

## TWO-WAY CONFIDENTIAL DISCLOSURE AGREEMENT (CDA)

This Agreement is made as of **Effective\_Date** (the "Effective Date") between Cummins Inc. a State of Indiana (USA) corporation having a principal office located at 500 Jackson St., Columbus, IN 47201 (USA) (herein after referred to as "Cummins"), and **Second\_Party\_Long\_Name**, a(n) **Second\_Party Country/State of ? corporation/limited liability company**, having a principal office located at **Second\_Party\_Street\_Address** (hereinafter referred to as "**Second\_Party\_Short\_Name**");

Whereas Cummins and **Second\_Party\_Short\_Name** find it desirable to exchange information for the purpose of **discussing [and evaluating] possible business relations [and supporting separately agreed to works] related to ? technologies, products [and/or services], and potential applications thereof [specifically including, but not limited to, ? technologies, ? products, ? services, and ? applications]** (hereinafter referred to as "**Purpose**") and desire to protect such information;

Now, therefore, in consideration for the premises and obligations set forth herein, it is hereby agreed that:

### 1. Definitions

- 1.1. Confidential Information: "Confidential Information" shall mean any and all information transmitted or communicated by or on behalf of one party (hereinafter referred to as "**Disclosing Party**") to the other party (hereinafter referred to as "**Receiving Party**") and any and all information derived (including, but not limited to, developed, designed, deduced, or the result of testing) from such information in connection with the Purpose or otherwise in the course of conducting ordinary business, which information is generally unknown to Receiving Party or entities competitive with the Disclosing Party, whether such information is disclosed or otherwise provided in written or oral form or on any other medium. Confidential Information includes, without limitation, information relating to the design, product, operation and manufacture, including manufacturing processes, prototypes, samples, flowcharts, source code, object code, data, and know-how of Disclosing Party or third party who transmitted or communicated information on behalf of Disclosing Party to Receiving Party, such as manufacturing drawings and all information referred to in such manufacturing drawings; costs, margins and pricing; marketing studies and strategies; customer list, customers' information or other customer-related information; names of developmental programs, sales or marketing plans; or references to next generation products and new product introductions, and all other information, documents and materials that relate to technical, financial, management and other business conditions, prospects, plans, procedures and affairs of Disclosing Party or third party to whom Disclosing Party bears duties to keep their information confidential.
- 1.2. Disclosing Party / Receiving Party: Each reference to either a Disclosing Party or a Receiving Party in this Agreement shall be deemed to include the respective Party's

subsidiaries and any other legal entity over which the Party can exert control. For purposes of this Agreement, "control" means the possession, directly or indirectly, of the power to direct the management or policies of an entity within the constraints or restrictions of the interest held, whether through the ownership of securities representing a right to vote, by contract, or otherwise.

## 2. Receiving Party Obligations

- 2.1. Except as provided in Section 2.2, Receiving Party shall use commercially reasonable efforts to hold any and all Confidential Information in confidence for a period of five (5) year(s) (hereinafter referred to as the "Hold Period") from the date such Confidential Information might be received. Receiving Party shall not disclose Confidential Information to any third party unless written consent of Disclosing Party is first obtained.
- 2.2. Exceptions: Notwithstanding Section 2.1, Receiving Party shall not be required to maintain confidential, or be restricted in its use of, any information which:
  - 2.2.1 was in the public domain at the date of disclosure by the Disclosing Party;
  - 2.2.2 becomes public knowledge during the Hold Period of this Agreement without breach of the Agreement by Receiving Party;
  - 2.2.3 Receiving Party can show was in its possession prior to disclosure by Disclosing Party;
  - 2.2.4 is lawfully acquired by Receiving Party from a third party; or
  - 2.2.5 was developed by Receiving Party without use of or reference to and independently from Confidential Information.

## 3 Rights and Duties of Disclosing Party

### 3.1 Right to Confidential Information:

- 3.1.1 Disclosing Party owns and will continue to own Confidential Information that has been created, discovered or developed by or on behalf of Disclosing Party that is not in the public domain, whether or not such information has commercial value;
- 3.1.2 Disclosing Party retains all right, title and interest in and to the Confidential Information, including without limiting the generality of the foregoing, all tangible embodiments bearing Confidential Information whether provided by or on behalf of Disclosing Party.

### 3.2 Duty to Identify Confidential Information

- 3.2.1 All Confidential Information shall be clearly identified by Disclosing Party as such by an appropriate and conspicuous writing or marking in human readable form on the medium transmitting such Confidential Information.

- 3.2.2 In case Confidential Information is originally disclosed in any other manner, for instance orally or visually, and identified as such at the time of disclosure, Disclosing Party shall summarize and designate such information as Confidential Information in a written memorandum delivered to Receiving Party within thirty (30) days of the date of disclosure.
- 3.2.3 Information that is not identified by Disclosing Party as Confidential Information pursuant to subsection 3.2.1 or 3.2.2 will be deemed as non-confidential.

#### 4 Use and Disclosure

##### 4.1 Purpose of Use

- 4.1.1 Receiving Party shall not use Confidential Information for any purposes other than the Purpose.
- 4.1.2 Receiving Party shall not design around, reverse engineer, or otherwise modify the Disclosing Party's Confidential Information.

4.2 Allowed Disclosure: Receiving Party may disclose Confidential Information to its own employees, consultants, and representatives who need to know such information for the Purpose provided that Receiving Party causes such employees, consultants, and representatives to be bound in writing by the same obligation of confidentiality and also remains responsible for the acts of such employees, consultants, and representatives.

##### 4.3 Unauthorized Use and Disclosure

- 4.3.1 Both Parties acknowledge that any use or disclosure of Confidential Information in violation of this Agreement will cause irreparable injury not readily measurable in monetary damages.
- 4.3.2 Any unauthorized use or disclosure by any of the employees, consultants, and/or representatives of Receiving Party shall be deemed to be an unauthorized use or disclosure by Receiving Party.
- 4.3.3 In the event of an unauthorized use or disclosure, Receiving Party shall indemnify and hold harmless Disclosing Party from and against any and all damages, losses, costs, expenses and attorneys' fees incurred as a result of such unauthorized use or disclosure.
- 4.3.4 In the event of an unauthorized use or disclosure, Disclosing Party shall be entitled to seek, without waiving any other rights, recourses, or remedies to which it may be entitled under this Agreement, at law or in equity, and without requiring a bond to be posted, injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

#### 5 Duration of Agreement

- 5.1 Term: This Agreement shall be in effect for a period of five (5) year(s) starting from the Effective Date.
- 5.2 Termination: Either party hereto, may, upon written notice to the other, terminate this Agreement. Such termination shall be effective thirty (30) days after receipt of such notice.
- 5.3 Return of Confidential Information: Upon termination or expiration of this Agreement, Receiving Party shall return, forthwith to Disclosing Party, any and all Confidential Information in its possession and control, together with copies thereof, if any, it received from Disclosing Party during the term hereof. Alternatively, at such termination or expiration, Disclosing Party may elect to have all Confidential Information it transmitted or communicated to Receiving Party destroyed by Receiving Party pursuant to written instructions.
- 5.4 Survival of Obligations: Articles 2, 3.1, 4.1, 4.3, 5.3, 5.4, and 6 herein shall continue in full force notwithstanding the termination or expiration of this Agreement.

**6 Requests of Governments**

- 6.1 Either party to this Agreement shall be entitled to disclose any Confidential Information in its possession in compliance with an order of any court of competent jurisdiction to which it may be subject.
- 6.2 Prior to Receiving Party disclosing Confidential Information pursuant to court order, Receiving Party shall inform Disclosing Party of the court’s request. Receiving Party shall thereafter take reasonable steps to preserve the confidentiality of the information so disclosed and shall give the Disclosing Party prompt notice of all Confidential Information so disclosed.
- 6.3 Disclosing Party, upon being informed of the court order, may take any reasonable method and action to protect its Confidential Information as long as such actions or methods do not interfere with Receiving Party’s compliance with such court order.

**7 No Implied Rights**

- 7.1 No rights, obligations, representations or terms other than those expressly set forth herein are to be implied from this Agreement. In particular, without limitation:
  - 7.1.1 This Agreement does not obligate either party to disclose or receive any information to or from, or to engage in any transaction with, the other;
  - 7.1.2 Subject to subsection 4.1.2, receipt of Confidential Information under this Agreement shall not preclude or otherwise limit Receiving Party, without disclosing or using Confidential Information of Disclosing Party, from developing, providing and/or obtaining technology, products and services to or from third parties which may be competitive with products or services of Disclosing Party, or compete with the Disclosing Party.

7.2 Neither the execution of this Agreement, nor the disclosure of any Confidential Information herein, shall be construed as, either expressly or by implication, estoppel or otherwise, transferring of ownership or granting any license under any invention, patent, trademark, copyright, trade secret or know-how now or hereafter held by or controlled by Disclosing Party.

7.3 All Confidential Information is provided "AS IS," "WHERE IS," and with all faults and defects, without any warranty, express or implied, regarding its accuracy, completeness, or performance.

## 8 Severability of Provisions

8.1 Should any part of this Agreement be declared invalid by a court of law or become invalid due to changes of law, such decisions or changes shall not affect the validity of any remaining portion which shall remain in full force and effect as if the invalid portion was never a part of this Agreement at the time it was executed.

8.2 Should the severance of any such part of this Agreement materially affect any other rights and obligations of the parties hereunder, or make impossible or impractical the enforcement of any remaining portion or the whole Agreement, the parties hereto shall negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

## 9 Miscellaneous

9.1 Non-Assignability: Neither party hereto shall, directly or indirectly, assign or purport to assign this Agreement or any of its rights and obligations in whole or part to any third party without the prior written consent of the other party.

9.2 Amendment: This Agreement shall not be amended, modified or altered, except in writing, duly accepted and executed by both parties.

9.3 Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana (USA) without regard to conflicts of laws principles and provisions, and the courts located therein shall have exclusive jurisdiction over any legal action that arises out of or in connection with this Agreement. Each party hereby waives any objections or defenses to the jurisdiction of any such courts. The United Nations (UN) Convention on the International Sale of Goods shall not apply to this Agreement.

9.4 Compliance with Export Control Laws and Regulations: Each party agrees to comply with all applicable export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, each party agrees that it will not transfer any information it receives from the other party

that constitutes export controlled items, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to that party or the party's suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

9.5 Entire Agreement: This Agreement constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof, and no representations or promises have been made that are not fully set forth herein.

## 10 Notices

Any notices from either party to the other will be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other.

If to Cummins

Cummins Inc.  
Law Department  
500 Jackson St.  
Columbus, IN 47201 (USA)

If to [Second\\_Party\\_Short\\_Name](#)

[Second\\_Party\\_Full\\_Name](#)  
ATTN: [Second\\_Party\\_Receiver\\_of\\_Notices\\_Name](#)  
[Second\\_Party\\_Receiver\\_of\\_Notices\\_Street\\_Address](#)

IN WITNESS WHEREOF, the parties hereby, or authorized agents thereof, have executed this Agreement, which shall be binding upon them and their respective successors and assigns, as of the day and year first above written.

Cummins Inc.

[Second\\_Party\\_Long\\_Name](#)

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and agreed to this Date:

Accepted and agreed to this Date:

\_\_\_\_\_

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