

CONFIDENTIALITY AGREEMENT

[DISCLOSER], INC.

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made the _____ day of _____, 20__, with an intended effective date of _____ between _____, a _____ corporation/ individual having an address at _____ ("Recipient") and [DISCLOSER], INC., a _____ corporation ("Discloser").

BACKGROUND

Recipient may, in the course of performing services for [Discloser] or in determining to enter into an agreement, relationship, understanding or other arrangement with or for [Discloser], receive access to and observe [Discloser]'s manufacturing, packaging and methods and facilities and receive information concerning [Discloser]'s products, plans, prospects, [**customize for item specific to industry in question, such as recipes, formulas, sources, ingredients, materials, fabrication techniques and so forth.**] marketing and distribution strategies and other commercial, technical, business and other information, including draft and executed documents, forecasts and other data, or tangible embodiments of such items which [Discloser] considers to be of a confidential or proprietary nature (any of the foregoing being "Protected Information").

Recipient has agreed to enter into this Agreement as a prerequisite to [Discloser] providing to Recipient or permitting Recipient access to any Protected Information.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. [Discloser] may, in its sole discretion, disclose Protected Information to Recipient in written, oral, tangible (including, for example, by samples or mock-ups) or demonstrative form. [Discloser] shall inform Recipient that information is Protected Information by so marking documents, by so stating with respect to oral statements or demonstrative or tangible forms or by so notifying Recipient in writing contemporaneously with or promptly following disclosure of information that is Protected Information. All such information (i) which relates to recipes, formulas, packaging (before release to the general public), ingredients or (ii) which the Recipient receives at any facility supplying, producing or packing [Discloser]'s [**customize: ingredients, products, advertising, packages, deployment, integration, etc.**] or containers, including any observations the Recipient makes of [Discloser]'s facilities (or those of its [**customize: packers, contract-manufacturers, fulfillment services or other agents,**] if any) and methods, shall be deemed to be designated by [Discloser] as Protected Information.

2. Recipient and every person who receives Protected Information through Recipient shall maintain all Protected Information in strict confidence and shall take all steps which are necessary to assure that Protected Information does not enter the public domain or come into the possession of unauthorized persons, including, without limitation, any actual or potential customers or competitors of [Discloser]. This obligation of confidentiality shall not apply, however, to Protected Information which:

- (a) has become generally available to the public through no breach of this Agreement or other confidentiality obligations;
- (b) is learned by Recipient from a third party entitled to disclose it as shown by Recipient's contemporaneous written records; or
- (c) was already known to Recipient before receipt from [Discloser], as shown by Recipient's contemporaneous written records.

3. Neither Recipient nor any person who receives Protected Information through Recipient shall use any Protected Information for any purpose other than for purposes of dealing with [Discloser] and with no other person.

4. Recipient may disclose Protected Information to Recipient's employees only if: (a) the person needs the Protected Information disclosed to assist Recipient in evaluating any proposal for business dealings with [Discloser]; and (b) prior to Recipient's disclosure of any Protected Information, the person has acknowledged in writing his or her obligation to maintain in strict confidence all Protected Information Recipient disclose to him or her by properly executing a copy of this Agreement or one substantially identical hereto.

5. Recipient shall be responsible for any breach of this Agreement by any person to whom Recipient has disclosed Protected Information and Recipient shall indemnify and hold [Discloser] and its affiliates and successors harmless from any losses, damages, demands, claims, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any such breach. [Discloser] shall be entitled to injunctive and other equitable relief in the event of a breach of this Agreement by Recipient and Recipient agrees that any such breach will cause irreparable harm to [Discloser] and consents to the entry of an order providing for such relief in the event of a breach hereof.

6. Recipient and every person who receives Protected Information through Recipient shall, upon written request by [Discloser], promptly deliver to [Discloser] all Protected Information, and documents and other records reflecting same, without retaining any copy thereof.

7. No failure or delay by [Discloser] in exercising any right, power or privilege under this Agreement shall operate as a waiver of, or impair any such right, power or privilege nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

8. Without the prior written consent of [Discloser], neither Recipient nor any of Recipient's directors, officers, employees, representatives or agents, shall disclose to any person, or make any news release or other public statement, whether to the press, stockholders, or otherwise, disclosing the existence of discussions between [Discloser] and Recipient or the existence or terms of this Agreement.

9. This Agreement shall be governed by and construed in accordance with the internal laws of the _____. In the event of any dispute arising hereunder, Recipient agrees that personal jurisdiction and venue in any suit between [Discloser] and Recipient shall be exclusively in the United States District Court for the _____.

IN WITNESS WHEREOF, and intending to be legally bound hereby, [Discloser] and Recipient have caused this Agreement to be executed.

"[Discloser]:"

"Recipient:"

[DISCLOSER], INC.

[Name:] _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[FOR SUBSEQUENT RECIPIENTS AND AFFILIATES OF RECIPIENT]

ACCEPTANCE: In accordance with Paragraph 4 above, the undersigned hereby accepts and agrees to comply with all of the terms and conditions of this Agreement owed to [DISCLOSER].

By: _____

Name: _____

Title: _____

Date: _____