

Mutual Confidentiality Agreement v3

THIS AGREEMENT is made on **[DATE]**

BETWEEN

- (1) **[COMPANY]**, whose registered address is at **[COMPANY]**, (the “Disclosing Party”)
- (2) **[SERVICE PROVIDER]** whose registered address is at **[SERVICE PROVIDER ADDRESS]** (the “Receiving Party”)

WHEREAS CREATIVE VIRTUAL LTD and the Company are respectively the owners of Confidential Information which they have agreed to disclose to each other for the Purpose on the terms and subject to the conditions set out in this Agreement.

1. In this Agreement:

“**Confidential Information**” means any and all information disclosed on or after **[DATE]** whether verbally, in writing, electronically or by any other means, whether directly or indirectly and whether or not marked “Confidential” unless trivial or obvious) by the Disclosing Party or any person on its behalf to the Receiving Party, including, but not limited to any information relating to the Disclosing Party’s business affairs, operations, products, processes, methodologies, formulae, plans, intentions, projections, know-how, intellectual property rights, trade secrets, market opportunities, suppliers, customers, marketing activities, sales, software, computer and telecommunications systems, costs and prices, usage rates, records, finances and personnel;

“**Disclosing Party**” means a party disclosing Confidential Information;

“**Purpose**” means all discussion and negotiation between the parties in connection with their respective business affairs;

“**Receiving Party**” means a party receiving Confidential Information; and a reference to a person includes a reference to that person’s successors and permitted assigns.

2. In consideration of the Confidential Information supplied to it by the other party, each party agrees that it shall keep the other party’s Confidential Information confidential, not use such Confidential Information except for the Purpose and not disclose such Confidential Information to another person (and use all reasonable efforts to prevent any such disclosure) except as permitted in clause 3 of this Agreement.

3. Each party may disclose the Confidential Information of the other party:

- (a) to any of its and its Affiliates’ officers, employees, subcontractors and advisers (“**Recipients**”) to the extent that such disclosure is reasonably necessary for the Purpose, provided that before disclosure of any Confidential Information to any Recipient, the Receiving Party shall ensure that the Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement;
- (b) with the prior written consent of the other party; or
- (c) where disclosure is required by law, by a court of competent jurisdiction or by any regulatory body which regulates the conduct of the Receiving Party, provided that the Receiving Party shall give the Disclosing Party as much notice as is practicable of any such requirement and shall not disclose any more Confidential Information than is reasonably necessary in the circumstances.

4. This Agreement does not apply to Confidential Information which:

- (a) is in the public domain and was publicly available prior to the Receiving Party’s receipt thereof from the Disclosing Party;
- (b) the Receiving Party can show was in its possession prior to disclosure by the Disclosing Party and which had not previously been obtained from the Disclosing Party or another person under an obligation of confidence to the Disclosing Party;

- (c) the Receiving Party obtains from a person other than the Disclosing Party, other than in breach by such person of any obligation of confidence to the Disclosing Party; or
- (d) is independently developed by the Receiving Party without the benefit of any Confidential Information of the Disclosing Party.
5. This Agreement shall come into force on the date of this Agreement and shall continue in full force and effect indefinitely. Each party shall within 7 days following receipt of a written request from the other party return to the other party, or at the other party's option destroy, all documents and other materials in its possession, custody or control which contain any of the other party's Confidential Information, and certify to the other party that this has been done.
6. Except as expressly set out in this Agreement, nothing contained in this Agreement shall be construed as granting any right or license to either party's Confidential Information or to any invention or discovery derived from or improvement made to such Confidential Information, whether conceived or created prior to or after the date of this Agreement.
7. Neither party makes any representation or warranty, express or implied, with respect to the Confidential Information. Neither party is liable to the other party or another person in respect of the Confidential Information or its use.
8. Each party acknowledges that breach by it of this Agreement will cause irreparable injury to other party, which injury will be inadequately compensable in damages. Accordingly each party is entitled to the remedies of injunction, specific performance and other equitable relief in respect of any actual breach or threatened breach of the terms of this Agreement, in addition to any other legal remedies which may be available.
9. A variation to this Agreement is only valid if it is in writing and signed on behalf of each of the parties.
10. This Agreement is governed by and shall be construed in accordance with Indian law and the courts of Mumbai - India shall have exclusive jurisdiction to hear and decide any action or settle any dispute which may arise in connection with this Agreement.

EXECUTION

Signed for and on behalf of COMPANY by:	_____	Witness:	_____
	Signature		Signature
	_____		_____
	Name		Name
	_____		_____
	Position		Position

Signed for and on behalf of [SERVICE PROVIDER] by:	_____	Witness:	_____
	Signature		Signature
	_____		_____
	Name		Name
	_____		_____
	Position		Position