NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is made as of DATE (the "Effective Date"), by and between Cummins \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "CUMMINS”), a Company incorporated under the Companies Act, 1956 and having its Registered Office at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and COMPANY NAME , (hereinafter referred to as “COMPANY”) , a Company incorporated under the Companies Act, 1956 and having its Registered Office at COMPANY ADDRESS.

Whereas CUMMINS and COMPANY find it desirable to exchange confidential and proprietary information for the purpose of discussing potential business relations concerning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (nature of assignment)

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

DEFINITIONS

1. PROPRIETARY INFORMATION shall mean any and all technical information relating to the design, operation and manufacture of CUMMINS and/or COMPANY products (including, but not limited to, manufacturing drawings and all information referred to in such manufacturing drawings); costs, margins and pricing; marketing studies and strategies; information, documents and materials relating to the disclosing party’s financial, management and other business conditions, prospects, plans, procedures and affairs which such party holds confidential or considers proprietary and has not publicly disclosed, whether the foregoing is tangible or intangible, and disclosed or otherwise provided in written or oral form or in or on any magnetic or other machine readable medium; and names of developmental programs, sales or marketing plans, or references to next generation products and new product introductions, which is transmitted or communicated by one party to the other.

TERMS AND CONDITIONS

2. Confidentiality Obligation: All PROPRIETARY INFORMATION which is transmitted or communicated by one party to the other shall in all cases be held in confidence by the receiving party and not disclosed to any third party unless written consent of the disclosing party is first obtained, except that, the receiving party has the right to disclose such information to its own employees, consultants and representatives who are bound by an obligation of confidentiality and who need to know such information for the purposes specified hereinabove. The receiving party agrees that it shall not use the PROPRIETARY INFORMATION for any purposes other than the ones specified herein.

3. Exceptions: Notwithstanding the provisions of Paragraph 2 of this Agreement the receiving party shall not be required to maintain confidential or be restricted in its use of any PROPRIETARY INFORMATION which:

 a. was in the public domain at the date of disclosure to the receiving party;

 b. becomes public knowledge during the term of this Agreement without breach of this Agreement;

c. the receiving party can show was in its possession prior to disclosure by the disclosing party;

d. disclosure of which is required by law or by order of a court of competent jurisdiction;

 e. is lawfully acquired by the receiving party from a third party not under an obligation of confidentiality to the disclosing party; or

f. was developed by the receiving party without reference to, and totally independently from, the PROPRIETARY INFORMATION.

4. Procedures to Protect Proprietary Information: For the purpose of protecting PROPRIETARY INFORMATION received from the disclosing party hereunder, the receiving party will use efforts commensurate with those it employs for the protection of corresponding information of its own, including as a minimum, alerting its employees of the confidential and sensitive nature of the PROPRIETARY INFORMATION of the disclosing party, disclosure to its employees only on a need-to-know basis and using appropriate safe-keeping procedures for PROPRIETARY INFORMATION of the disclosing party.

5. Term: This Agreement shall be effective as of the Effective Date and its term shall end five (5) years from the date hereof.

6. Subsidiaries: Each reference to a “party” in this Agreement shall be deemed to include each party’s respective subsidiaries, affiliates and sister companies or any other organization in which such party has an ownership stake or over which such party can exert control, each of which such party shall cause to observe the requirements of this Agreement with respect to the information disclosed by the other party under this Agreement.

7. No Implied Rights: No rights, obligations, representations or terms other than those expressly set forth herein are to be implied from this Agreement. In particular, without limitation:

 (a) 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;

 (b) Receipt of PROPRIETARY INFORMATION under this Agreement shall not preclude or otherwise limit the receiving party, without disclosing or using PROPRIETARY INFORMATION of the other, from developing, providing and/or obtaining technology, products and services to or from third parties (1) which may be competitive with products or services of the disclosing party or (2) which compete with the disclosing party; and

 (c) No license is hereby granted directly or indirectly under any patent, trademark, copyright, trade secret or know-how now held by, or which is or may be licensable by, the disclosing party.

 (d) This Agreement shall not be construed as an agreement of Joint Venture or intention of both the parties to enter into any such agreement in whatsoever manner at any future date.

8. Termination: Either party hereto, upon written notice to the other, may terminate this Agreement. Such termination shall be effective thirty (30) days after receipt of such notice. All obligations arising under this Agreement shall survive any termination or expiration of this Agreement and any confidentiality obligations will remain in effect for a period of five (5) years from date of first disclosure hereunder. Upon termination or expiration of this Agreement, any PROPRIETARY INFORMATION received pursuant to this Agreement shall be returned, together with all copies thereof.

9. Severability of Provisions: Should any part of this Agreement be declared invalid by a court of law, such decision 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 when it was executed. As it is the parties’ intent that this Agreement be enforced to the fullest extent permitted by law, such invalidated section shall be deemed amended so as to avoid the reasons for its invalidity. Should the severance or amendment of any such part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

10. 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.

11. Amendment: Subject to Paragraph 9 above, this Agreement shall not be amended, modified or altered, except in writing, duly accepted and executed by both parties.

12. Governing Law: This Agreement shall be governed by, and construed in accordance with the laws of India. Any dispute arising out of this Agreement shall be subject to the jurisdiction of Courts at \_\_\_\_\_ (city name), India only.

13. Expenses : Both the parties shall bear the expenses / costs etc. in relation to providing Proprietary Information to the other party and shall not have any claim against each other.

14. Entire Agreement: This Agreement constitutes the entire agreement and understanding of the parties hereto, and no representations or promises have been made that are not fully set forth herein.

1. 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. A notice will be deemed received when delivered, or three (3) days after deposit in the Post Office , certified or registered, postage prepaid, whichever is earlier.

 If to CUMMINS:

 Cummins \_\_\_\_\_\_\_\_\_\_\_\_\_\_

#  Attn:

 (address )

 If to COMPANY:

 COMPANY NAME

 Attn : AUTHORIZED SIGNATORY

 COMPANY ADDRESS

16. Rights, Remedies and Restrictions. The Receiving Party acknowledges that:

 (a) the Disclosing Party possesses and will continue to possess PROPRIETARY INFORMATION that has been created, discovered or developed by or on behalf of the Disclosing Party by third parties, which information has commercial value and is not in the public domain;

 (b) unauthorized use or disclosure of PROPRIETARY INFORMATION is likely to cause irreparable injury not readily measurable in monetary damages;

 (c) in the event of an unauthorized use or disclosure, the Disclosing Party shall be entitled to, without waiving any other rights, recourses or remedies to which it may be entitled under this Agreement, at law or in equity, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction;

 (d) subject to the rights expressly granted to the Receiving Party in this

Agreement, the Disclosing Party and its licensors retain all right, title and interest in

and to the PROPRIETARY INFORMATION, including without limiting the generality of the foregoing, title to all materials regardless of whether provided by or on behalf of the Disclosing Party or created by the Receiving Party; and

 (e) any unauthorized use or disclosure by the agents, representatives, advisors, directors, officers or employees of the Receiving Party shall be deemed to be an unauthorized use or disclosure by the Receiving Party and the Receiving Party shall indemnify and hold harmless the Disclosing Party from and against any and all damages, losses, costs, expenses and attorneys’ fees incurred as a result of such breach.

 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-**

 By:

#  Name:

 Title:

 Date:.

 **COMPANY:**

 By:

#  Name:

 Title:

 Date: