



LATIN AMERICA IP SME HELPDESK

Non-Disclosure Agreement (Template)

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Non Disclosure Agreement (“NDA”) and Confidentiality Agreements

The Non-disclosure Agreement or as it is commonly known in the international practice “NDA”, is an agreement whereby one or more person, either physical or legal, that maintains a legal relation, restrict the use of the shared information between them in virtue of such relation, setting the conditions for the use and disclosure of that shared information to third parties.

The use of this agreement could be applicable on many fields, as can be labor, commercial, and intellectual property matters, among others.

Please note that that as of today no specific regulation for making this kind of agreements exists; however, in different regulations such as the Code of Commerce (*Código de Comercio*), Federal Criminal Code (*Código Penal Federal*), the Federal Law of Personal Data Protection in Possession of Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*), Federal Law on the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) and Federal Law for Consumers Protection (*Ley Federal de Protección al Consumidor*), it is provided the obligation of keeping confidentiality over certain shared information and its respective sanctions in particular cases.

The effectiveness of such provisions may be argued since they do not include the definition of “confidentiality, which is why the obligations of the recipient of the information are not clear and the sanctions that are established could be disproportionate regarding the value information that is intended to be protected or to the damage caused due to its disclosure.

The principal aim of this type of agreements is to protect the right of the parties regarding that the information they share is only to be used for making effective the legal relationship amongst them and to protect it from its potential disclosure.

In Mexico the adoption of these type of agreements that protects their information is based on the use of Non-Disclosure Agreements which in practice are used in international transaction and is derived from common law, but conforming to the applicable legal provisions, with the advantage that everything that is not found regulated could be agreed amongst the parties.

In practice, it is advisable not to consider as confidential information, the following information:

- (a) Information of from public knowledge;
- (b) Information that prior to the agreement becomes of the public knowledge by third parties;
- (c) Information acquired legally from any third party that is not obliged to keep it confidential;
- (d) Information which disclosure is required by court, judge or governmental entity and, in its case, only after the notice to the other party;

(e) Information which disclosure has been authorized in writing by the other party: or

(f) Information that has been transmitted in a different nature to the confidential and has been recorded in writing.

It is important to consider consulting with its legal advisors in the elaboration of these type of agreements, not only from a contractual view, but also from the dispute resolution point of view and Intellectual Property regulations, on 05 November 2020, the Federal Law for the Protection of Industrial Property (New Industrial Property Law) was enacted in Mexico as an effort to modernise and complement the former Industrial Property Law, which had been in force since 1994, and to comply with new standards and commitments accorded by Mexico under the United States-Mexico-Canada Agreement (USMCA).

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.

NONDISCLOSURE AGREEMENT IN MEXICO

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

This Nondisclosure Agreement (this "Agreement") dated as of XXXXX XX, 2024 is made between XXXXXXXXXXXX (hereinafter referred as "Disclosing Party"), having its principal place of business at XXXXXXXXXXXXXXXXXXXXXXXXXXXX, and XXXXXXXX, an XXXXX corporation (the "Receiving Party"), with offices located at XXXXXXXXXXXXXXXXXXXXXXXXXXXX, referred collectively as the "Parties" and individually as a "Party", who have agreed jointly to celebrate this Agreement governed by the following:

RECITALS

A. In connection with the evaluation or pursuit of certain mutually beneficial business opportunities (the "Project"), including but not limited to the negotiations for _____ (as defined below), as well as to carry out through the Receiving Party any procedure and obtain on behalf of Disclosing Party may disclose valuable proprietary information to Receiving Party relating to information about the _____.

B. Disclosing Party would like to protect the confidentiality of, maintain its rights in, and prevent the unauthorized use and disclosure of the information mentioned above and herein.

C. As used in this Agreement, the capitalized terms set forth below shall have the following respective meanings:

Territory. – XXXXXXXXXXXXXXXXXXXX

Trademark and/or Brand. – The name under which the Products and/or services will be marketed in the Territory and which will be defined by Disclosing Party.

D. Except as specifically otherwise provided in this Agreement, a reference to a Section or an Exhibit is a reference to a Section of this Agreement or an Exhibit of this Agreement, and the terms "hereof," "herein," and other like terms refer to this Agreement as a whole, including the Exhibit(s) to this Agreement.

E. The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner to construe or interpret this Agreement.

AGREEMENT

The Parties hereby agree as follows:

1. Confidential Information. As used in this Agreement, "Confidential Information" means all information about the Products and/or Services (including but not limited to its formula, technology, intellectual property rights, Trademark, authorizations and promotion, marketing and distribution strategies), that is not generally known to the public, and all data or information that is deemed proprietary of Disclosing Party and that which is not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, whether of a technical, business or other nature (including, but not limited to trade secrets, trademarks, patents, copyrights and related rights, inventions, designs, process, procedure, formula, improvement, method, know-how and information relating to the technology, customers and suppliers information, any scientific, medical, technical, marketing, legal or data information, concepts, reports, knowledge, works-in-progress, development tools, specifications, computer software, source code, object code, flow charts, databases, any form of business or marketing plans, promotional and marketing activities, plans for products or services, strategies, projections, operations, finances, sales quotes or estimates, performance results which may be related to the past, present and/or future business activities and other business affairs of Disclosing Party and any other information that represents a), that (i) is disclosed by Disclosing Party to the Receiving Party, and (ii) if in tangible form, including transmission via electronic media, is marked or identified as confidential or proprietary or bears a marking of like import, or the Disclosing Party states it to be considered confidential or proprietary, **or should be understood to be confidential or proprietary based on the nature of the information**, furnished directly or indirectly by the Disclosing Party to the Receiving Party before, on or after the Effective Date. If oral, such information is deemed confidential unless it falls within an exception in Section 3 or the Disclosing Party disclaims confidentiality in writing. Confidential Information also includes all information concerning the existence and progress of the Parties' dealings with respect to the Project. For purposes of this Agreement, "Disclosing Party" includes affiliates, subsidiaries and/or any related entities who disclose Confidential Information to the Receiving Party regarding the Project.

The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts and, as such, the Disclosing Party regards all of its Confidential Information as trade secrets.

Consequently, the Receiving Party shall not dispose, lease, render, record, negotiate, disclose, publish, show, release, broadcast, modify, revel or provide it in any other way to any person or entity, in anyway, even if it's for the purpose of include it in documents as reports or proposals, for any reason, without prior written consent of the Disclosing Party.

2. Use of Confidential Information. The Receiving Party herein agrees to make use of the Confidential Information solely for the purpose and in connection with the current or contemplated business relationship between both parties and not for any purpose other than that which has been stipulated and contained herein this Agreement, unless otherwise authorized by prior written consent by an authorized representative of the Disclosing Party. There shall be no other right or license, whether expressed or implied, in the Confidential Information granted to the Receiving Party hereunder. Any and all use of

the Confidential Information by the Receiving Party shall be solely for the benefit of the Disclosing Party. There shall be nothing herein contained that would be intended to modify the parties' existing agreement that the parties' discussions in furtherance of a potential business relationship.

The Receiving Party, except as expressly provided in this Agreement, shall not disclose the Disclosing Party's Confidential Information to anyone without the Disclosing Party's prior written consent. The Receiving Party shall not permit others to use, Confidential Information for any purpose other than evaluating and if applicable implementing the Project or any business opportunity agreed between the Parties. The Receiving Party shall take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. The Receiving Party shall not reverse-engineer, decompile, or in any other manner use the Products or the information provided or disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party.

3. Exceptions. The provisions of Section 2 shall not apply to any information that:

- (i) is or becomes publicly available without breach of this Agreement;
- (ii) can be shown by documentation to have been known to the Receiving Party without confidentiality restrictions at the time of its receipt from the Disclosing Party;
- (iii) is rightfully received from a third Party who did not acquire or disclose such information by a wrongful or tortious act, or in breach of a confidentiality restriction; or
- (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information.

4. Receiving Party Personnel. The Receiving Party shall restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, subcontractors and entities controlled by it (collectively, "Personnel") who have a need to know Confidential Information in connection with the Project. The Receiving Party's Personnel shall have access only to the Confidential Information they need for such purposes. The Receiving Party shall ensure that its Personnel comply with this Agreement.

5. Disclosures to Governmental Entities. If the Receiving Party may be compelled to disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, and in opinion of its counsel, the Receiving Party becomes legally obligated to disclose Confidential Information, the Receiving Party shall give the Disclosing Party prompt written notice sufficient to allow the Disclosing Party to seek a protective order or other appropriate remedy, and shall, to the extent practicable, consult with Disclosing Party in an attempt to agree on the form, content, and timing of such disclosure. The Receiving Party shall disclose only such information as is required, in the opinion of its counsel, and shall use its best efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

6. Ownership of Confidential Information. All Confidential Information shall remain the exclusive title and property of the Disclosing Party, and the Receiving Party shall have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein; and any type or manner of improvements or modifications thereof by the Receiving Party shall remain the sole property of the Disclosing Party.

No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential or other information.

7. Protection of the Trademark and Disclosing Party's Intellectual Property Rights. Disclosing Party guarantees the property of the Intellectual Property's. Disclosing Party shall be the sole responsible for the registration of the trademarks, patents, industrial designs or utility models, advertising campaigns and any other advertising materials and/or author rights those are related to the promotion and sales of Product in the Territory.

Unless prior and written consent granted by the Disclosing Party, the Receiving Party shall refrain from file and/or applicate to register, or otherwise take any step to obtain, on its own behalf or on behalf of, or in conjunction with, any person or legal entity different from Disclosing Party, protection of the Patent(s), Utility Model(s), Industrial Design(s), Trademark(s) and/or any other development and/or intellectual recognition related to the mark, trademark, brand and/or a distinctive sign those are similar in terms of confusion to the Trademark of the Product and/or even through a different distinctive sign (the "Alternative Brand") intended to promote, advertise and/or commercialize a product containing the same and/or similar mechanical and/or engineering characteristics of the Product. ("Competing Product") and/or services or process that copy or imitate the tradedress including the look and feel of the trademark, and/or its website design.

In the event the Receiving Party or its affiliates or agents files an application to register, registers or otherwise takes steps to obtain protection of the Trademark and/or any Alternative Brand or obtains rights in, or in connection with, the Trademark, the Alternative Brand and/or any Disclosing Party's intellectual property rights in any country, territory or jurisdiction, the Receiving Company shall immediately at Disclosing Party's direction either: (i) automatically assign and transfer to Disclosing Party, without further consideration, all right, title and interest in or to such registration(s) or application for registration(s) in such country, territory or jurisdiction, or (ii) surrender and abandon such registration or application for registration(s). In the event that the Receiving Party fails to perform in accordance with the foregoing, or refuses to execute and deliver any such documents required for (i) and/or (ii) above, Disclosing Party shall have and is hereby granted the right and authority to execute such documents in Receiving Company's name, place and stead and as Receiving Company's attorney-in-fact for such purposes, which power is coupled with an interest and is irrevocable. Upon the request of Disclosing Company, in connection with the registration of the Trademark(s), the Receiving Company shall provide full cooperation at its sole cost and expense (including without limitation, any legal fees and filing and maintenance costs) and take all the necessary actions in connection with any required filings for and prosecution of such applications and defense of the Intellectual Property

The Receiving Company shall not be responsible in case of any complaint, lawsuit, legal or authority claim made by a third party derived from the use of any trademark and/or any Intellectual Property related to the Product. The Disclosing Company shall maintain

Receiving Company harmless and eventually reimburse, compensate and indemnify all expenses, damages and or losses arising from any such complaint, lawsuit or authority claim.

The Company shall use the Trademark and any other trademark, service marks, copyrights and logos, and/or intellectual property related to the Product, solely in connection with the performance of this Agreement. It is expressly agreed that the obligations of this paragraph survive the termination of this Agreement.

8. No Warranty or Obligation to Proceed. Disclosing Party gives no warranties of any kind with respect to the accuracy, appropriateness or completeness of information provided to the Receiving Party. The parties agree that unless and until a definitive written agreement between the Parties with respect to the Project and/or any transaction relating to disclosures under this Agreement is executed, neither party shall be under any legal obligation of any kind whatsoever with respect to perform the Project or such transaction by virtue of this or any written or oral expression with respect to the Project or such transaction by any of their respective directors, officers, employees, agents, representatives or advisors thereof, except, in the case of this Agreement, for the matters specifically agreed to herein.

The parties further acknowledge and agree that each party herein reserves the right, in their sole and absolute discretion, to reject any and/or all proposals and to terminate discussions and negotiations with respect to any Transaction at any time. In the event that a Transaction should go forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. Should and such provision not be provided or stipulated in said transaction documents, then this Agreement shall be the controlling instrument.

9. Return of Confidential Information. The Receiving Party promptly shall return or destroy, and verify in writing its destruction of, all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, memos, records, notes, copies or derivative information and excerpts of Confidential Information and all electronic media or records containing, based on, include or derived from Confidential Information in any form) upon the earlier of (i) the completion or termination of the dealings between the Disclosing Party and the Receiving Party, and (ii) the Disclosing Party's written request.

10. Notice of breach. The Receiving Party shall immediately notify the Disclosing Party upon discovering any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Representatives, or any other breach of this Agreement by the Receiving Party or its Representatives, and will cooperate with any efforts by the Disclosing Party to assist it to regain the possession of its Confidential Information and thus prevent its further unauthorized use.

11. Non-Compete. The Parties agrees that during this Agreement and for a survival period of two years, Receiving Party may not develop, commercialize and/or grant any other person or undertaking within the Territory the right to develop, commercialize, represent, sell, distribute or market any product that is so similar in design, composition, formula, content and function; or competes with and/or is confusingly similar to the Products and/or it is seen as an equal, misleading or otherwise objectionable to the Products as to infringe

on the trademark, author rights, copyrights or patents of the Product. In addition, Receiving Party shall refrain from performing or allowing performing any action that may or will interfere with Disclosing Party's sales of the Products and/or as to infringe on the trademark, copyright or patents for the Products.

Likewise, the Receiving Party agrees that during this agreement and the survival period stated on Section 16, it may not develop or commercialize any products, methods, systems or processes that incorporate or are contemplated to any of the products, methods, formulas, systems or processes of the Disclosing Party or the Products.

12. Non-Solicitation of Customers, Customer Prospects, Intermediaries, Suppliers and Distributors. The Parties also agrees that during the term of this Agreement and the survival period stated on Section 16, Receiving Party will not, directly or indirectly, on its own behalf or on behalf of, or in conjunction with, any person or legal entity, solicit, or induce, or attempt to solicit or induce, any business with any of Disclosing Party's Customers, Customer Prospects, Intermediaries, Suppliers or Distributors in connection with the development, commercialization, representation, selling, distribution or marketing the Products or any product that is so similar in design, composition, content, formula and function to the Products, without the prior and written consent granted by Disclosing Party.

13. Personal Data. Both Parties agree to make use of the personal information that they receive under this Agreement for the exclusive purpose here contained and in accordance with the Personal Data Protection Law, as well as not to transfer it with the prior consent of the owner. If it is necessary to exercise the rights of access, rectification, opposition or cancellation of the personal data it should be done under the corresponding Privacy Notice, or in its absence according to the inforce law. Each Party will be responsible for compliance with the applicable law.

14. Injunctive Relief. The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party shall have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Agreement.

Therefore, in addition to the rights and other legal redress to the injured Party, a contractual penalty has to be paid by the breaching Party whose amount based on an appropriate level which is has to be decided in the discretion of the competent arbitrator accordingly with Section 18 and which is independent to the claim for damages, remedies, or to seek and obtain injunctive relief for any violation of this Agreement.

The Disclosing Party shall be entitled to recover any sustained costs and/or fees, including, but not limited to, any reasonable attorney's fees, which may be incurred while attempting to obtain any such relief. Furthermore, in the event of any litigation that may be related to this Agreement, the prevailing party shall be entitled to recover any such reasonable attorney's fees and expenses incurred.

15. Limited Relationship. This Agreement shall not create a joint venture, partnership or other formal or informal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each Party shall act as an independent contractor and not as an agent of the other Party for any purpose, and neither shall have the authority to bind the other.

16. Cumulative Obligations. Each Party's obligations hereunder are in addition to, and not exclusive of, any of its other obligations and duties to the other Party, whether express, implied, in fact or in law.

17. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings and agreements, whether oral or written, relating to the matters discussed herein. This agreement may be amended or modified only with the mutual written consent of the Parties.

18. Scope; Termination. This Agreement is intended to cover Confidential Information disclosed by Disclosing Party, both prior and subsequent to the date hereof.

The herein contained Agreement shall remain in effect until the Confidential Information remains as reserved or confidential, therefore the Receiving Party's duties to maintain in confidence any and all Confidential Information that may have been disclosed during the term shall thus remain in effect indefinitely.

19. No waiver. Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

20. Governing Law. The applicable laws of the State of México, shall govern this Agreement. The Parties agree that all disputes arising out of or related to this Agreement, whether before or after its termination, shall be resolved by final, mandatory, binding arbitration, by a mutually-chosen arbitrator, utilizing the American Arbitration Association, under the rules of expedited procedure, with one arbitrator, each party to pay its own costs, attorney fees, and expenses, but the prevailing party in any such arbitration shall be entitled to recover its reasonable attorney's fees and costs incurred. Receiving Party consents to the jurisdiction and venue. English shall be the official language of the arbitration proceedings. Judgment on the award rendered by the arbitrator may be entered in any court in any country having jurisdiction over the party against whom an award is entered.

21. Severability. If a provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law, and when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

22. Notices. Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, emailed, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the aforementioned address of the other party, or any such other address or addressee as may be furnished by a party in accordance with this paragraph.

23. Transfer or Assign. This Agreement is personal in nature, and the Receiving Party shall not may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of Disclosing Party, which consent shall not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or .pdf/email copy will be deemed as effective as delivery of an originally executed counterpart.

In witness whereof, the Parties have executed this Agreement on the date first written above.

XXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

By: XXXXXXXXXXXX
Its: Legal Representative

By: XXXXXXXXXXXX
Its: Legal Representative

Contact us

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