement is also referred to as the "**Disclosing Party**" and the Party receiving the Confidential Information under this Agreement as the "**Receiving Party**".

Background:

- a. The Parties hereto desires to participate _____ activities (**the 'Purpose'**)
- b. During these discussions, Disclosing Party may share certain proprietary information with the Receiving Party. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.
- c. The Parties may, in these evaluations, discussions and negotiations, disclose to each other information that is technically and /or commercially confidential.
- d. The Parties have agreed that disclosure and use of such technical and/or commercial confidential information shall be made and, on the terms, and conditions of this Agreement.
- e. The Parties have agreed to protect the said confidential by signing this Non- Disclosure agreement.

1. Now it is agreed as follows:

- 1.1 **Definitions:** In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:
- 1.2 '**Disclosing Party**' means the Party disclosing Confidential Information to the other Party under this Agreement
- 1.3 '**Receiving Party**' means the Party receiving Confidential Information from the other party under this Agreement.
- 1.4 '**Confidential Information**' means any information, which shall include but is not limited to, design, development, integration, hardware fabrication & assembly drawings, know-how, processes, product, specifications, trade secrets, intellectual property, market opportunities, compilations, studies, documentation, analytics, summaries, abstract of any documentation prepared by the company, or business or financial affairs of the Parties or their customers, product samples, inventions, concepts and any other technical and/or commercial

information, prototypes, media disclosed directly or indirectly and in any form whatsoever (including, but not limited to, disclosure made in writing, oral or in the form of samples, models, computer programs, drawings, photographs, graphic recording or other instruments) furnished by the Disclosing Party to the Receiving Party under this Agreement

1.4.1 Such Confidential information shall also include but shall not be limited to:

- 1.4.1.1. Information disclosed by the Disclosing Party in writing marked as confidential at the time of disclosure;
- 1.4.1.2. Information disclosed by the Disclosed party orally which is slated to be confidential at the time of disclosure;
- 1.4.1.3. Information disclosed in any other manner is designated in writing as Confidential information at the time of disclosure; or
- 1.4.1.4. Notwithstanding sub-clauses 1.4.1.1, 1.4.1.2, 1.4.1.3 of this definition, any information whose nature makes it obvious that is confidential.

1.4.2. Such Confidential Information shall not include any information which:

- 1.4.2.1. is, at the time of disclosure, publicly known; or
- 1.4.2.2. becomes at a later date, publicly available otherwise than a wrongful act or negligence or breach of this Agreement of or by the Receiving Party; or
- 1.4.2.3. the Receiving Party can demonstrate by its written records was in its possession, or known to the Receiving Party, before receipt under this Agreement, and which was not previously acquired under an obligation of confidentiality; or
- 1.4.2.4. is legitimately obtained at any time by the Receiving Party from a third party without restrictions in respect of disclosure or use; or
- 1.4.2.5. the Receiving Party can demonstrate to the satisfaction of the Disclosing Party, has been developed independently of its obligations under this Agreement and without access to the Confidential Information.

1.5. **‘Purpose’** means the contractual relationship between the Parties in respect of the activities defined in clause (a) of the **Background** section

1.6. **‘Affiliate’** means any legal entity which, at the time of disclosure to it on any Confidential Information, is directly or indirectly controlling, controlled by or under common control with any of the Parties.

1.7. **‘Contemplated Agreement’** means any future legally binding Agreement between the Parties in respect of the Project envisaged under this Agreement.

2. Terms and Termination:

2.1 This Agreement shall become effective on the Effective Date. The Provisions of this Agreement shall however apply retroactively to any Confidential Information, which may have been disclosed in connection with discussion and negotiations regarding the proposed activities prior to the Effective Date.

2.2 The term of this Agreement is One [1] year commencing on the date set out above. The validity of this agreement can extend up to One [1] year from the last day of conclusion of the proposed activities as set out above in the **Background** section.

2.3 The rights and obligations of each Party with respect to all Confidential Information of the other Party that is received under this Agreement shall remain in effect for a period of two (2) years from the date of disclosure of Confidential Information.

2.4 If either party decides not to continue to be involved in the Purpose with the other party it

shall notify the other party in writing and this agreement will terminate with immediate effect. The obligations of each party shall continue for a period of Two [2] years from the termination of this agreement. Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

3. Non-Disclosure of Confidential Information:

- 3.1. In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party solely for the Purpose, the Receiving Party undertakes whether by itself, its successors and heirs, not to disclose Confidential Information to any third party, unless in accordance with Clause.
- 3.2. The Receiving party agrees that it shall use company's Confidential Information solely for the purposes of evaluating the opportunity and shall not reverse engineer; disassemble or decompile any prototypes, software or other tangible objects that embody company's Confidential information.
- 3.3. In addition to the undertaking in Clause 3.1, the Receiving Party shall be liable for:
 - 3.3.1. any loss, theft or other inadvertent disclosure of Confidential Information, and
 - 3.3.2. any unauthorized disclosure of Confidential Information by persons (including, but not limited to, present and former employees) or entities to whom the Receiving Party under this Agreement has the right to disclose Confidential Information, except where, the Receiving Party has used the same degree of care in safeguarding such Confidential Information as it uses for its own Confidential Information of like importance and in no event less than a reasonable degree of care; and upon becoming aware of such inadvertent or unauthorized disclosure the Receiving Party has promptly notified the Disclosing Party thereof and taken all reasonable measures to mitigate the effects of such disclosure and to prevent further disclosure.
- 3.4. The Receiving Party understands and agrees that:
 - 3.4.1. any information known only to a few people to whom it might be of commercial interest and not generally known to the public is not public knowledge;
 - 3.4.2. a combination of two or more parts of the Confidential Information is not public knowledge merely because each part is separately available to the public.
 - 3.4.3. not to contact any employees, customers, or suppliers of the other party or its affiliates with respect to any transaction or for the purpose of obtaining information for use in evaluating any transaction, without the other party's prior written consent.
 - 3.4.4. To ensure unless expressly permitted under this Agreement, no third party can obtain access to any Confidential Information.
- 3.5. The Receiving Party acknowledges the technical, commercial and strategic value of the Confidential Information to the Disclosing Party and understands that unauthorized disclosure of such Confidential Information will be injurious to the Disclosing Party.
- 3.6. The Receiving Party shall notify the Company immediately upon discovery of or where they have reason to believe any unauthorized use or disclosure of the Confidential Information or any other breach of this Agreement by any employee or third party has taken place, and the Receiving Party shall cooperate with the Company in every reasonable way to assist the Company in regaining the possession of the Confidential Information and preventing further unauthorized use of it.
- 3.7. The Receiving Party may disclose the Confidential Information only to the Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party shall have

executed or shall execute appropriate written agreements with third parties, in a form and manner sufficient to enable the Receiving Party to enforce all the provisions of this Agreement.

4. Permitted Disclosure of Confidential Information:

- 4.1 The Receiving Party may disclose in confidence Confidential Information to any of its Affiliates and employees, in which event the Affiliate and employee shall be entitled to use the Confidential Information but only to the same extent the Receiving Party is permitted to do so under this Agreement. The Receiving Party agrees that such Affiliates or employees are subject to confidentiality obligations no less restrictive than those of this Agreement.
- 4.2 The Receiving Party shall limit the dissemination of Confidential Information of its Affiliates and employees having a need to receive such information to carry out the Purpose.
- 4.3 The Receiving Party may disclose Confidential Information to its consultants, contractors, sub-contractors, agents or similar persons and entities having a need to receive such information to carry out the Purpose on the prior written consent of the Disclosing Party. In the event that the Disclosing Party gives such consents, the Receiving Party agrees that such individuals are subject to confidentiality obligations no less restrictive than those of this Agreement.
- 4.4 Notwithstanding Clause 3.1, the Receiving Party shall not be prevented from disclosing Confidential Information, where;
 - 4.4.1. Such disclosure is in response to a valid order of a court or any other governmental body having jurisdiction over this Agreement or
 - 4.4.2. Such disclosure is otherwise required by law, rule, regulation or legal process; provided however, that the Receiving Party, to the extent practicable, shall give prompt written notice of any such request for such information to the Disclosing Party, and agrees to co-operate with the Disclosing Party, at the Disclosing Party's expense, to the extent permissible and practicable, to challenge the request or limit the scope thereof, as the Disclosing Party may reasonably deem appropriate.

5. Copying and Return of Furnished Instruments:

- 5.1. The Receiving Party shall not be entitled to copy samples, models, computer programs, drawings, documents or other instruments furnished by the Disclosing Party hereunder and containing Confidential Information, unless and to the extent it is necessary for the Purpose.
- 5.2. All samples, models, computer programs, drawings, documents and other instruments furnished hereunder and containing Confidential Information shall remain the Disclosing Party's property.
- 5.3. At any time upon request from the Disclosing Party or upon the conclusion of the Purpose or termination/ expiry of this Agreement, the Receiving Party, at its own cost, will return or procure the return, promptly and in any event within 14 days of receipt of such request, of each and every copy of Confidential Information given by the Disclosing Party, and satisfy the Disclosing Party that it no longer holds any further Confidential Information. The Receiving Party shall certify to the Disclosing Party in writing that it has satisfied its obligations under this paragraph.

6. Non-Disclosure of Negotiation:

Except as provided in Clause 4, each Party agrees that it will not, without the other Party's prior written approval, disclose to any third party the fact that the Parties are discussing the Project. The Parties acknowledge that the provisions of this Agreement shall apply in respect of the

content of any such discussions.

7. Intellectual Property Rights:

- 7.1. All copyright, trademark, trade secret and other intellectual property rights and proprietary rights disclosed herein, in its totality, its contents and any related materials shall remain at all times the sole and exclusive property of the Disclosing Party and its licensors and the Receiving Party shall obtain no right thereto of any kind by reason of this Agreement.
- 7.2. The Receiving Party agrees not to file any design or patent applications claiming any information, developments, discoveries, technologies, inventions, designs and the like arising from the use of Confidential Information or that could not have been made, developed or discovered but for access to such Confidential information.

8. Future Agreements:

Nothing in this Agreement shall obligate either Party to enter into any further Agreements.

9. Non – Compete:

For the entire duration of this agreement and, for 12 months after the Disclosing Party's relationship with the **Receiving Party** has been terminated for any reason, the Receiving party will not work/engage as a partner, consultant, agent, owner, or engage in any other capacity, including through relatives, with any business competitive with the business of the **Disclosing Party**.

10. Amendments:

Any amendment to this Agreement shall be agreed in writing by both Parties and shall refer to this Agreement.

11. Severance:

If any term or provision in this Agreement is held to be either illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the validity and enforceability of the remainder of this Agreement shall not be affected.

12. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of Visakhapatnam, Andhra Pradesh, India and in any dispute arising out of or relating to this agreement, the Parties submit to the exclusive jurisdiction of the Courts situated at Visakhapatnam, Andhra Pradesh, India.

13. Injunctive Relief:

The Receiving Party understands and agrees that any use or dissemination of Confidential Information in violation of this Agreement will cause the Disclosing Party irreparable harm, and that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information, and that the Disclosing party may be left with no adequate remedy

at law; therefore, the Disclosing party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by the court of competent jurisdiction. Such remedies should not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

14. General:

14.1. Upon 45 days written notice, the Disclosing Party may audit the use of the programs, materials, marketing materials, services, and such additional disclosed resources. The Receiving Party agrees to co-operate with the Disclosing Party's audit and to provide reasonable assistance and access to information.

14.2. Neither Party shall use the other's name, trademarks, proprietary words or symbols or disclose under this Agreement in any publication, press release, marketing material, or otherwise without the prior written approval of the other.

14.3. The Disclosing Party shall not have any liability to the Receiving Party for any claims made by third parties arising out of their use of the Disclosing Party's trademarks (including "Logo") or marketing materials. The Receiving Party agrees to indemnify the Disclosing Party for any loss, liability, damages, cost or expense (including attorney's fees) arising out of any claims, which may be made against the Disclosing Party arising out of their use of the Logo or marketing materials where such claim relates to their activities, products or services. Notwithstanding above, the Receiving Party shall have no obligation to indemnify the Disclosing Party with respect to a claim of trademark or copyright infringement based upon their use of the Logo or marketing materials, as expressly permitted under this Agreement.

14.4. The Receiving Party shall disclose of any similar agreements explicit or otherwise, for similar purpose/application with in its own organization, or any other third party.

15. IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONFIDENTIALITY AGREEMENT IN DUPLICATE BY AFFIXING THE SIGNATURE OF THE AUTHORISED REPRESENTATIVES AS OF THE DATE

For and on behalf of Avya Inventrax Private Limited.	For and on behalf of _____
Sign: _____	Sign: _____
Name	Name
Title :	Title :
Date :	Date :
Place:	Place:

Witness 1	Witness 2
Sign: _____	Sign: _____
Name:	Name:
Designation:	Designation:
Date:	Date :
Place:	Place: