

## NON-DISCLOSURE AGREEMENT

(Smart Contract No.: L-xxxxxxx)

THIS NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made and entered into on this \_\_\_\_\_ 2020 (“**Effective Date**”) by and between:

**Smart Axiata Co., Ltd. (“Smart”)**, a private limited company incorporated under the laws of Cambodia, having company number 00016061, having its registered address at 464A, Preah Monivong Blvd., Sangkat Tonle Bassac, Khan Chamkarmorn, Phnom Penh 12301, Cambodia, represented by **Mr. Thomas HUNDT, Chief Executive Officer**; and

**[company name]** (“**[abbreviation]**”), a **[private limited]** company incorporated under the laws of **[country]**, having company number **[number]**, having its registered address at **[full address]**, represented by **[Name]**, **[Position]**.

Each of the parties listed above is referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS** the Parties wish to enter into this Agreement in order to protect the confidentiality of certain information to be disclosed under this Agreement solely for use in connection with **[Smart projects]** (the “**Purpose**”).

**NOW, THEREFORE**, the Parties hereto agree as follows: -

### 1. **DEFINITIONS.**

- (a) “**Confidential Information**” means any information and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose, irrespective of the medium in which such information or data is embedded, which is - when disclosed in tangible form or via electronic communication, including internet based provision of information - marked "Confidential" by the Disclosing Party (as hereinafter defined) or which is - when disclosed orally or visually - identified as such prior to disclosure and summarized in writing by the Disclosing Party and said summary is given to the Receiving Party (as hereinafter defined) within thirty (30) days after such disclosure marked "Confidential". In case of disagreement, the Receiving Party must present its objections to the summary in writing within thirty (30) days of receipt. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.
- (b) “**Intellectual Property**” includes information relating to research and development, inventions, discoveries, developments, improvements, methods and processes, know-how, techniques, sketches, drawings, patterns, blueprints, specifications, designs, ideas, prototypes, models, formulations, test data and results, samples, molds, product briefs, algorithms, computer programs and software (whether in source or object code), compositions, works of authorship, compilations of data, concepts, patents, copyrights, trademarks, trade names, trade secrets, formulae, writings, notes and patent, trademark and copyright applications.
- (c) “**Related Company**” shall mean any corporation, company or other entity, which controls, or is controlled by one Party or by another Related Company of such Party, where control means ownership or control, direct or indirect, of more than fifty-one percent (51%) of such corporation’s, company’s or other entity’s voting capital. However, any such corporation, company or other entity shall be deemed to be a Related Company of one Party only so long as such ownership or control exists.

### 2. **CONFIDENTIALITY.**

- 2.1. Either Party who receives the Confidential Information (“**Receiving Party**”) shall keep all information received from the other Party (“**Disclosing Party**”) in whatever form as strictly confidential.
- 2.2. 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 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 Related Company, who each of them reasonably need to know such Confidential Information for the Purpose and who are bound to confidentiality either by their employment agreement or otherwise, in writing, to an extent not less stringent than the obligations imposed on the Receiving Party under this Agreement. Prior to any disclosure to a Related Company, the Receiving Party must have in place a written agreement with such Related Company, imposing on such Related Company the confidentiality obligations in respect of the Confidential Information not less stringent than the obligations imposed on the Receiving Party under this Agreement. Each Party shall be liable for acts or omissions by a Related Company or by Related Companies' employees resulting in unauthorized distribution, use and/or disclosure of Confidential Information as if such acts or omissions had been its own acts or omissions;
- iii) 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
- iv) shall remain the property of the Disclosing Party.

### **3. EXCEPTIONS.**

3.1. The obligations under Clause 2 shall not apply, however, to any information which:

- i) was in the Receiving Party's possession without confidentiality obligation prior to receipt from the Disclosing Party;
- ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the Receiving Party or the breach of the corresponding obligations of the Related Companies;
- iii) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided such third party is not, to the Receiving Party's knowledge, in breach of any confidentiality obligation relating to such information;
- iv) is developed by the Receiving Party or its Related Companies independently from Confidential Information or under the exceptions as set out in Clause 3 lit. i) - iii) or vi);
- v) is required to be disclosed by any ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the Disclosing Party so as to give the Disclosing Party an opportunity to intervene and further provided that the Receiving Party uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially; or
- vi) is approved for release by written agreement of the Disclosing Party.

3.2. The Party seeking the benefit of such exception shall bear the burden of proving its existence.

4. **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.

5. **LICENSE AND INTELLECTUAL PROPERTY.** License or any Intellectual Property is neither granted nor conveyed by this Agreement, nor does this Agreement constitute any obligation of the Disclosing Party to grant or convey such rights to the Receiving Party.

6. **INDEMNIFICATION.** The Receiving Party that fails to comply with its obligations under this Agreement shall indemnify the Disclosing Party for actual losses resulting from disclosure or illegal exploitation of the Confidential Information. Considering the special significance of the Disclosing Party's Confidential Information, in the event of non-compliance, the Disclosing Party has the right to claim either compensation of losses or non-recurring payment of a penalty in the amount of USD100,000 (US Dollars one hundred thousand only) for every case of non-compliance.

7. **TERM AND TERMINATION.** This Agreement shall come into force upon execution by the Parties and shall automatically terminate one (1) year later. Either Party may prematurely terminate this Agreement with thirty (30) days' prior written notice to the other Party. The rights and obligations of

the Parties which have accrued prior to termination shall, however, survive the termination of this Agreement for a period of four (4) years. The Parties shall not be legally obligated to conclude any other contract with regard to the Purpose.

**8. RETURN.**

8.1. Within ninety (90) days after termination of this Agreement the Disclosing Party may request in writing from the Receiving Party to either return or destroy all Confidential Information received from the Disclosing Party and stored electronically and/or on record-bearing media as well as any copies thereof. The Receiving Party shall confirm in writing such destruction or return the Confidential Information as well as any copies thereof to the Disclosing Party within fourteen (14) days after receipt of the Disclosing Party's request.

8.2. Clause 8.1 shall not apply to copies of the electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the Receiving Party according to mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation according to the terms and conditions set out herein.

**9. GOVERNING LAW.** This Agreement and any dispute or claim arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Cambodia.

**10. GOVERNING JURISDICTION.**

10.1. All disputes, controversies or differences which may arise between the Parties in respect of this Agreement shall as far as practicable be settled amicably through mutual negotiation between the authorized representatives of each Party. Should the Parties fail to resolve any dispute through negotiation within one month, the Parties agree to submit their dispute to Cambodian competent court.

10.2. Each Party shall be entitled to seek necessary and appropriate injunctive relief to maintain the status quo or any other temporary measures from the courts of competent jurisdiction to enjoin the other Party from taking certain actions which allegedly infringe the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by the competent jurisdiction in accordance with Clause 10.1.

**11. NO ASSIGNMENT.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

**12. ENTIRE AGREEMENT; AMENDMENTS; WAIVER.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. This Agreement may not be amended or modified except by a writing signed by both Parties. The failure of either Party to insist upon strict adherence to any provision of this Agreement on any occasion will not be considered a waiver of the right to insist upon strict adherence to such provision thereafter or to any other provision of this Agreement in any instance. Any waiver will be in writing signed by an authorized representative of the Party against whom waiver is asserted.

**13. REFORMATION; SEVERABILITY.** The provisions of this Agreement will be severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the other provisions hereof will remain in full force and effect, and such invalid or unenforceable provision will be reformed as necessary to make it valid and enforceable to the maximum extent possible.

**14. NOTICES.** All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing.

15. **SURVIVAL OF AGREEMENT**. Subject to any provision to the contrary, this Agreement is to enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but are not to enure to the benefit of any other persons.

16. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, by computer image file (such as by pdf) or original signature, each of which, when executed, will be deemed to be an original and all of which together will constitute one and the same document.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed and delivered on the Effective Date by their duly authorized representative as below.

For and on behalf of  
**Smart Axiata Co., Ltd.**

For and on behalf of  
**[company name]**

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**Mr. Thomas HUNDT**  
Chief Executive Officer

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**Name:**  
Position: