

## CUSTOMER/CHANNEL PARTNER NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“**Agreement**“) is made on \_\_\_\_\_ day of \_\_\_\_\_ (“**Effective Date**“)

### BETWEEN

1. [**Your company name**], a company registered under the Companies Act, 2013 with its registered office at [.] having CIN [.] (the “**Disclosing Party**“); and
2. [.] , a company incorporated company registered under the Companies Act, 2013 with its registered office at [.] having CIN [.] (the “**Receiving Party**“), collectively referred to as the “**Parties**. “

### RECITALS

1. The Parties wish to discuss the Receiving Party’s potential employment.
2. During such discussions, information of a confidential nature is to be disclosed by the Disclosing Party to Receiving Party;
3. The Receiving Party understands that the Disclosing Party has disclosed or may disclose information relating to [services/product or any other proprietary information], which to the extent previously, presently, or subsequently admitted to the Receiving Party is from now on referred to as “**Proprietary Information**” of the Disclosing Party.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following words and expressions have the following meanings unless the context otherwise requires:

- “**Business**” shall mean the grant of License of the means [Human Capital Management Software – Akrivia HCM](#);
- “**Competing Business**” means any business carried on within [**state appropriate geographical area, e.g., India**] which wholly or partly competes or proposes to compete with the company carried out by the Parties
- “**Disclosing Party**” shall mean [Your company name]
- “**Effective Date**” shall mean the date of signing of this Agreement.
- “**Proprietary Information**” means all the information related to the Business.
- “**Receiving Party**” is the party receiving the Proprietary Information, including its employees, managers, principles, agents, or consultants.
- “**Restricted Goods or Services**” means goods or services of the same type as or similar to or competitive with any goods or services supplied by the Parties
- In this agreement unless otherwise specified references to:

(a) A “party” means a party to this agreement and includes its permitted assignees (if any) and the successors in title to that part of its undertaking, which consists of this agreement and, in the case of an individual, to their estate and personal representatives;

(b) A person includes any person, individual, firm, partnership, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it is incorporated or exists);

(c) Recitals, clauses, paragraphs, or schedules are to recitals, clauses and sections of and schedules to this agreement; and

(d) “including” means without limitation.

(e) Defined terms not included in this Agreement shall have the same meaning as given to them in the License Agreement dated executed between the Parties on [•].

## 2. CONFIDENTIALITY OBLIGATIONS

2.1 In consideration of the disclosure of Proprietary Information by the Disclosing Party, the Receiving Party agrees and undertakes that they shall:

- Hold the Proprietary Information in strict confidence and to take all reasonable precautions to protect such Proprietary Information;
- Ensure that Proprietary Information or any part thereof is not disseminated or accessible to any person or party who is not bound by the terms of this Agreement and shall put in place at least such controls as it employs concerning its proprietary and confidential information which it does not desire to have disseminated or published; and
- Not to make any use whatsoever at any time of such Proprietary Information except to evaluate its relationship with the Disclosing Party internally, and

- Not make or have made copies of the Proprietary Information or any portion thereof in any medium without the prior written consent of the Disclosing Party, which the Disclosing Party is entitled in its entire discretion to grant or not grant as it chooses.
- The confidentiality obligations and undertakings of the Receiving Party shall not apply to Proprietary Information:
  - Which at the time of its disclosure is within the public domain or which, after exposure to the Receiving Party (through no improper action or inaction by the Receiving Party) comes into the public domain; or
  - Which is required to be disclosed under applicable law or by order of a court of competent jurisdiction.
  - After five years following the disclosure thereof
  - Was in its possession or known by it before receipt from the Disclosing Party as evidenced in writing, except to the extent that such information was unlawfully appropriated, or
  - Was rightfully disclosed to it by a third party, or
  - Was independently developed without using any Proprietary Information of the Disclosing Party.
- The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent, reasonable efforts to limit exposure and has allowed the Disclosing Party to seek a protective order.

- No Grant of Proprietary Rights or License

2.2 The Confidential Information shall remain the exclusive property of the Disclosing Party at all times. In particular, and without limitation, it is agreed that no license is granted by the Disclosing Party nor any license acquired by the Receiving Party (by implication or otherwise) for any purpose whatsoever.

### 3. PROTECTION OF INTERESTS

#### 3.1 Competition

Each of the Restricted Parties covenants with each other that until the expiration of [12 months] from the termination of this Agreement, it shall not directly or indirectly:

- Carry on or be engaged or interested in a Competing Business; or
- Act as a consultant or employee or worker or officer in any capacity in a Competing Business or provide technical, commercial, or professional advice to a Competing Business.

#### 3.2 Customers

The Receiving Party covenants with to the Disclosing Party that until the expiration of [12 months] from the termination of this Agreement it shall not directly or indirectly accept orders for or supply, or cause orders to be taken for or cause to be supplied, Restricted Goods or Services to any person:

- Who, to his knowledge, was provided with goods or services by the Disclosing Party at any time during the [12 months] up to and including his Leaving Date; and
- Who, to his knowledge, was negotiating with the Company about orders for or the supply of goods or services at any time during the [12 months] up to and including the last date of this Agreement.

3.3 The Receiving Party Parties covenants with the Disclosing Party that until the expiration of [12 months] from the termination of this Agreement, he shall not directly or indirectly solicit, canvass or approach or endeavor to solicit, canvass or process, or cause to be solicited, canvassed or approached, any person:

- Who, to his knowledge, was provided with goods or services by the Company at any time during the [12 months] up to and including the last day of this Agreement; and
- Who, to his knowledge, was negotiating with the Receiving Party about orders for or the supply of goods or services at any time during the [12 months] up to and including the last day of this Agreement; to offer that person Restricted Goods or Services.

### 3.4 **Employees**

The Receiving Party covenants to the Disclosing Party that until the expiration of [12 months] from the termination of this Agreement, he shall not directly or indirectly:

- Solicit or entice away or endeavor to solicit or entice away, or cause to be solicited or enticed away, from the Disclosing Party any person

who is, and was at the last day of this Agreement, employed or directly or indirectly engaged by the Disclosing Party, to induce that person to leave such employment or engagement (whether or not such person would commit a breach of his contract of employment or attention because of leaving); and

- Solicit or endeavor to solicit or cause to be solicited any person who was at any time during the [12 months] up to and including the last date of this Agreement employed or directly or indirectly engaged by the Disclosing Party who, because of their employment or engagement, possesses any trade secrets or a material amount of confidential information concerning the business or affairs of the Disclosing Party or is likely to be able to solicit away from the Disclosing Party the custom of any person to whom the Disclosing Party supplies goods or services, to induce that person to act in the same or a materially similar capacity about the same or a materially identical field of work for another person carrying on business in competition with the Disclosing Party (whether or not such person would commit a breach of his contract of employment or engagement because of so acting).]

### 3.5 Know-how

Each of the Restricted Parties covenants with each other that until the expiration of [12 months] from the termination of this Agreement, neither shall not disclose nor use, for his benefit or that of any other person any Know-how which he possesses concerning the business or affairs of the Parties or of any person having dealings with the Parties except any such Know-how which is in the public domain other than because of any breach by the Restricted Party of any of his obligations under this Agreement or any violation by any person of any duty of confidentiality about the business or affairs of the Company.

#### 4. RETURN OF PROPRIETARY INFORMATION

Immediately upon receiving the written request by the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party all Proprietary Information and all documents or media containing any such Proprietary Information and any copies or extracts thereof, save that where such Proprietary Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased, as appropriate.

#### 5. GENERAL DISCLOSURES

5.1 The Receiving Party understands that nothing herein:

- Requires the disclosure of any Proprietary Information; or

(ii) Requires the Disclosing Party to proceed with any transaction or relationship.

- The Receiving Party further acknowledges and agrees that no representation or warranty, express or implied, is or will be made. No responsibility or liability is or will be accepted by the Disclosing Party, or by any of its respective directors, officers, employees, agents or advisers, as to, or about, the accuracy or completeness of any Proprietary Information made available to the Receiving Party or its advisers; it is responsible for making its evaluation of such Proprietary Information.
- The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.



## 6. INVALIDITY

If any part, term, or provision of this Agreement is held to be illegal or unenforceable, neither the validity nor enforceability of the remainder of this Agreement shall be affected.

## 7. ASSIGNMENT

Neither Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Party.

## 8. AMENDMENT

This Agreement may not be amended for any other reason without the prior written agreement of both Parties. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations, or understandings concerning it.

## 9. COUNTERPARTS

9.1 This agreement may be executed in any number of counterparts, which shall together constitute one agreement. Any Party may enter into this Agreement by completing a half, and this agreement shall not take effect until both the Parties have directed it.

## 10. GOVERNING LAWS

10.1 This Agreement (and any dispute, controversy, proceedings, or claim of whatever nature arising out of or in any way relating to this agreement or its formation) shall be governed by and construed by the laws of India.

10.2 The Parties hereto irrevocably submit to the exclusive jurisdiction of the competent courts of Gwalior to hear and determine any suit, action, or proceeding and settling any disputes arising out of or in connection with this agreement.

**11. ENTIRE AGREEMENT**

11.1 This agreement constitutes the entire and only agreement between the Parties relating to the subject matter of this agreement. It supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties, and arrangements of any nature whatsoever, whether or not in writing, relating to it.

11.2 No alteration to this agreement shall be valid unless made in writing and signed by the Parties.

**IN WITNESS, of which, the** parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and date mentioned hereinabove.

**[Disclosing Party]**

**[Receiving Party]**

**For [Your Company Name]**

By:

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Name:

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Name:

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Title:

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Title:

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Address:

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Address:

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Date:

Date:

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