

Product Development Opportunity Agreement/Control Brand NDA

Confidentiality in Shoppers Information The undersigned (hereinafter, the “**Supplier**”) acknowledges and agrees that it will use the information provided directly or indirectly by Shoppers Drug Mart Inc., its affiliates and/or its subsidiaries (hereinafter, “**Shoppers**”) solely for the evaluation and potential development of a Shoppers product (“**Control Brand Opportunity**”) whether such information is provided by Shoppers verbally, in writing or by any other means or is marked or communicated as confidential (collectively, the “**Shoppers Information**”). The Supplier agrees that it shall employ appropriate safeguards to keep the Shoppers Information strictly confidential, such efforts to be no less than efforts taken to prevent disclosure of its own confidential or proprietary information. This shall include appropriate internal safeguards to keep the Shoppers Information strictly confidential from those employees of the Supplier who may service clients that are Competing Entities (as hereinafter defined). The Supplier agrees to ensure the Shoppers Information is not directly or indirectly (i) disclosed, in whole or in part, to any other person, except as expressly permitted herein or upon the prior written approval of Shoppers, (ii) used, copied, duplicated, reproduced, exploited or further developed, in any form in whole or in part, except as expressly permitted herein and/or (iii) sold, assigned, sublicensed, parted with or otherwise transferred or disposed of.

Exception to Supplier’s Confidentiality Obligations. The obligations of Supplier under this agreement shall not apply to Shoppers Information that Supplier can clearly demonstrate: (a) at the time of disclosure, is in the public domain through no act or failure of Supplier; (b) subsequent to disclosure, is lawfully obtained from a third party which, to Supplier’s knowledge, has the lawful right to disclose such Shoppers Information and who is not in violation of any contractual, legal or fiduciary obligation to any party, as applicable, with respect to such Shoppers Information; (c) prior to disclosure, is already in the possession of Supplier as sufficiently evidenced by same; (d) is independently developed by Supplier, by persons having no direct or indirect access to the Shoppers Information as sufficiently evidenced by same; (e) is required to be disclosed by law or judicial order, provided that prior to disclosing any Shoppers Information, Supplier shall notify, and cooperate with, Shoppers to lawfully limit or obtain appropriate protective orders with respect to such portions(s) of the Shoppers Information which is the subject of any such required disclosure.

Notwithstanding anything to the contrary contained herein, the Supplier may disclose the Shoppers Information to its affiliates, employees, contractors, agents and advisors only on a “need-to-know” basis and provided that, prior to such disclosure: (i) such persons are bound in writing by an obligation of confidentiality to Supplier corresponding in all material respects to the obligations of Supplier under this agreement; (ii) Supplier adequately advises such persons of their obligations under this agreement; and (iii) such persons do not service clients who are Competing Entities (collectively, the “**Permitted Recipients**”).

For the purposes of this Agreement, “**Competing Entities**” means any retail, wholesale or e-commerce business that sells, or is likely to sell, products or services that compete with any of Loblaw Companies Limited (i.e., Shoppers’ parent company) and its subsidiaries’ products or services. Competing Entities include but are not limited to:

- Retail competitors (e.g. Sobeys, Metro, Walmart, Rexall, The Gap);
- Wholesale competitors (e.g. TRA, Gordon Food Service, and any vendors that have a food service sales division); and
- E-commerce competitors (e.g. Amazon).

Ownership and Disclaimer Supplier acknowledges and agrees that: (i) the Shoppers Information shall be owned by Shoppers or its affiliates, as applicable; (ii) subject to the terms of a separate signed Shoppers form agreement, Shoppers is or shall be the sole and exclusive owner of all proprietary rights in any products that may result from the Control Brand Opportunity including without limitation any and all formulas, recipes, ingredient lists, specifications, artwork, designs, mechanicals, films, packaging, concepts, ideas or other trade secrets and intellectual property associated with the Products (the “**Products**”); and (iii) Shoppers makes no representation or warranty in relation to any of the Shoppers Information, its adequacy, accuracy, or suitability for any purpose, and, except as expressly agreed in writing, Shoppers shall not be liable to Supplier for any loss or damage arising from the use of the Shoppers Information howsoever caused.

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Remedies for Breach Supplier shall indemnify and hold Shoppers and its affiliates and their respective directors, officers, employees and agents harmless from all loss, damage, injury or liability suffered by same, including reasonable legal fees, arising from, directly or indirectly related to, the improper disclosure, use or handling of the Shoppers Information by Supplier, or any affiliates, employees, contractors, agents and advisors of Supplier. In the event of a breach or threatened breach of these terms, Supplier agrees that Shoppers and/or its affiliates shall be entitled to temporary and permanent injunctive relief, prohibiting any and all use and disclosure of the Shoppers Information, and such injunctive relief shall not limit any other remedies which Shoppers and/or its affiliates may have as a result of the breach of the covenants contained herein.

Non-confidential Proposal The Supplier acknowledges and agrees that all information it provides to Shoppers in connection with the Control Brand Opportunity verbally, in writing or by any other means, including but not limited to information having to do with the improvement, development, manufacture, sale and/or packaging of any currently existing or proposed Shoppers product(s) (collectively the “**Supplier Proposal**”), will be considered as non-confidential public information. For certainty, the Supplier acknowledges and agrees that it shall not seek to prevent Shoppers from using, without compensation to Supplier, any information included in the Supplier Proposal for any purpose whatsoever, including but not limited to, any commercial purpose. Furthermore, Supplier acknowledges and agrees that Shoppers is under no obligation to proceed with the commercialization of the Control Brand Opportunity with the Supplier.

Exception to Non-confidential Proposal Shoppers acknowledges that any non-public information received by Supplier regarding pricing, costs, rates or pre-existing Supplier intellectual property contained in the Supplier Proposal which are: a) disclosed to Shoppers in the course of evaluating the Control Brand Opportunity; and b) marked “confidential”, will be treated by Shoppers as confidential information and will only be used as reasonably required for the purposes of discussing, investigation and evaluation of each Control Brand Opportunity and for no other purpose, whether directly or indirectly.

General These terms shall be interpreted and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario. Should any term herein be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining terms, which shall remain in full force and effect. In the event of conflict or inconsistency between the terms and conditions of this agreement and those of other agreements entered into between Shoppers and the Supplier in connection with Supplier’s supply of products to Shoppers, the terms and conditions of this agreement will govern and prevail to the extent of the conflict or inconsistency. No amendment or modification to this form of Agreement will be valid unless set forth in writing and signed by authorized signatories of both parties.