

NON-DISCLOSURE AGREEMENT

DRAFT NDA. CUSTOMER DETAILS TO BE ADDED

This non-disclosure and non-circumvention agreement ("**Agreement**") is hereby entered into as of this the [.] day of [.] , 20 [.] [.] ("**Effective Date**"), by and between

ARKANCE IN Private Limited a private limited company incorporated under the Companies Act, 2013 with Corporate Identification Number is (CIN) U72200KA1995PTC018704 and having its registered office located at No. 6, 2nd Floor, Service Road, 2nd Stage, West of Chord Road, Mahalakshmiipuram, Bangalore, Karnataka, India – 560086 , (the "**ARKANCE**" which term shall include parent and subsidiary companies and permitted assigns); of the **FIRST PART**;

and

_____ a Company incorporated under the Indian Companies Act, 2013, having its registered office located at _____ ; (hereinafter referred to as " Company " which expression shall mean and include unless repugnant to the context, its successors and permitted assigns) of the **OTHER PART**

WHEREAS:

ARKANCE In Private Limited is a subsidiary of ARKANCE which is part of the MONNOYEUR, a French B2B services group founded in 1906 serving construction, industrial, and agriculture sectors with current global revenues exceeding 3 billion Euros. ARKANCE was established in 2018 with a vision to become a leading partner for digitalization of the construction and manufacturing sectors. The ARKANCE solutions portfolio combines its own purpose-built software with solutions from a network of world-class technology partners. In addition, ARKANCE leads the digital transformation of its customers with expanded professional services encompassing development capabilities, integration, and implementation services, training, and a full suite of digital advisory services;

_____ is in the business of _____ ;

and

_____ and ARKANCE are in the process of working out and negotiating a possible business relationship for _____;

WHEREAS, either Party possesses certain confidential proprietary information; and

WHEREAS, in connection with the pursuit, evaluation and/or feasibility of a business relationship, and/or the consummation of a transaction (collectively, the "Business Purposes") between the two parties hereto, including their affiliates, subsidiaries, stockholders, partners, co-venture, trading partners, employees and other organizations (hereinafter referred to as Affiliates), confidential proprietary information of the ARKANCE may become available to the Company.

WHEREAS, the Parties desire to prevent the unauthorized use and disclosure of such confidential proprietary information.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, it is hereby covenanted and agreed by the Parties as follows:

1. Definition of Confidential Information or Proprietary or Trade Secrets information

- i. For purposes of this Agreement, **“Confidential Information or Proprietary information”** means any and all confidential, proprietary or trade secret information, communicated directly or indirectly, verbally, in writing, through observation or by any other means, in tangible or intangible form, including information which is conceived of or acquired by the Disclosing Party, applicable to or in any way related to: (a) the present or future business of the Disclosing Party; (b) the business of any client or vendor of the Disclosing Party. For purposes of clarity only, and without limiting the generality of the foregoing, Confidential Information shall include the following property or information of the Disclosing Party: trade secrets, investments, business strategies, customer lists, supplier lists, designs, drawings, plans or strategies for marketing, development and pricing, business plans, financial statements, profit margins and all

information concerning existing or potential customers, investors, suppliers or vendors, product development plans, supplier information, forecasts, strategies, information which are confidential, non-public, competitively sensitive, private, and/or proprietary and which are disclosed in connection with this NDA or the definitive Agreements, or any other form of information which shall fall within the domain knowledge of the party. Confidential Information also includes all similar information disclosed to the Disclosing Party by any third party that is subject to confidentiality obligations between the Disclosing Party and such third party.

- ii. The Parties acknowledge that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that the Disclosing Party regards all of its Confidential Information as trade secrets.
- iii. The Parties acknowledge being aware of/ in receipt of the Confidential Information of the Disclosing Party and agree not to disclose such information to third parties and to continue to keep such information confidential.
- iv. The Parties agree not to use, sell or disclose the Confidential Information of the Disclosing Party for the benefit of any third party/ domestic agency/ international agency/ customer/ service provider/ sub-contractor etc or for any personal gains.
- v. The Parties agree to immediately give notice to the Disclosing Party of any unauthorized use or unauthorized disclosure of the Confidential Information which comes to their attention.
- vi. Based on the foregoing, the Parties agree as follows:
 - a) The Parties agree that all rights to Confidential Information are and shall remain the sole property of and in control of the Disclosing Party;
 - b) Except as required by applicable law or authorized in writing by the Disclosing Party's board of Directors, the Parties will keep the Disclosing Party's Confidential Information confidential;
 - c) Except as required by Applicable Laws or as authorized in writing by the Disclosing Party's board of directors, the Parties shall not, at any time:
 - i. reproduce or copy;
 - ii. disclose or transfer;

- iii. aid, encourage or allow any other person, business or entity to gain, possession or access to;
- iiii. use, sell, or exploit; or
- v. encourage or allow any other person, business or entity to use, sell or exploit, any of the Confidential Information.

2. **Exception:** The obligations of the Parties under the foregoing provisions with respect to any part of the Confidential Information shall not apply to any such portion which either of the Parties can demonstrate:

(a) was already in the public domain or becomes available to the public other than through the act or omission of the disclosing Party;

(b) was a disclosure of Confidential Information by the disclosing Party, either

(i) in response to a valid order by a court or other governmental body,

(ii) otherwise required by law, or

(iii) necessary to establish the rights of a Party under this Agreement,

shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the disclosing Party, shall provide prompt prior written notice thereof to the affected Party to enable such Party to seek a protective order or otherwise prevent such disclosure.

3. **Non-disclosure Obligations:** The Receiving Party promises and agrees to receive and hold the Confidential Information in confidence. Without limiting the generality of the foregoing, Receiving Party further promises & agrees:

a) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; Neither party shall advertise or publish or make known to public at large the outcome of such confidential information may it be in the form of test or any such form.

b) Not to use any of the Confidential Information except for the Business Purposes.

c) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Confidential Information except as specifically authorized by the Disclosing Party in accordance with this Agreement.

d) Not to use any Confidential Information to unfairly compete or obtain unfair advantage vis-a-vis Disclosing Party in any commercial activity which may be

comparable to the commercial activity contemplated by the parties in connection with the Business Purposes under this Agreement and in future.

- e) To restrict access to the Confidential Information to those of its officers, directors, and employees who clearly need such access to carry out the Business Purposes.
- f) To advise each of the persons to whom it provides access to any of the Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information, and, upon Request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons.
- g) To comply with any other reasonable security measures requested in writing by the Disclosing Party.
- h) To refrain from directly contacting or communicating by whatsoever means to the Source(s) of Information without written consent of the Disclosing Party.
- i) To undertake not to disclose any names and their particulars to third parties without the written consent by the Disclosing party.

The obligation of the Receiving party not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Receiving party, or by the rejection of any agreement between the Disclosing Party and the Receiving party, by a trustee of the Receiving party in bankruptcy, or by the Receiving Party as a debtor-in-possession or the equivalent of any foregoing under law.

4. **Return of Confidential Information:** The Receiving Party agrees, upon termination of the Business Purposes or upon the written request of the other Party, whichever is earlier, to promptly deliver to the other Party all records, notes, and other written, printed, or tangible materials in the possession of the Receiving Party, embodying or pertaining to the Confidential Information, and shall destroy all memoranda, notes and other writings prepared by the receiving party or its Affiliates or directors, officers, employees or advisors based on the Confidential Information and promptly certify such destruction.

5. **No Right to Confidential Information:** This Agreement does not obligate either party to disclose any particular proprietary information; to purchase, sell, license, transfer, or otherwise dispose of any technology, services, or products; or to enter into any other form of business, contract or arrangement. Furthermore, nothing contained hereunder shall be construed as creating, conveying, transferring, granting or conferring by one party on the other party any rights, license or authority in or to the information provided. The parties shall use the Confidential Information on a need to know basis, and only for the limited purpose of the parties discussing the possibility of working together and for the purposes of a future business relationship or agreement that may be entered into in this regard and for no other purpose whatsoever.

6. **Transferring Confidential Information to Third Person:** Each party agrees and undertakes that it shall not, without first obtaining the written consent of the other, disclose or make available to any person, reproduce or transmit in any manner, or use (directly or indirectly) for its own benefit or the benefit of others, any Confidential Information save and except both parties may disclose any Confidential Information to their Affiliates, directors, officers, employees or advisors of their own or of Affiliates on a "need to know" basis to enable them to evaluate such Confidential Information in connection with the negotiation of the possible business relationship; provided that such persons have been informed of, and agree to be bound by obligations which are at least as strict as the recipient's obligations hereunder. For the purpose of this Agreement, Affiliates shall mean, with respect to any party, any other person directly or indirectly Controlling, Controlled by, or under direct or indirect common Control with, such party. "Control", "Controlled" or "Controlling" shall mean, with respect to any person, any circumstance in which such person is controlled by another person by virtue of the latter person controlling the composition of the Board of Directors or owning the largest or controlling percentage of the voting securities of such person or by way of contractual relationship or otherwise.

7. **No Warranty:** Each party warrants that it has the right to enter into the present Agreement and make the relevant disclosures under this Agreement. No other warranties are made by either party under this Agreement and all information

exchanged under this Agreement is provided “as is”. The parties acknowledge that although they shall each endeavour to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither party hereto shall have any liability to the other party nor to the other party’s Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

8. **Indemnification:** The parties agree to indemnify and keep indemnified each other against all loss and damage, which the disclosing party may suffer as a result of any breach of this Agreement by the receiving party; provided that the disclosing party shall forthwith give written notice within Seven (07) working days from the receipt of notice of such loss or damage to the receiving party for the above loss or damage.
9. **Remedies:** The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate. Such right of the Disclosing Party shall be in addition to Remedies otherwise available to the Disclosing Party at law or in equity.
10. **No Waiver:** The failure of either party in exercising or enforcing any right, remedy or power hereunder shall not operate as waiver thereof, nor shall any single or partial exercise or enforcement of a right, remedy or power preclude any further exercise or enforcement thereof or exercise of enforcement of any other right, remedy or power.

11. Jurisdiction and Governing Laws:

- a) This Agreement shall be governed by the laws of Republic of India.

b) All the disputes and differences arising between the parties hereto, including any dispute or difference in regard to the interpretation of any provision or term or the meaning thereof, or in regard to any claim of one party against the other or in regard to the rights and obligations of any parties hereto under the Agreement or otherwise, howsoever, shall be referred to arbitration, governed by the provisions of the Arbitration and conciliation Act, 1996 for the time being in force. The Parties hereby agrees to appoint one arbitrator each. Further, the two appointed arbitrators shall appoint a third arbitrator who shall be the principal/lead arbitrator. The venue of the Arbitration shall be Bangalore, India. The language of Arbitration will be English. The decision of Arbitral tribunal will be final and binding on both the parties.

12. **Amendment:** This Agreement shall not be amended, assigned or transferred by either party without the written consent of the other party.

13. **Force Majeure:** Neither party shall be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, labor stoppage, war or military hostilities, nor shall inability of carriers to make scheduled deliveries, and any payment or delivery date be extended to the extent of any delay resulting from any force majeure event.

14. **Term and Termination:** This Agreement shall remain valid for a period of Two (2) years from the date of execution of this NDA or the definitive Agreements whichever is higher as the case may be, which term may be extended to such a term as may be agreed by mutual consent in writing of both the parties. This Agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party without assigning any reason whatsoever. The obligations of each party hereunder will continue and be binding irrespective of whether the discussion between the parties materialise into a specific understanding/business relationship or not and for a further period of two (2) year after termination / expiry of the Agreement.

15. **No Commitment:** The disclosure of Confidential Information does not, and is not intended to represent a commitment by the Disclosing Party to enter into any business

relationship with the Receiving Party or with any other entity. If the Parties desire to pursue business opportunities, they will execute a separate written agreement to govern such business relationship.

16. **Compelled Disclosure:** If the Party faces legal action to disclose Confidential Information received under this Agreement, then the Party shall promptly notify the Other Party in order that it may have the opportunity to intercede and contest such disclosure and, upon request, shall cooperate with the other Party in contesting such a disclosure. Except in connection with failure to discharge the responsibilities set forth in the preceding sentence, neither Party shall be liable in damages for any disclosures pursuant to such legal action.

17. **Successors and Assigns:** Neither shall any Party have any right to assign its rights under this Agreement, whether expressly or by operation of law, without the written consent of the other Party. This Agreement and the Party's obligations hereunder shall be binding on their Representatives, permitted assigns, and successors of the Parties and shall ensure to the benefit of Representatives, assigns and successors of the Parties.

18. **Notices and Communications:** The two parties agree that the communication between the parties is considered delivered and reached other party if transmitted by fax or electronic means with proof of sending machine. The date of receiving the messages, notices or letters is the date of sending authenticated by the sending machine. All notices under this Agreement shall be deemed to have been duly given upon the mailing of the notice, postpaid to the addresses listed above, or upon the facsimile transmission, to the party entitled to such notice at the facsimile number set forth below.

Each party will bear its own costs in connection with the activities undertaken in connection with this Agreement.

Nothing in this Agreement is intended to confer any rights/remedies under or by reason of this Agreement on any third party.

19. **Entire Agreement:** This Agreement supersedes all prior discussions and writings with respect to the Confidential Information and constitutes the entire Agreement between the parties with respect to the subject matter hereof. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part(s) thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement.

This Agreement may be executed in one or more separate counterparts, all of which shall constitute one and the same Agreement and may be amended only in writing executed by both parties. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first above written.

ARKANCE IN Private Limited _____

Name: XXXXX

Designation: XXXXXX

Name: XXXXX

Designation: XXXX