

**IN THE MATTER OF AN ARBITRATION UNDER THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

**- and -**

**THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

**- between -**

**Alicia Grace; Ampex Retirement Master Trust; Apple Oaks Partners, LLC; Brentwood  
Associates Private Equity Profit Sharing Plan; Cambria Ventures, LLC; Carlos  
Williamson-Nasi in his own right and on behalf of Axis Services, Axis Holding, Clue and F.  
305952; Carolyn Grace Baring; Diana Grace Beard; Floradale Partners, LLC;  
Frederick Grace; Frederick J. Warren; Frederick J. Warren IRA; Gary Olson; Genevieve  
T. Irwin; Genevieve T. Irwin 2002 Trust; Gerald L. Parsky; Gerald L. Parsky IRA; John  
N. Irwin III; José Antonio Cañedo-White in his own right and on behalf of Axis Services,  
Axis Holding and F. 305952; Nicholas Grace; Oliver Grace III; ON5  
Investments, LLC; Rainbow Fund, L.P.; Robert M. Witt; Robert M. Witt IRA; Vista  
Pros, LLC; Virginia Grace**

**(the “Claimants”)**

**and**

**THE UNITED MEXICAN STATES**

**(the “Respondent”)**

**ICSID Case No. UNCT/18/4**

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**PROCEDURAL ORDER No. 3  
ON CONFIDENTIALITY**

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*Tribunal*

Prof. Diego P. Fernández Arroyo, President  
Mr. Andrés Jana Linetzky, Arbitrator  
Mr. Gabriel Bottini, Arbitrator

*Secretary of the Tribunal*  
Ms. Celeste E. Salinas Quero

**April 26, 2019**

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## I. Procedural background

Pursuant to § 25.2 of Procedural Order No. 1, the parties consented to the publication on ICSID's website of certain documents, "subject to the appropriate conditions, deadlines and procedures for the protection of confidential information" that shall be established by the Tribunal in consultation with the parties in a Confidentiality Order.

In light of the above, on April 9, 2019 the Tribunal circulated a draft procedural order and invited the parties to confer with each other and submit by April 19, 2019 (i) a joint proposal advising the Tribunal of any agreements to be included in the Confidentiality Order and (ii) their positions on the issues where there was disagreement.

On April 19, 2019 the parties submitted their joint proposal on the Confidentiality Order.

## II. Order

The Tribunal issues the following Confidentiality Order:

1. In accordance with § 25.2 and § 25.4 of Procedural Order No. 1 and § 31 of Procedural Order No. 2, this Confidentiality Order shall apply to the following documents that the ICSID Secretariat will publish on the Centre's website. These include:
  - a) Any orders, decisions, interim or partial awards, as well as the final award, issued by the Tribunal;
  - b) The following pleadings (but not the supporting witness statements, expert reports, exhibits or legal authorities): (i) Claimants' notice of arbitration, including the notice of intent; (ii) Claimants' statement of claim; (iii) Respondent's statement of defence; (iv) Claimants' reply; (v) Respondent's rejoinder;
  - c) Any written submissions by other NAFTA Parties; and
  - d) Any written submissions by third persons (*amicus curiae*) that have been admitted by the Tribunal.
2. This Order governs issues relating to the disclosure of information to the public and is without prejudice to the right of the disputing parties to object to the production of documents on grounds of confidentiality.

A. *Confidential information*

3. Confidential information, as defined in § 4 and as identified pursuant to the arrangements referred to in § 5, shall not be made available to the public.
4. Confidential information consists of:
  - (i) Confidential business information includes, but is not limited to: confidential business communications, trade secrets, confidential research, competitively sensitive technical, marketing, financial, or sales information, business plans, customer and supplier information, or any other information that, if disclosed, could cause significant business injury.
  - (ii) Information that is protected against being made available to the public under the NAFTA, including information that the Respondent may withhold in accordance with Article 2102 (Essential Security) and Article 2105 (Disclosure of Information);
  - (iii) Information that is protected against being made available to the public, in the case of information of the Respondent, under the law of the Respondent, and in the case of other information, under any law or rules determined by the Tribunal to be applicable to the disclosure of such information;
  - (iv) Information that is protected from disclosure by a legal obligation such as a non-disclosure agreement (or similar agreements preventing disclosure or protecting confidentiality) or confidentiality order entered by other courts (for example, protective orders); or
  - (v) Information the disclosure of which would impede law enforcement.

5. The following procedure shall govern requests to protect information:

- (i) A disputing party filing a document (the “filing party”) that it claims to contain confidential information shall submit an unredacted as well as a redacted version of that document and shall briefly identify the reasons for the redactions in a schedule as set out in Annex A to this order (the “Transparency Schedule”). The redacted version of the document purporting to contain confidential information along with the brief reasons for the redactions shall be submitted no later than 21 calendar days after the submission of the unredacted document.

- (ii) The filing party shall clearly identify on each page of the document containing such information the notation “*Confidential*” or “*Confidential Information – Unauthorized Disclosure Prohibited*” or some variation thereof.
  - (iii) If the other party (the “opposing party”) does not object to the proposed redactions and does not itself request any redactions within 21 calendar days of the filing of the redacted version of the document, the redacted document shall be made public.
  - (iv) Within 21 calendar days of the filing of the redacted document, the opposing party may object to the redactions proposed by the filing party, using the Transparency Schedule provided by the filing party, and/or itself propose redactions to the original or redacted document in a new Transparency Schedule.
  - (v) If the opposing party has proposed redactions to the document, the filing party shall have 14 calendar days to object to such redactions using the Transparency Schedule provided by the opposing party.
  - (vi) The Tribunal will issue its determination on disputed redactions promptly after receiving the parties’ Transparency Schedules. The Tribunal’s determination will be included in the Transparency Schedules. Until the Tribunal rules on the disputed redactions, the redacted information shall be treated as confidential.
  - (vii) The parties shall submit the Transparency Schedules in Word and Pdf formats.
- (viii) If the Tribunal issues an order, decision or award containing information that either disputing party claims to be confidential, the requesting party shall inform the Tribunal and other disputing party that it wishes to redact certain confidential information from the order, decision or award. In such case, the procedure for requests to protect information in pleadings set out in § 5 (i) – (vi) above shall apply.
- 6. Any request to protect information made in accordance with § 5 shall specifically identify the part (or parts) of the document sought to be designated as confidential.
  - 7. Where the Tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, the filing party shall have seven calendar days to withdraw all or part of the document from the record of the arbitral proceedings.
  - 8. Each disputing party shall have the obligation of notifying all persons who receive access to confidential material, including consultants and witnesses, of the obligations under this Order. The obligations created by this Order shall survive the termination of these

proceedings. The Tribunal and the Centre shall maintain such material in conditions that ensure the protection of confidential information.

*B. Integrity of the arbitral process*

9. Information shall not be made available to the public pursuant to this order where the information, if made available to the public, would jeopardize the integrity of the arbitral process as determined pursuant to § 9.
10. The Tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication or other disclosure of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for parties or members of the Tribunal, or in comparably exceptional circumstances.
11. No disputing party shall file any confidential material covered by this Order in any Court without first bringing this Order to the attention of the Court and seeking directions concerning the filing of such material in a manner that protects its confidentiality. A disputing party shall notify the other disputing party and any affected parties prior to requesting such direction from the Court.

*C. Repository of published information*

12. ICSID shall act as Repository of published information, without prejudice to the right of any party to publish such information on its own website. The following rules shall apply in connection with the Repository:
  - (i) The Tribunal will submit the documents for publication (in redacted form if applicable) to the Repository;
  - (ii) The Secretary of the Tribunal will receive the documents from the Tribunal and ensure publication in searchable electronic format (.pdf format), if possible;
  - (iii) The Repository will publish information and documents in the form and language in which it receives it;
  - (iv) The Tribunal will be released of its responsibility under this Order upon completion of its mandate under the NAFTA and UNCITRAL Arbitration Rules, being specified that such mandate extends to any interpretation or revision proceedings. However, the Tribunal is not released of its obligation to keep confidential information that has been designated as such during these proceedings.

On behalf of the Tribunal

[Signed]

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Prof. Diego P. Fernández Arroyo  
Presiding Arbitrator  
Date: April 26, 2019

**Annex A**  
**Transparency Schedule**

No.	
<b>Identification of redacted passages (Document, paragraph, page)</b>	
<b>Reasons for requesting redaction</b>	
<b>Objections to the request for redaction</b>	
<b>Decision of the Tribunal</b>	