

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is made by and between BSPIN and Software-IT Company (SWITCO) located at ----- . This agreement (“Agreement”) is made and entered into on the --- day of ----- . First Party on one hand and Second Party on the other hand are each sometimes referred to herein as “Party” and collectively as the “Parties” in this Agreement.

### **WITNESSETH:**

**WHEREAS BSPIN**, a registered society of software professionals wants to arrange a mechanism for collecting the data from representative software and IT companies through a secure token and e-mail system, analyze the data and come up with industry-wide benchmark.

**WHEREAS SWITCO** is willing to share and provide their data in order to enable BSPIN to analyze the data and come up with industry-wide benchmark.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the covenants and agreements herein contained the parties hereto agree as follows:

### **1. Definitions**

**1.1. Confidential Information** means any proprietary or confidential information of SWITCO, discussion conducted between the parties under this Agreement in relation to sharing and analyzing data directly or indirectly in any form such as, written, oral, in electronic in order to facilitate the work and such information shall:

1.1.1. Not be in public domain

1.1.2. Communicated by either of the parties as CONFIDENTIAL

1.1.3. Not appear to be CONFIDENTIAL due to its character, nature, or method of transmittal.

Such confidential information may include business information or technical information.

The confidential information shall not include the information, which is available in the public domain or was already known to the BSPIN or has been received from the source other than the SWITCO or is approved for release by written authorization of the SWITCO or is disclosed to BSPIN by a third party not in violation of any obligation of confidentiality;

### **1.2. Purpose**

The Purpose is to obtain and analyze the data from SWITCO by BSPIN in order to come up with industry-wide benchmark.

## **2. Obligations of BSPIN**

- 2.1. BSPIN agrees to undertake utmost care in safe-guarding and ensuring the non-disclosure of confidential information provided by SWITCO.
- 2.2. BSPIN shall treat the Confidential Information with the same degree of care it accords its own Confidential Information of a similar nature; provided that in no event shall BSPIN exercise less than reasonable care to protect the Confidential Information.
- 2.3. BSPIN shall publish list of BSPIN members (Annexure A) that are involved in collection of data from SWITCO and analysis of such data.
- 2.4. The list of BSPIN members as in Annexure A may be updated by BSPIN from time and time and the same shall be notified to SWITCO periodically.
- 2.5. BSPIN shall send prescribed templates to SWITCO in order to obtain data and arrange a mechanism for collecting the data through a secure token and e-mail system to ensure the anonymity of the source of data.
- 2.6. The data shall be received from SWITCO with anonymity, analyzed without the knowledge of the source of data.
- 2.7. BSPIN shall not divulge the data in any form to anyone other than BSPIN members (as specified in Annexure A).
- 2.8. The industry-wide benchmark report shall not have any specific or express reference to the source of data or the SWITCO or any other company participating in industry-wide benchmark. SWITCO can choose to include or exclude its name in the list of participating companies – see section 6 “Confidentiality” below.

## **3. Obligations of SWITCO**

- 3.1. The data provided by SWITCO shall not infringe or conflict with any patent, patent right, copyright, trademark, trade secret, trade name (registered or unregistered) or any other protectable proprietary rights of any third party.
- 3.2. SWITCO hereby certifies that any of the data, information etc, shared by it does not belong to any third party and doesn't violate rights of any such third party.
- 3.3. SWITCO shall ensure accuracy and currency of the data being shared for the purpose of industry-wide benchmarking as the data provided by SWITCO has direct impact on the result and output of industry-wide benchmarking.
- 3.4. SWITCO shall safe-guard and take appropriate measures to prevent misuse of the identity, passwords and tokens provided for the purpose of uploading /sharing the data by BSPIN.

## **4. Term and termination**

- 4.1. SWITCO can terminate their participation in the benchmarking by informing BSPIN in writing. One month from the receipt of the notice, BSPIN shall remove SWITCO from the list of participating companies. However, due to the nature of anonymous collection of data, it will be not possible for BSPIN to return/stop using the data already provided by SWITCO to BSPIN in the industry-wide benchmarking.

- 4.2. BSPIN can terminate this Agreement and participation of SWITCO in industry-wide benchmarking at its discretion.
- 4.3. In either of the circumstances leading to termination of the Agreement as mentioned above, all identity, tokens, passwords shared by BSPIN for the benchmarking shall not be used further by SWITCO.

## **5. Intellectual Property Rights**

- 5.1. Data developed and compiled on the basis of the raw data (industry-wide benchmark results) that has been provided by the SWITCO as well as other participating companies is the Intellectual Property of BSPIN and can be used by anyone who purchases the industry-wide benchmark results with terms and conditions of the publication of the benchmarking results.

## **6. Confidentiality**

- 6.1. BSPIN and SWITCO can decide at the time of signing this Agreement whether SWITCO permits or desires to remain anonymous or its name, logo etc can be listed in the participants list.
- 6.2. BSPIN agrees not to disclose the Confidential Information of the SWITCO to any third party (ies) except the ones authorized by BSPIN.
- 6.3. Notwithstanding the foregoing, BSPIN may disclose the SWITCO's Confidential Information if in the opinion of its legal counsel, disclosure is required by law; provided, however, that BSPIN will use all reasonable efforts to notify SWITCO on the same.
- 6.4. Neither party shall make any public announcement or press release of the fact that the discussion is taking place between the parties or existence or content of this Agreement.
- 6.5. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

## **7. Warranty**

As between the parties, all information shall remain the property of the SWITCO. By disclosing information or executing this agreement, the SWITCO does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. THE SWITCO DISCLAIMS ALL WARRANTIES REGARDING THE INFORMATION, INCLUDING ALL WARRANTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND ALL WARRANTIES AS TO THE ACCURACY OR UTILITY OF SUCH INFORMATION. Execution of this Agreement and the disclosure of information pursuant to this agreement do not constitute or imply any commitment, promise, or inducement by either party or its affiliated/ related companies to make any purchase or sale, or to enter into any additional agreement of any kind.

**8. Severance**

If any of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

**9. Notice**

Any notice required or permitted to be given under this Agreement shall be given in writing by personal delivery, certified or registered mail, or courier or facsimile or electronic mail and shall be addressed to the nominated addresses set forth below or such other address as either Party has notified the other Party in writing.

**10. General**

10.1. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.

10.2. This Agreement may be amended or modified only in writing signed by the Parties or their authorized representatives.

**11. Jurisdiction**

This Agreement shall be construed in interpreted, applied and governed in accordance with the laws of India and jurisdiction of Court at Bangalore, Karnataka.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed by a duly authorized representative of such party as of the date first above written.

**BSPIN**

**SWITCO**

**Witness 1**

**Witness 2**

**Name and Address**

**Name and Address**