



SPICE ROUTE  
FINANCE

# Sample NDA Template

Business Plan	Business Model
Commencement Date	
Disclosing Party	
Receiving Party	
Authorized Purpose	Merger & Acquisition
Confidential Information	shall have the meaning given to it in Clauses 1.1 and 1.2.
Expiry Date	The third anniversary of the Commencement Date, subject to Clause 15.
Representatives	Officers, employees, contractors, consultants, agents, advisers and other representatives.

**Disclosing Party shall provide to Receiving Party (and to Associated Parties) Confidential Information to facilitate the Authorized Purpose subject to the provisions of this Agreement.**

## 1. Confidential Information

1.1 In this Agreement, “Confidential Information” shall, subject to Clause 1.2 mean any information, however it is conveyed, that relates to:

1.1.1 the business, affairs, finances, customers, clients, suppliers, strategies, intentions, market opportunities or marketing plans of the Disclosing Party and/or its Associates; and

1.1.2 the operations, processes, research, know-how, designs, software, algorithms or trade secrets of the Disclosing Party and/or its Associates, together with any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential, disclosed before, on or after the Commencement Date by the Disclosing Party and/or its Associated Parties to the Receiving Party and/or its Associated Parties. Confidential Information shall further include any information or analysis based upon or derived from any of the aforementioned information.

1.2 “Confidential Information” shall not include any information which the Receiving Party can prove:

1.2.1 is or becomes public knowledge through no improper conduct on the part of the Receiving Party and/or its Associated Parties;

1.2.2 is already lawfully possessed by the Receiving Party and/or its Associated Parties prior to receiving it from the Disclosing Party and/or its Associated Parties; and/or

1.2.3 is obtained subsequently by the Receiving Party and/or its Associated Parties from a third party without any obligations of confidentiality and

such third party is in lawful possession of such information and is not in violation of any contractual or legal obligation to maintain the confidentiality of such information.

1.3 The onus shall be on the Receiving Party to prove application of the exceptions set out in Clause 1.2.

## 2. Confidentiality Obligations

2.1 The Receiving Party shall, and shall ensure that its Associated Parties shall, treat all Confidential Information received or derived from the Disclosing Party and/or its Associated Parties as secret and confidential.

2.2 The Receiving Party shall not, and shall ensure that its Associated Parties shall not, use, copy or disclose to any third party any Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party’s Associated Parties except as expressly set out in Clause 3 below.

2.3 If the Receiving Party produces any document or other work (whether in paper, electronic or any other form) which includes or is derived from any Confidential Information received from the Disclosing Party and/or any of the Disclosing Party’s Associated Parties, then the Receiving Party shall ensure such document or other work is clearly

and conspicuously marked with a notice stating that it contains Confidential Information belonging to the Disclosing Party.

- 2.4 The Receiving Party shall not at any time prior to the expiration of two (2) years from the date of disclosure: directly or indirectly through subsidiaries, related companies, or third parties, initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertakings on the basis any Confidential Information which would be competitive with the Disclosing Party, or with any such third party identified or introduced by the Disclosing Party; or seek to by-pass, compete with, avoid or circumvent the Disclosing Party from any business opportunity or compensation.

### 3. Permitted Acts

The Receiving Party may:

- 3.1 use Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties solely for the Authorized Purpose;
- 3.2 disclose any part of the Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties solely to the extent that it is legally required to do so pursuant to valid legal process (e.g., a properly served subpoena) or an order of a court of competent jurisdiction, provided that the Receiving Party shall use its best effort to limit such disclosure and shall provide the Disclosing Party with an opportunity to appear before such court for the purpose of contesting or limiting disclosure requirements; and/or
- 3.3 disclose Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties to those of its Associated Parties on a need-to-know basis and to the extent necessary in order to carry out the Authorized Purpose.

### 4. Associated Parties

- 4.1 The Receiving Party shall ensure that each of its Associated Parties in possession of Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties:
- 4.1.1 is aware of the Receiving Party's obligations under this Agreement in respect of that Confidential Information; and
- 4.1.2 is legally bound by confidentiality and non-use obligations in relation to that Confidential Information which are at least as stringent as the provisions of this Agreement.
- 4.2 Each party shall ensure that each of its Associated

Parties who have access to Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties comply with the confidentiality and non-use obligations referred to in Clause 4.1.2 above. Each party shall at its own expense make all reasonable effort (including but not limited to utilizing legal process) to restrain its Associated Parties from making any unauthorized use or disclosure of Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties.

### 5. Return of Confidential Information

- 5.1 The Receiving Party shall at the request of the Disclosing Party:
- 5.1.1 destroy or return to the Disclosing Party forthwith all documents, files or other items containing any Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties, and where the same are in the possession of the Receiving Party's Associated Parties, procure the destruction or return of the same to the Disclosing Party; and
- 5.1.2 erase all the Disclosing Party's Confidential Information (and that of the Disclosing Party's Associated Parties) from its computer systems or other electronic storage (to the extent possible), and procure the erasure of the same from the computer systems or from other electronic storage of the Receiving Party's Associated Parties (to the extent possible); and
- 5.1.3 certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that the Receiving Party and/or its Associated Parties may retain documents and materials containing, reflecting, incorporating, or based on any of the Disclosing Party's and/or the



Disclosing Party's Associated Parties' Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Receiving Party to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Receiving Party and/or the Receiving Party's Associated Parties.

## 6. No Obligation to Disclose or License Confidential Information

For the avoidance of doubt, nothing in this Agreement shall require either party or any of their Associate Parties to disclose any of its/their Confidential Information to the other party and/or any of the other party's Associated Parties or to enter into any licence agreement in respect of the Confidential Information and/or technology belonging to it and/or any of their Associated Parties. Except as expressly set forth in this Agreement, neither party grants to the other or to any of the other's Associated Parties by implication, estoppel or otherwise, any right, title, license or interest in any intellectual property right.

## 7. Notification of Disclosure

The Receiving Party shall, and will ensure that its Associated Parties, promptly notify the Disclosing Party if it/they become(s) aware of any unauthorized disclosure or use of any of the Confidential Information received or derived from the Disclosing Party and/or the Disclosing Party's Associated Parties.

## 8. Injunctions

The parties acknowledge that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement. Accordingly, without prejudice to any other rights or remedies that any party may have, the parties agree that they shall be entitled to equitable relief, including injunctions and orders for specific performance, in the event of any breach of the provisions of this Agreement, in addition to all other remedies available at law or in equity.

## 9. Waiver

Any failure or delay of either party to exercise any rights or powers under this Agreement shall not be deemed to be a waiver of those or any other rights, nor will any single or partial exercise of them preclude any further exercise, unless expressly so agreed in writing by such party.

## 10. Indemnity

Each party shall indemnify the other and the other's Associated Parties against any action, claim, cost, loss, liability, expense or damage that the other and/or the other's Associated Parties may suffer or incur arising directly or indirectly from any breach of the provisions of this Agreement by the indemnifying party or any act or omission by the indemnifying party's Associated Parties which causes the indemnifying party to be in breach of this Agreement.

## 11. Exclusion of Implied Warranties

Neither party makes any warranty or representation, express or implied, (1) as to the truth, accuracy, efficacy, completeness, capabilities or safety of any of its Confidential Information; or (2) that any of its Confidential Information will not infringe any third party rights.

## 12. Publicity

Except as required by law, the parties shall not, and shall ensure that their Associated Parties shall not, make any announcement, or comment upon, or originate any publicity, or otherwise provide any information to any third party (other than its legal advisors) concerning this Agreement including but not limited to, the fact that the parties are engaging in discussions, the existence of this Agreement, the terms of this Agreement, the performance of this Agreement and/or any dispute or disagreement relating to this Agreement without the prior written consent of the other party.

## 13. Non-solicitation

During the term of this Agreement, neither party shall, and shall procure that its Associates shall not, without the prior written consent of the other, solicit the employment or engagement of any person who is employed or engaged by the other party or the other party's Associates in relation to the Authorized Purpose.

## 14. Assignment

Neither party shall be entitled to assign its rights and/or obligations under this Agreement without the prior written consent

of the other party.

## 15. Duration

This Agreement shall continue in force for as long as either party and/or their Associated Parties have knowledge or possession of any Confidential Information received or derived from the other party and/or that party's Associated Parties provided that, subject to any provisions that are expressly stated to survive or which by their nature may be deemed to survive, this Agreement shall expire on the Expiry Date. For the avoidance of doubt, this Agreement shall survive any termination of discussions between the parties.

## 16. No Partnership

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute a party the agent of the other party, nor authorize a party to make or enter into any commitments for or on behalf of the other party.

## 17. Third Party Rights

A person who is not a named Party to this Agreement shall not have any rights under or in connection with it.

## 18. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

## 19. Governing Laws

This Agreement shall be governed by the laws of India, without reference to conflict of laws principles and the Parties submit to the exclusive jurisdiction of the courts at Bangalore, Karnataka.

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For and on behalf of [Name of Company]

*Signed*

*Full Name*

*Title*

For and on behalf of [Name of Company]

*Signed*

*Full Name*

*Title*



## About Spice Route Finance

Spice Route Finance helps startups, early stage and growth stage companies create change that matters. We partner with our clients to identify and overcome the most critical challenges and deliver value by uncovering opportunities.

From leadership to execution, we help our clients to transform their organizations through our in-depth expertise in financial strategy, interim leadership, business strategy, and deal advisory. This means embedding excellence in financial decision making, analytics, and design into core processes and mindsets; building capabilities that help businesses thrive in the face of rapid disruption; and developing successful execution models to ensure that ideas translate into outcomes, quickly and sustainably.

*This eBook has been compiled to help startups to give a flavor of why accounting and finance is important for all startups irrespective of size and segment.*

*If there is any area which you need any specific guidance or help please do not hesitate to reach out to the founder at [sriram@spiceroutefinance.com](mailto:sriram@spiceroutefinance.com)*