



**Contract No.:**

## **Non-Disclosure Agreement**

The following two parties enter this Non-Disclosure Agreement (the Agreement) on \_\_\_\_\_ (date):

Party A: International SparkLink Wireless Short-range Communication Alliance (SparkLink Alliance, the Alliance)

Party B: [Full name]

Party A and Party B are hereinafter individually referred to as the "Party", and collectively as the "Parties".

### **Whereas:**

- (A) Party A and Party B intend to engage in activities under the Agreement (as defined below).
- (B) Either party may disclose the Confidential Information (as defined below) regarding activities under the Agreement to the other party during negotiation and communication, and either party may suffer loss due to the other party's failure to comply with the confidentiality obligations.
- (C) The Parties wish to maintain the confidentiality of the Confidential Information.

### **To this end, the parties agree as follows:**

1. In this Agreement, "Disclosing Party" refers to the party that provides the Confidential Information and "Receiving Party" refers to the party that receives the Confidential Information.
2. Unless otherwise stated in this Agreement, the following expressions have the following definitions in this Agreement:
  - (a) "Activities under the Agreement" means participation in the Alliance's tasks and standard development activities.
  - (b) "Affiliate" means a legal entity (in relation to the Receiving Party) that directly or indirectly controls a member, or is directly or indirectly controlled by a member, or is directly or indirectly controlled by another entity which directly or indirectly controls a member. One entity is deemed to control another entity if it:
    - Owns or controls over 50% of the another entity's voting shares
    - Has the decision-making power according to bylaws or agreements though it does not own or control over 50% of the another entity's voting shares, or
    - Has the right to elect or appoint directors or other personnel with similar responsibilities and has the decision-making power according to bylaws or agreements.

Affiliates exclude government agencies and other public bodies that perform their duties in accordance with laws, or any legal entity associated with a member

merely controlled or owned by government agencies and other public bodies that perform their duties in accordance with the law.

- (c) "Confidential Information" refers to business, marketing, technical, scientific, and other information disclosed by the Disclosing Party in relation to the activities under the Agreement (or information that the Receiving Party is aware of during the activities under the Agreement), which is:
- (i) Marked as confidential or proprietary (or similarly marked) when disclosed by the Disclosing Party or known by the Receiving Party.
  - (ii) Recorded in the form for transferring confidential information.
  - (iii) Labelled as confidential in writing or any other tangible manner; or disclosed in an intangible manner (including but not limited to oral communication) and confirmed to be confidential at the time of disclosure, and then summarized in writing and marked as confidential or proprietary (or similarly marked) and transmitted to the Receiving Party within 20 days of disclosure.

"Confidential Information" includes but is not limited to technical product information, software documents, development ideas, product development and business plans, product specifications/standards, and product design concepts/ideas.

**"Confidential Information" does not include the following if the Receiving Party can provide written proof:**

- (i) Information already in the possession of the Receiving Party when disclosed.
- (ii) Information that becomes public through means other than an act or omission by the Receiving Party.
- (iii) Information that is legally and independently obtained by the Receiving Party from a third party that is not subject to any confidentiality obligations.
- (iv) Information that is independently developed by the Receiving Party without using any confidential information disclosed by the Disclosing Party and for which the Disclosing Party can provide proof of ownership (written or otherwise).
- (v) Information that is already published or publically available.

The preceding definition does not limit the Receiving Party from disclosing information in compliance with an order from a court, arbitral tribunal, government department, or stock exchange. However, the Receiving Party shall promptly notify the Disclosing Party of such disclosure in writing, allow the Disclosing Party to seek an appropriate protective order or other court order, and provide necessary assistance in this regard. The information disclosed by the Receiving Party shall be limited to the purpose and scope prescribed by the aforesaid order. Any Party seeking protection or assistance shall bear the corresponding legal costs.

3. The Receiving Party states, guarantees, and warrants that it shall:

- (a) Fulfill reasonable confidentiality obligations for keep this Agreement, relevant Annexes (if any), and the Confidential Information obtained under this Agreement confidential, to the extent that is no less than the extent to which the Receiving Party keeps its own confidential information.

- (b) Not disclose (or cause or permit any disclosure of) the Confidential Information to any person, but not including the following persons for whom the disclosure is necessary to perform Alliance tasks: managers or employees of the Receiving Party that are directly involved in the activities under the Agreement, the Receiving Party's consultants and its Affiliate's managers or employees who have received access to the Confidential Information from the Disclosing Party in writing for the purpose of performing activities under the Agreement.
  - (c) Not use (or cause or permit any disclosure of) the Confidential Information for any purpose other than performing activities under this Agreement, including but not limited to imitation, reverse engineering, disassembly, and reverse derivation of the Confidential Information in whole or in part.
  - (d) Not copy or store the Confidential Information if the Disclosing Party has clearly indicated that the Confidential Information shall not be copied or stored in any data storage or retrieval system at the time of disclosure.
  - (e) Return all records or materials containing the Confidential Information (whether in writing, on disk, or otherwise) to the Disclosing Party and urge the relevant parties to do the same as requested by the Disclosing Party upon completion of the activities under this Agreement. If requested by the Disclosing Party, the Receiving Party shall warrant in writing that all such records or information have been returned.
  - (f) Upon the request of the Disclosing Party, enter into relevant agreements with the Disclosing Party regarding any part of the Confidential Information disclosed by the Disclosing Party under the permission of a third party. The Disclosing Party shall not disclose the Confidential Information approved by the third party before signing relevant agreements with the Receiving Party.
  - (g) Urge the person listed in Article 3(b) to provide a written undertaking that they will maintain the confidentiality of the Confidential Information. The undertaking shall be as strict as the terms set forth in this Agreement. Upon receiving a reasonable request from the Disclosing Party, the Receiving Party shall provide the written undertakings.
  - (h) Be directly responsible to the Disclosing Party if the person listed in Article 3(b) discloses the Confidential Information to other parties not authorized by this Agreement, and be jointly and severally liable for any breach of this Agreement resulting from the acts or omissions of the person in question.
  - (i) Notwithstanding the provisions of Article 3(b), in case of the Alliance being the Receiving Party, the Alliance has the right to disclose the Confidential Information to other Alliance members and experts hired by the Alliance for the purpose of fulfilling standards formulation tasks unless the Disclosing Party had made an explicit statement of no permission to disclose to any others at the time of the Disclosing Party's disclosure. Such disclosure by the Alliance shall not be deemed as a breach of this Agreement. However, the Alliance shall warrant that the aforesaid members or experts have signed a non-disclosure agreement or letter of commitment with confidentiality restrictions that the degree of confidentiality shall be no less than this Agreement.
4. All rights, property, or interests in or to any of the Confidential Information shall remain the property of the lawful owner or holder of the Confidential Information. Excluding the manner and scope of use stated in this agreement, the Receiving Party has not been granted any other rights, explicitly or implicitly, with respect to the Confidential Information.

5. The Receiving Party fully acknowledges that the Disclosing Party does not warrant the Confidential Information it provides is or will be true.
6. The Parties acknowledge that any breach of this Agreement by either Party may result in irreparable loss to the other Party and that monetary damages alone cannot serve as adequate compensation. Accordingly, notwithstanding the provisions of Article 11, the Disclosing Party may seek injunctive relief from any court of competent jurisdiction, in addition to any other available remedy, against the Receiving Party's default or potential default.
7. In the event that the Receiving Party breaches this Agreement, the Parties agree that following the Disclosing Party's instructions, the Receiving Party shall take effective measures at its own expense to maintain the confidentiality of Proprietary Information. The Receiving Party shall indemnify the Disclosing Party for all direct loss arising from the breach.
8. This Agreement is valid for 5 years. The Receiving Party shall maintain the confidentiality of all Confidential Information it obtains pursuant to this Agreement until the date when the Receiving Party receives a written declassification notice from the Disclosing Party or 3 years after the Confidential Information is received (whichever is earlier).
9. Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party.
10. This Agreement constitutes the entire understanding and agreement between the Parties on the corresponding subject matter and supersedes all prior agreements, representations, and communication in any form. Unless made in writing by the Parties and signed by the authorized representatives of the Parties, any modification or amendment to this Agreement shall be null and void and shall not be binding on the Parties.
11. This Agreement is made and construed in accordance with the laws of the Mainland of the People's Republic of China (excluding Hong Kong and Macao). All disputes arising from this Agreement shall be submitted to the court where the Alliance is located for adjudication, unless otherwise stated in this Agreement.

This Agreement is made in quadruplicate, and each Party holds two copies with the same legal validity. If a Chinese version exists, it shall prevail. The duly authorized representatives of the Parties have signed this Agreement on the date set forth at the beginning of this Agreement.

**SparkLink Alliance**

**[Name of Party B]**

Signature and Seal:

Signature and Seal:

Name: Zeng Guosong

Name:[Party B's representative]

Title: Secretary-General,

Title: [Position of Party B's representative]

International SparkLink Alliance