

If you want to enter into a formal confidentiality agreement with Fabforma, you would need to opt for a NDA project. After submitting your Enquiry, you shall receive an email from Fabforma with a signed version of this template. You would need to email us at [support@fabforma.com](mailto:support@fabforma.com), a scanned copy (with your signature on all pages) of the document.

*If opting for a NDA project, please go through all the clauses in this NDA template before you decide to submit your project Enquiry on Fabforma.*

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## NON-DISCLOSURE AGREEMENT

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. "Confidential information" - For purposes of this Agreement, "**Confidential information**" means and includes all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged and any data or information that is confidential to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to:

- Any trade secrets, proprietary documents, business plans, process, structure or practices;
- Any concepts, reports, data, know-how, works-in-progress, designs, drafts, blueprints, 3D models, development tools, specifications;
- Any and all product information, service information or details of deliverables;
- Any marketing strategies, plans, financial information, or projections; operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies;
- Any other information that should reasonably be recognized as Confidential information of the Disclosing Party;

Confidential information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated as Confidential information. The Receiving Party acknowledges that the Confidential information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential information as trade secrets.

The Receiving Party shall use the Confidential information solely for and in connection with the Purpose.

Notwithstanding any other provision of this Agreement, the Parties acknowledge that Confidential information shall not include any information that,

- is or becomes legally and publicly available without breach of this Agreement by the Receiving Party;
- was rightfully in the possession of the Receiving Party without any obligation of confidentiality; or
- is disclosed or is required to be disclosed under any relevant law, regulation or order of court, provided the Disclosing Party is given prompt notice of such requirement or such order and (where possible) provided the opportunity to contest it, and the scope of such disclosure is limited to the extent possible.

2. *The obligations of the Receiving Party respecting disclosure and confidentiality shall continue to be binding and applicable without limit in point in time except and until such information enters the public domain.* Also, the terms of this Agreement shall survive the termination of discussions between the Parties regarding a potential relationship between the Parties. Upon any demand made by Disclosing Party, the Receiving Party shall immediately cease any and all disclosures or uses of Confidential information.
3. The Receiving Party shall hold in strict confidence and shall not disclose to any third party, nor make it accessible in any other manner, the Confidential information of the Disclosing Party. The Receiving Party also agrees to protect the confidentiality of all the Confidential information with the same degree of care with which it protects the confidentiality of its own Confidential information. The Receiving Party shall use all such Confidential information only for the purpose of the aforementioned project and shall not use or exploit such Confidential information, at any time, for its own benefit or the benefit of another without the prior written consent of the Disclosing Party.
4. Furthermore, the Receiving Party also agrees to the following:
  - that it may disclose the Confidential information only to its employees, affiliates, agents, contractors on a need-to-know basis in order to complete the aforementioned project and only if such employees, affiliates, agents or contractors have executed similar written non-disclosure agreements with the Receiving Party;
  - that it will take all necessary measures to ensure that the Confidential Information is not copied, duplicated, distributed, reverse engineered or reproduced in any other manner except as needed for the completion of the aforementioned project;
  - that it will immediately notify the Disclosing Party, in writing, of any actual or potential misuse or misappropriation of such Confidential information that may come to its attention;
  - the Receiving Party may be required to disclose the Confidential information to comply with a court order or similar legal process, provided that the Receiving Party provides prior written notice of such disclosure to the Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.
5. All rights, title and interest in and to the Confidential information shall remain with the Disclosing Party or its licensors. The Disclosing Party or its licensors, as the case may be, provides the Receiving Party a limited, non-exclusive, revocable, and non-transferable license for using the Confidential information solely for the purpose of providing the Receiving Party's Services to the Disclosing Party.
6. The Receiving Party shall, upon the written request by the Disclosing Party at any time, immediately return to the Disclosing Party all Confidential information and all documents or media containing any such Confidential information (and all copies and reproductions thereof, including, without limitation, all back-up copies in electronic formats). If the Confidential information is in a form which is incapable of return, then it shall be destroyed or erased completely by the Receiving Party.

7. This Agreement does not obligate the Parties to enter into any transaction or any subsequent agreement with each other. Both parties agree not to take or allow to be taken any action during the term of this Agreement that has the effect of circumventing the terms of this Agreement, it being the intent of the parties that each abide by both the letter and the spirit of the terms of this Agreement.
8. No Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Parties. This Agreement shall be binding upon all the Parties hereto and their respective successors and assigns.
9. This Agreement may not be amended or terminated, in whole or in part, without the prior written agreement of all Parties. It supersedes all prior agreements, written or oral, between the Parties, relating to the Confidential information.
10. The failure of any Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any part, term or provision of this Agreement becomes invalid or null and void, then neither the validity, nor enforceability of the remainder of this Agreement shall be affected.
11. The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate, irreparable harm for which monetary damages may not be adequate.  
Furthermore, the Receiving Party acknowledges that damages are not a sufficient remedy for the Disclosing Party for any breach of any of the Receiving Party's undertakings herein provided and the Receiving Party further acknowledges that the Disclosing Party is entitled to, without limitation to, the other rights guaranteed under this Agreement, to specific performance or injunctive relief (as appropriate) as one of the remedies for any breach or threatened breach of those undertakings by the Receiving Party, in addition to any other remedies available to the Disclosing Party in law or in equity.
12. It is expressly agreed to by the Parties hereto that the formation, interpretation and performance of these Terms and any disputes arising here from will be resolved through a two-step Alternate Dispute Resolution ("ADR") mechanism. It is further agreed to by the Parties that the contents of this Section shall survive even after the termination or expiry of the Terms.
  - **Mediation.** The Parties agree to first mediate any disputes or claims between them in good faith and resolve the disputes amicably and share the cost of mediation equally.
  - **Arbitration.** In the event that mediation fails, any controversy or claim arising out of or relating to this Agreement or breach of any duties hereunder shall be settled by Arbitration in accordance with the Arbitration and Conciliation Act of India, 1996. All hearings will be held in Bangalore, Karnataka, India and shall be conducted in English. The parties shall each appoint an arbitrator who shall then appoint a sole arbitrator to preside over the Arbitration proceedings.
13. This Agreement shall be construed and governed in accordance with the laws of India and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of India. In the event that any Party fails to honour this Agreement or any dispute arises hereunder, the Parties hereto consent, stipulate and agree that

when a dispute arises as to any terms or enforcement of this Agreement, same shall be submitted to binding arbitration pursuant to the laws of India.

14. In the event of the failure of either party to perform any of its obligations under this Agreement shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by factors beyond the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage, terrorism, external hacking, breach of security, vandalism, accident, restraint of government, governmental acts, injunctions, strikes and other such incidents beyond the reasonable anticipation and control of the party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.
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