

## NON-DISCLOSURE AND RESTRICTED USE AGREEMENT

This Non-Disclosure and Restricted Use Agreement ("Agreement") is entered into on \_\_\_\_\_, 2021  
between

**CYBER INTERNET SERVICES (PRIVATE) LIMITED**, a private limited company incorporated under Companies Ordinance 1984, with its business office at A-904, 9<sup>th</sup> Floor, Lakson Building III, Sarwar Shaheed Road, Saddar, Karachi (hereinafter referred to as "**Cybernet**") which expression shall, where the context so permits, mean and include its successors-in-interest and permitted assigns of the **FIRST PART**;

**AND**

**XYZ** a \_\_\_\_\_ with its principal place of business located at 101 Federal Street, 23rd Floor, Boston, Massachusetts 02110, USA (hereinafter referred to as "**XYZ**") which expression shall, where the context so permits, mean and include its successors-in-interest and permitted assigns of the **Second PART**;

(Cybernet and are also herein collectively referred to as the '**Parties**' and individually as a '**Party**')

### **RECITALS**

**WHEREAS** Cybernet has been duly authorized in terms of a license issued by the Pakistan Telecommunication Authority (hereinafter referred to as the "PTA") to offer Data Communication Network Service in Pakistan;

**WHEREAS** and Cybernet intend to explore mutual business opportunities and joint activities in the area of telecommunication technology including Data Communication and Network Services, products, services or business in general and in the course of discussions, will be disclosing certain commercially valuable, proprietary and confidential business, financial, technical and other information to each other.

**AND WHEREAS** in the course of such activities it is anticipated that the Parties will disclose to each other proprietary information for the purpose described above, which information the Parties regard as confidential.

**Now therefore, the Parties enter into the following agreement ("Agreement"):**

#### **1. Confidential Information**

During the life of the work, it may be necessary for either Party to provide proprietary information to the other. With respect to such information, the Parties agree as follow:

- i. "**Proprietary Information**" shall include, but not be limited to, performance, sales, financial, contractual and special marketing information, ideas, technical data and concepts originated by the disclosing Party, not previously published or otherwise disclosed to the general public, not previously available without restriction to the receiving Party or others, nor normally furnished to others without compensation, and which the disclosing Party desires to protect against unrestricted disclosure / use or competitive use, and which is furnished pursuant to this Agreement and appropriately identified as being proprietary when furnished.
- ii. In order for proprietary information disclosed by one Party to the other to be protected in accordance with this Agreement, it must be:
  - a. in writing;

- b. clearly identified as proprietary information at the time of its disclosure by each page thereof being marked with an appropriate legend indicating that the information is deemed proprietary by the disclosing Party; and
- c. delivered by letter of transmittal to the individual designated, or his designee.

Where the proprietary information has not been or cannot be reduced to written form at the time of disclosure and such disclosure is made orally and with prior assertion of proprietary rights therein, such orally disclosed proprietary information shall only be protected in accordance with this Agreement provided that complete written summaries of all proprietary aspects of any such oral disclosures shall have been delivered to the individual identified herein, within twenty (20) calendar days of said oral disclosures. Neither Party shall identify information as proprietary which is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary claims.

- iii. In order for either Party's proprietary information to be protected as described herein, it must be submitted in written form as discussed in Paragraph 2 above to:

<b>Cyber Internet Services (Pvt.) Ltd.</b> A-904, 9 <sup>th</sup> Floor, Lakson Square Building III, Sarwar Shaheed Road, Saddar, Karachi	<b>Attn: Legal Department</b>  Phone: +9221 35698345 Fax: +9221-35680842 E-mail: <a href="mailto:legalaffairs@cyber.net.pk">legalaffairs@cyber.net.pk</a>
<b>Customer Name:</b> <b>Customer Address:</b>	<u><b>Attn:</b></u>  <u>Title:</u> <u>Phone:</u> <u>Fax:</u> <u>E-mail:</u>

- iv. Each Party covenants and agrees that it will, notwithstanding that this Agreement or any other previous Agreement may have terminated or expired, keep in confidence, and prevent the disclosure to any person or persons outside its organization or to any unauthorized person or persons, any and all information which is received from the other under this Agreement and has been protected in accordance with this Agreement; provided however, that the receiving Party shall not be liable for disclosure of any such information if the same:
  - a. was in the public domain at the time it was disclosed, or
  - b. becomes part of the public domain without breach of this Agreement, or
  - c. is disclosed with the written approval of the other Party, or
  - d. was independently developed by the receiving Party, or
  - e. is or was disclosed by the disclosing Party to a third Party without restriction, or
  - f. is disclosed pursuant to the provisions of a court order.

As between the Parties hereto, the provisions of this Agreement shall supersede the provisions of any inconsistent legend that may be affixed to said data by the disclosing Party, and the inconsistent provisions of any such legend shall be without any force or effect. Any protected information provided by one Party to the other shall be used only in furtherance of the purposes described in the foregoing Agreement, and shall be, upon request at any time, returned to the disclosing Party. If either Party loses or makes unauthorized disclosure of the other Party's protected information, it shall notify such other Party immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.

- v. The standard of care for protecting Proprietary Information imposed on the Party receiving such information, will be that degree of care the receiving Party uses to prevent disclosure, publication or dissemination of its own proprietary information.

- vi. Neither Party shall be liable for the inadvertent or accidental disclosure of Proprietary Information if such disclosure occurs despite the exercise of the same degree of care as such Party normally takes to preserve its own such data or information.
- vii. In providing any information hereunder, each disclosing Party makes no representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall either Party incur any liability or obligation whatsoever by reason of such information, except as provided herein.
- viii. The Bank shall during the term of this Agreement and after the termination thereof, regardless of the reason for termination, will not, directly or indirectly, induce or attempt to induce any officer, director, or employee to leave or solicit or attempt to solicit any business from Cybernet's customers or vendors.
- ix. Notwithstanding the termination or expiration of the Agreement, the obligations of the Parties with respect to proprietary information shall continue to be governed by this Agreement.
- x. Nothing contained in this Agreement shall, by express grant, implication, estoppel or otherwise, create in either Party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, or software documentation of the other Party.
- xi. Nothing contained in this Agreement shall grant to either Party the right to make commitments of any kind for or on behalf of any other Party without the prior written consent of that other Party.
- xii. The effective date of this Agreement shall be the date stipulated at the beginning of the Agreement.

## 2. Confidentiality; Restricted Use

### All Confidential Information:

- i. shall be used by the receiving Party exclusively for the Purpose, unless otherwise expressly agreed to in writing by the disclosing Party.
- ii. shall not be used by the receiving Party for its own sole benefit or for any reason detrimental to the disclosing Party.
- iii. shall be held by the receiving Party in complete confidence and shall not be disclosed by the receiving Party except with the specific prior written consent of the disclosing Party or otherwise as expressly permitted by this Agreement.
- iv. shall not be distributed or disclosed in any way or form by the receiving Party to anyone except to the employees of the receiving Party or those employees of its Affiliate and except to consultants, advisers or bankers advising the receiving Party and/or its Affiliate with regard to the Purpose ("Advisers"), who each of them reasonably need to know such Confidential Information for the Purpose and who are informed by the receiving Party of the confidential nature of the Confidential Information and of the receiving Party's obligations under this Agreement. The receiving Party agrees to be responsible for enforcing the terms of this Agreement as to its employees, Affiliates and Advisers and to take such action, legal or otherwise, as may be necessary to cause its employees, Affiliates and Advisers to comply with the terms hereof. The receiving Party shall restrict circulation of Confidential Information to the extent necessary to fulfil the Purpose contemplated by this Agreement.
- v. shall be kept confidential by the receiving Party with the same degree of care as is used with respect to the receiving Party's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
- vi. shall remain the property of the disclosing Party.

### **3. Refusal**

Each Party shall have the right to refuse to accept any information under this Agreement prior to any disclosure; information disclosed despite such a refusal is not covered by the confidentiality obligation under this Agreement. Nothing herein shall obligate either Party to disclose any particular information.

### **4. Termination; other contracts**

This Agreement shall come into force upon execution by both Parties and shall automatically terminate after **five (05) years**. All obligations relating to or affecting the protection, use or disclosure of Confidential Information disclosed prior to expiration or termination of this Agreement shall continue in **perpetuity** after any termination or expiration of this Agreement for any reason whatsoever.

The Parties shall be legally under no obligation to conclude any other contract with regard to the Purpose. This Agreement is not a commitment by any Party to enter into any transaction or business relationship, nor is it an inducement for any Party to spend funds or resources. No such agreement will be binding unless and until stated in a writing signed by the respective parties thereto.

### **5. Return**

Upon receipt of the disclosing Party's written request, the receiving Party will promptly return all or any requested portion of the Confidential Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Confidential Information) to the disclosing Party, or, in the alternative, the receiving Party will provide the disclosing Party with written certification stating that such Confidential Information has been destroyed.

### **6. Arbitration**

All disputes arising out of or in connection with this Agreement, including, but not limited to, any question regarding its existence, validity or termination, shall, unless amicably settled between the Parties, be finally settled by arbitration according to the Rules of Arbitration Act (1940). The seat of arbitration shall be Karachi, Pakistan. The arbitration proceedings shall be conducted in English.

### **7. Governing law**

This Agreement is governed by and shall be construed in accordance with the laws of Pakistan.

### **8. No assignment**

This Agreement shall be binding upon and shall inure to the benefit of the legal successors of the respective parties; provided however, that any transfer of this Agreement by either Party, including without limitation by assignment, merger, consolidation or asset purchase, without the prior written consent of the other Party, shall be void.

### **9. Written form**

This Agreement represents the entire agreement between the Parties and supersedes all prior agreements, oral or written dealing with the subject matter contained herein. This Agreement may not be modified or amended except by written amendments duly executed by the Parties. This requirement of written form can only be waived in writing.

### **10. Third parties**

A person who is not a party to this Agreement may not enforce any of its terms.



**11. Severability**

In the event that any section or sections of this Agreement should be declared to be invalid, void, illegal or unenforceable, such section or sections shall not affect, impair or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representatives.

**For and behalf of  
Cybernet**

**For and behalf of**

\_\_\_\_\_  
Name: Ghulam Mohiuddin  
Designation: Chief Financial Officer

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

**WITNESS 1**

**WITNESS 2**

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

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

Cyber Internet Services (Pvt.) Ltd.  
10th floor, Lakson Square Building 3  
Sarwar Shaheed Road  
Karachi 74200, Pakistan  
UAN: 021-111 125 683 Fax: +92 21 3568 0842  
Web: www.rapidcompute.com Email: info@rapidcompute.com

\_\_\_\_\_  
Customer's Initials

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Cybernet's Init