



# LATIN AMERICA IP SME HELPDESK

## Non-Disclosure Agreement (Template)

### Disclaimer

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## CONFIDENTIALITY AGREEMENTS

Through these agreements, also known as secrecy or non-disclosure agreements (NDAs), the parties commit to prevent the disclosure of certain information shared during negotiations. Confidentiality agreements are very important, as they are normally used to protect trade secrets and any confidential commercial or industrial information that confers a competitive advantage, such as: advertising strategies, list of suppliers and customers, prototypes, or drawings of a technology.

They are also extremely important when an SME develops a new product, technology or design that has not yet been protected through a registered Intellectual Property Right (IPR). Novelty is a requirement for the registration of patents or designs and the disclosure of the innovation or designs before filing the application with the National Institute of Industrial Property (INPI) can destroy the novelty of the application, leading to its rejection. An NDA can also be important for an EU SME when looking for investors in Brazil, because in negotiations with the potential investor it may be compelled to disclose some sensitive information that may harm its interests and even the protection of its rights, such as the request for a patent or design registrations.

However, companies may also choose to protect other sensitive and confidential information that they do not intend to disclose through these agreements, as a business strategy or for any other reasons (bear in mind that, although it is not confidential information per se, a company may want to keep some of its activities in secrecy from competitors, or even current partners, for as long as possible for commercial reasons).

A confidentiality agreement is a key tool to avoid unexpected surprises.

Writing an NDA, despite requiring technical and legal knowledge, is not particularly complex or expensive. However, it is considered a necessary investment since the consequences of its absence can be very serious. For this reason, legal advice is always recommended so that the contract provides the parties with the desired and adequate protection. Upmost important, there are some provisions that must always be included to ensure effective protection. There are many NDA templates that can be found with a simple internet search. The templates, despite representing a useful working basis, should be used with caution, and it is highly advisable to enlist the help of a lawyer to write or improve a template.

**The following NDA model can be used as a starting point, considering the need to adapt it to the specific situation or the needs of its users.**

## NON-DISCLOSURE AGREEMENT

(This document is a translation of the NDA version in Brazilian Portuguese)

By the present document, on the one side **[NAME + complete qualification]**, hereinafter referred as the **DISCLOSING PARTY**,

and on the other side, **[NAME + full qualification]**, hereafter referred as the **RECEIVING PARTY**.

Both PARTIES wish to *[initiate a business partnership for...]* [explain the reason for the business relationship between the parties] which will be the subject of the Master Agreement to be entered into between the PARTIES, so that they may develop the activities specifically contemplated therein, which shall be expressly bound by this Non-Disclosure Agreement.

In the framework of the [negotiation for the execution of the above-referenced project], the DISCLOSING PARTY may disclose sensitive and confidential information to the RECEIVING PARTY, who, by signing this agreement, undertakes to comply with the provisions set forth in the clauses listed below:

### 1. OBJECT

- 1.1 The object of this Agreement is to safeguard and protect the confidential information provided by the DISCLOSING PARTY to the RECEIVING PARTY in the framework of the negotiations carried out and of the Master Agreement to be entered into by the PARTIES.
- 1.2 The RECEIVING PARTY may only use the confidential information received for the purpose set forth herein and may not disclose it without the prior written authorization of the DISCLOSING PARTY.
- 1.3 The provisions and obligations herein shall apply to sensitive and confidential information provided by the DISCLOSING PARTY to the RECEIVING PARTY.

### 2. CONFIDENTIAL INFORMATION

- 2.1. The RECEIVING PARTY agrees to maintain the secrecy and confidentiality with respect to all confidential information, as defined below, which has been previously, or is hereafter, provided by the DISCLOSING PARTY to the RECEIVING PARTY.
- 2.2. Any information disclosed in any way by the DISCLOSING PARTY (its officers, directors, employees and/or agents) to the RECEIVING PARTY (its officers, directors, employees and/or agents) shall be considered confidential information, regardless of whether it contains a prior and express indication that it is "Confidential" information.

2.3. The term "confidential information" shall cover all written, verbal or otherwise presented information, whether digital or analog, tangible or intangible, and may include, but is not limited to: know-how, techniques, designs, specifications, drawings, copies, diagrams, formulas, models, samples, flow charts, schematics, sketches, plans, lists, reports, tables, surveys, photographs, blueprints, computer programs, disks, diskettes, tapes, contracts, business plans, processes, designs, product concepts, specifications, idea samples, customers, dealer and/or distributor names, prices and costs, market definitions and information, inventions and ideas, other technical, financial or commercial information, among others.

### **3. PURPOSE OF CONFIDENTIAL INFORMATION**

3.1. The RECEIVING PARTY shall receive confidential information to enable proper execution of the... [ explain the purpose of the information - nature of the contractual relationship] and under the terms of the Master Agreement and use for any other purpose not previously authorized in writing by the DISCLOSING PARTY is expressly prohibited.

### **4. LIMITATIONS OF CONFIDENTIALITY**

4.1 The provisions and obligations contained herein shall not apply to any information that:

- (a) Is demonstrably in the public domain at the time of disclosure or after disclosure, except where this occurs in violation of the provisions of this Agreement;
- (b) It was already in the possession of the RECEIVING PARTY prior to the disclosure made to it by the DISCLOSING PARTY, provided that the RECEIVING PARTY can prove this fact;
- (c) Has been received by the RECEIVING PARTY from third parties not related to this Agreement, in a proven, lawful and legitimate manner, without violation of any confidentiality agreement with the DISCLOSING PARTY;
- (d) Is disclosed by the RECEIVING PARTY pursuant to court order or other valid governmental determination, only to the extent of such orders, provided that the RECEIVING PARTY complies with any relevant protective order and has notified the existence of such order, in advance and in writing, to the DISCLOSING PARTY, giving the latter, to the extent possible, sufficient time to seek any protective measures it deems appropriate.

### **5. RIGHTS AND OBLIGATIONS**

5.1 The RECEIVING PARTY agrees and undertakes to use the confidential information exclusively for the purposes of this Agreement and the execution of the Master Agreement, always maintaining strict confidentiality of such information.

- 5.2 The RECEIVING PARTY undertakes not to make any copy of the confidential information without the prior and express consent of the DISCLOSING PARTY. Consent shall be waived for copies, reproductions, or duplications for internal use, by directors, employees and/or agents who need to know such information for the purpose provided for herein and for the purposes of the Master Agreement.
- 5.3 The RECEIVING PARTY shall take care that the confidential information is restricted to the knowledge of its representatives, directors, employees, agents, consultants, associates and collaborators who are directly involved in the discussions, analyses, meetings and execution of the business object of the Master agreement, in addition to committing to make this Agreement aware of its existence and of the confidential nature of the information to which they have access, further ensuring that all sign confidentiality agreements in writing, whose terms are sufficient to ensure compliance with all provisions of this Agreement.
- 5.4 The RECEIVING PARTY agrees to take all necessary measures to protect the confidential information of the DISCLOSING PARTY, as well as to avoid and prevent disclosure to third parties, except if duly authorized in writing by the DISCLOSING PARTY. In any case, the disclosure is allowed for controlling, controlled and/or associated companies, thus considered the companies that directly or indirectly control or are controlled by the RECEIVING PARTY, provided that all sign confidentiality agreements under the terms set forth in the previous item.
- 5.5 The RECEIVING PARTY will take reasonable precautions, to the same extent as it would take to protect its own confidential information, or to keep confidential information as confidential.
- 5.6 The DISCLOSING PARTY shall remain the sole owner of all CONFIDENTIAL information eventually disclosed to the RECEIVING PARTY as a result of this Agreement and the Master Agreement, and shall be returned immediately upon request, as well as any and all copies that may exist.
- 5.7 This Agreement does not imply the grant by the DISCLOSING PARTY to the RECEIVING PARTY of any license or any other right, express or implied, under any patent right, publishing right or any other right related to intellectual property.
- 5.8 The RECEIVING PARTY agrees not to take any action to obtain for itself or any third party the ownership of any intellectual property rights related to the confidential information that may be disclosed.
- 5.9 The RECEIVING PARTY undertakes to separate disclosed confidential information from third-party confidential materials to prevent accidental mixing.

## **6. DURATION**

- 6.1 This Agreement has an irrevocable and irreversible nature, remaining in force from the date of the disclosure of the confidential information until 5 years after the termination of the Master Agreement, to which it is linked.

## **7. INDEMNITY AND FINE**

7.1 Disclosure of the confidential information without the express authorization of the DISCLOSING PARTY, or violation of any obligations imposed in this Agreement, shall obligate the RECEIVING PARTY to:

- (a) indemnify the damages and losses, material and moral, caused to the DISCLOSING PARTY in the amount corresponding to the losses, which will be duly quantified according to the applicable regulation; and
- (b) pay a punitive fine in the amount of R\$ ... [inform the amount numerically and in full].

## **8. GENERAL PROVISIONS**

8.1 This Non-Disclosure Agreement is linked to the Master Agreement, as an independent and regulatory part thereof.

8.2 Should divergences arise as to the interpretation of the provisions of this Agreement or as to the performance of the obligations arising out of it, or should it contain gaps, the PARTIES will resolve such divergences in accordance with the principles of good faith, equity, reasonableness, and economy, and will fill the gaps with stipulations that, presumably, would have corresponded to the will of the PARTIES on the respective occasion.

8.3 The provisions of this Non-Disclosure Agreement shall always prevail, in case of doubt, and unless otherwise expressly determined, over any provisions contained in other related instruments executed between the PARTIES regarding the confidentiality of confidential information, as defined herein.

8.4 The omission or tolerance of the PARTIES in requiring strict compliance with the terms and conditions of this Agreement shall not constitute new agreement or waiver, nor shall affect their rights, which may be exercised at any time.

8.5 If any provision of this Agreement is held invalid or unenforceable, the validity of the remaining provisions shall not be affected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision that accomplishes the objective pursued by the annulled provision.

## **9. APPLICABLE LAW AND JURISDICTION**

9.1 The legislation of the [Federative Republic of Brazil] shall apply to this Agreement.

9.2 The PARTIES choose the central court of the district of [the Capital of the State of São Paulo] to settle any doubts arising from this Agreement, expressly waiving any other, no matter how privileged it may be.

And, in witness whereof, the parties sign the present instrument in two (2) counterparts of equal content and effect, in the presence of two witnesses.

[Place and date].

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**DISCLOSING PARTY**

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**RECEIVING PARTY**

**WITNESSES:**

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Name:  
CPF:

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Name:  
CPF:

## Contact us

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