

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is dated, _____ between:

_____, a company incorporated under the laws of _____ and having its registered office at _____ (hereinafter referred to as "**Receiving Party**"), which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns);

- and -

Delicious Coco Water Private Limited, a company incorporated under the laws of India and having its registered office (as per data available from MCA) located at D-13 Udhyog Nagar Peeragarhi New Delhi DL 110063 with CIN- U55209DL2008PTC175430 **through its Liquidator Mr K G Somani**, appointed vide order of Hon'ble NCLT, New Delhi dated 31st May, 2019 located at 3/14, 4th Floor, Asaf Ali, Road, New Delhi 110002 (hereinafter referred to as "**Disclosing Party**"), which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns);

WHEREAS the Disclosing Party intends to disclose certain information to the Receiving Party regarding **Delicious Coco Water Private Limited for the purpose of conducting a Due diligence on the Disclosing Party;**

AND WHEREAS the Receiving Party has agreed to keep the information confidential on the terms of this Agreement;

NOW THEREFORE in consideration of the foregoing and the mutual agreements contained in this Agreement (the receipt and adequacy of which are acknowledged), the Parties agree as set forth below.

1. Defined Terms.

As used in this Agreement, the following terms have the meanings set forth below.

"**Affiliate**" means, in respect of a Party, any Person (other than a natural person) which (a) is controlled directly or indirectly by such Party, or (b) is directly or indirectly controlled by a Person which directly or indirectly controls such Party. "Control" means the right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

"**Agreement**" means this confidentiality agreement, as amended, modified, restated, replaced or supplemented from time to time.

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any days

on which major banks are closed for business in India.

"Confidential Information" means all information relating to Disclosing Party's business, operations, assets, liabilities, plans, prospects and affairs, which has been or is disclosed to or acquired by the Receiving Party regardless of whether such information is in oral, visual, electronic, written or other form and whether or not it is identified as "confidential".

"Law" means any applicable law, statute, code, constitution, treaty, ordinance, order, decree, directive, rule, published policy, regulation or decision of any competent judicial, legislative, administrative, ministerial, departmental or regulatory body or authority or by the rules, policies or other requirements of any relevant stockexchange.

"Notice" has the meaning specified in Section 9.

"Party" means either **Receiving Party** and **Disclosing Party** and any other Person who may become a party to this Agreement. These parties may be referred to individually as "Party" or collectively as "Parties". Reference to a Party includes such Party's Representatives and affiliates and their Representatives.

"Person" means a natural person, partnership, limited partnership, limited liability partnership, and corporation, limited liability Corporation, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental or other regulatory entity, and pronouns have a similarly extended meaning.

"Representative" means any director, officer, employee, agent, or advisor of that Party, including accountants, counsel, lenders, consultants and financial advisors.

"Work Papers" means all notes, analyses, compilations, forecasts, data, studies, interpretations, or other documents prepared by, on behalf of or for the benefit of, the Receiving Party that contain, reflect, summarize, analyze, discuss or review any Confidential Information.

2. Interpretation

In this Agreement, the words "including", "includes" and "include" mean "including (or includes or include) without limitation". The expression "Section" or other subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. Words referencing the singular include a reference to the plural and *vice versa*.

3. Non-Disclosure of Confidential Information.

(a) The Receiving Party will keep strictly confidential all Confidential Information

and Work Papers and will not, and will cause its Representatives not to, disclose or use such Confidential Information or Work Papers except as permitted by this Agreement.

- (b) The restrictions set out in Section 3(a) do not apply to Confidential Information or any part of it that:
 - (i) is or becomes generally available to the public other than as a result of disclosure directly or indirectly by the Receiving Party;
 - (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party;
 - (iii) is or was independently acquired or developed by the Receiving Party, its affiliates or their respective Representatives without violating its obligations under this Agreement or any other obligation of confidentiality it may have to the Disclosing Party;
 - (iv) is required to be disclosed by Law, unless such Law permits the Receiving Party, its affiliates or their respective Representatives to refrain from making such disclosure for confidentiality or other reasons; or
 - (v) the Disclosing Party has expressly permitted in writing that the particular Confidential Information may be disclosed.
- (c) The Receiving Party may disclose Confidential Information and its Work Papers to its Representatives but only to the extent that its Representatives need to know the Confidential Information or Work Papers for purposes of evaluating such Confidential Information or Work Papers, have been informed of the confidential nature of the Confidential Information and Work Papers and agree to be bound by and act in accordance with the confidentiality provisions of this Agreement.
- (d) The Receiving Party acknowledges that it and its Representatives are bound by all applicable privacy law with respect to any personal information disclosed under this Agreement.
- (e) The Receiving Party hereby acknowledges that it is aware, and that the Receiving Party will advise its Representatives who are informed as to the matters that are the subject of this agreement, that applicable securities laws prohibit any person who has material, non-public information concerning the matters which are the subject of this agreement from purchasing or selling securities of the Disclosing Party, including an affiliate, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

- (f) The Receiving Party is responsible for any breach by its Representatives of any of the provisions of this Agreement whether or not they have agreed in writing to be bound by such provisions. The Receiving Party will, at its sole expense, take all reasonable measures to ensure that its Representatives do not breach any of the provisions of this Agreement.
- (g) If the Receiving Party is required to make disclosure of any or all of the Confidential Information and/or its Work Papers pursuant to Law it will (unless otherwise prohibited by Law and to the extent possible), after consultation with the Disclosing Party:
 - (i) give the Disclosing Party immediate Notice of the requirement and the proposed content of any disclosure;
 - (ii) at the costs of the Disclosing Party, co-operate with the Disclosing Party in limiting the extent of the disclosure and in obtaining an appropriate protective order or pursuing such legal action, remedy or assurance as the Disclosing Party deems necessary to preserve the confidentiality of the Confidential Information; and
 - (iii) disclose only that portion of the Confidential Information and its Work Papers that it is, in the written opinion of the Receiving Party's counsel, legally compelled to disclose.

4. Handling and Return of Confidential Information.

- (a) The Receiving Party will keep a written record of the subject and location of all Confidential Information disclosed to it and a list of Representatives to whom Confidential Information has been disclosed and will provide a copy of the record and list immediately to the Disclosing Party upon request.
- (b) Confidential Information shall be only for review by the Receiving Party and its Representatives. The Receiving Party may not remove any proprietary, copyright, trade secret or other legend from any of the Confidential Information.
- (c) After the completion of resolution process under the IBC,2016, the Receiving Party will and will cause its Representatives to, within 7 Business Days of the Notice:
 - (i) Return to the Disclosing Party or destroy all Confidential Information without retaining any copies;
 - (ii) destroy all copies of Work Papers in its possession; andcertify to the Disclosing Party in writing that this Section 4(c) has been

complied with by the Receiving Party.

- (d) Notwithstanding the foregoing, neither the Receiving Party or its Representatives are required to return or destroy the Confidential Information to the extent that it is obliged by any law, court of competent jurisdiction, competent regulatory agency or authority, applicable compliance procedures or the rules of any stock exchange to keep them;
- (e) Notwithstanding the return or destruction of Confidential Information and Work Papers, the Receiving Party and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

5. No Representation or Warranty.

- (a) The Disclosing Party and the Resolution Professional makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information provided by it or with respect to the infringement of patents, trade-marks, copyrights, or other intellectual property rights respecting such Confidential Information, or of the rights of any other Person.
- (b) The Disclosing Party and the Resolution Professional is not liable to the Receiving Party or to any other Person for any losses, liabilities, damages, claims, demands, fines, penalties or expenses resulting from, connected with or arising out of the Receiving Party's use of the Confidential Information. This Agreement does not benefit or create any right or cause of action in, or in favor of, any Person other than the Parties and shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract. Only the Parties are entitled to rely on its provisions in any action, suit, proceeding, hearing or other forum subject to clause 5(d)
- (c) To the extent that any Confidential Information is owned by the Disclosing Party, it will remain the exclusive property of the Disclosing Party. Nothing in this Agreement or in the disclosure of any Confidential Information confers any interest in the Confidential Information on the Receiving Party.
- (d) The Resolution Professional shall not be held liable for any damages/ liabilities arising out of the use of confidential information or the accuracy of the confidential information.

6. Remedies.

- (a) In the event of a breach of a Party's obligations under this Agreement, that Party must, immediately following discovery of the breach, give Notice to the other Party of the nature of the breach. The breaching Party must, upon consultation with the other Party, take all reasonable measures to limit the extent of the breach.

- (b) The Receiving Party acknowledges that the Disclosing Party shall be irreparably injured by breach of this Agreement which could not be adequately compensated by damages. The Disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be exclusive remedies but shall be in addition to all other remedies available in law or in equity including damages.
- (c) The rights and remedies provided in this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity. All such rights and remedies may be exercised from time to time, and as often and in such order as the applicable Party deems appropriate.
- (d) Each Party shall have a duty to use all reasonable endeavors to mitigate its loss and damage arising on account of the breach or default by the other Party.
- (e) Except as may be otherwise provided in this Agreement, or breach by either party will result in the other party being responsible to reimburse the non- defaulting party for all costs incurred directly as a result of the breach of this Agreement and shall be subject to such damages as may be allowed by law including all attorneys' fees and costs of enforcing this Agreement. However, the provision of clause 7(e) shall survive the termination of the agreement.
- (f) Subject to the foregoing provisions of this Section 6, if the Receiving Party or any of its Representatives is in default or breach of its obligations under this Agreement, the Receiving Party shall indemnify the Disclosing Party from and against any direct cost, loss, expense, liability, claim or damage which the Disclosing Party incurs or suffers as a result of any such default or breach. Notwithstanding the foregoing, in no event, shall the Receiving Party be liable for any consequential, punitive, special, exemplary or other similar damages.

7. Other Covenants and Agreements.

- (a) The Parties irrevocably undertake not to circumvent, avoid, bypass or obviate each other, directly or indirectly and agree on customer and partner protection for all mutual named customers and partners. By signing this agreement, the parties commit to each other not to contact the partners and customers of the other party or to start any business activity, directly or via third parties, without previous written consent.
- (b) The Parties shall not disclose any contact revealed by either Party to any third Parties and shall not enter into direct and/or indirect offers, negotiations and/or transaction with such contacts revealed by the other Party who made the contact(s) available.
- (c) In the event of circumvention by any of the undersigned Parties, whether direct and/or indirect, the circumvented Party shall be entitled to a legal monetary

compensation equal to the maximum service it should realize from such a transaction, plus any and all expenses, including any and all legal fees incurred in lieu of the recovery of such compensation

- (d) Nothing in this Agreement nor the disclosure of Confidential Information to the Receiving Party creates any agency, partnership, joint venture, and representative or employment relationship between the Parties.
- (e) The obligations of the Parties under this Agreement continue and are binding for 3 years.

8. Acknowledgements of Receiving Party.

Each Party acknowledges and agrees that, notwithstanding any other provisions of this Agreement, all contacts by one Party and its Representatives with the other Party regarding the Confidential Information shall be made through each Party's authorized representative, and one Party and its Representatives shall not contact any other employee of the other Party unless expressly authorized.

9. Miscellaneous.

- (a) Any notice, consent, direction or other communication (each a "**Notice**") given regarding the matters contemplated by this Agreement must be express and in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed to:

Receiving Party Name:
Address:
Attention:
Designation:
Telephone/Mobile No:
Email Id:

Disclosing Party Name: **Delicious Coco Water Private Limited**
Address:
Designation:
Telephone/Mobile No:
Email Id:

A Notice is deemed to be delivered and received (1) if sent by personal delivery or service courier, on the date of delivery, or (2) if sent by facsimile, on the day following the date of confirmation of transmission by the originating facsimile, or (3) if sent by e-mail, on the day the e mail was sent.

- (b) Except as otherwise expressly provided in this Agreement, each Party will pay

for its own fees, costs and expenses incurred in connection with this Agreement. The fees, costs and expenses referred to in this are those that are incurred in connection with the negotiation, preparation, execution and performance of this Agreement, including the fees, costs and expenses of counsel, financial advisors, bankers, lenders and accountants.

- (c) No waiver of any provision of this Agreement constitutes a waiver of any other provision (whether or not similar). No waiver is binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement is not a waiver of that right. A single or partial exercise of any right does not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- (d) This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written.
- (e) This Agreement may only be amended, supplemented, or otherwise modified by express written agreement signed by the Parties.
- (f) Neither this Agreement, nor any of the rights or obligations under this Agreement, are assignable or transferable by a Party without the express prior written consent of the other Party.
- (g) If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. This clause has no effect if the severance alters the basic nature of this Agreement.
- (h) This Agreement and any dispute, controversy or claim arising out of, relating to, or in any way connected with this Agreement (including, without limitation, the existence, validity, performance, breach or termination thereof) shall be governed by the laws of India. Any such dispute, controversy or claim shall be fully and finally resolved by binding arbitration in accordance with the Rules of Arbitration of the **Disclosing Party**. The seat of such arbitration shall be in New Delhi, India. The language of such arbitration shall be English. The dispute shall be heard by three (3) arbitrators. Within thirty (30) days of the respondent's receipt of notice of arbitration, the Disclosing Party, on the one hand, and the Receiving Party, on the other hand, shall each select an arbitrator, and within fifteen (15) days of selection of the second arbitrator, the two arbitrators shall select the third arbitrator, who shall act as the Chair.

Each arbitrator must be independent and disinterested and must not be affiliated in any way with any of the Parties.

- (i) This Agreement may be executed in any number of counterparts and all counterparts taken together constitute one and the same instrument. Receipt of an originally executed counterpart signature page by facsimile or an electronic reproduction of an originally executed counterpart signature page by electronic mail is effective execution and delivery of this Agreement. Any Party sending a counterpart by facsimile or electronic mail will also deliver the original signed counterpart to the other Party; however, failure to do so will not invalidate this Agreement.

Receiving Party

Disclosing Party

By _____
:

By: _____

IN WITNESS WHEREOF the Parties have executed this Agreement.

Company Name:

Company Name:

Name:

Name:

Designation:

Designation:

Place:

Place:

Date:

Date:

Witness:

Witness:

Name:

Name:

Address:

Address: