

Distributor/Sales and Marketing Agency Mutual Confidentiality and Non-Disclosure Agreement

This Mutual Confidentiality and Non-Disclosure Agreement (this “**Agreement**”) is entered into this _____ day of _____, 20____, by and between _____, a _____ entity, together with its operating subsidiaries and affiliates (“**Distributor**”) with its principal place of business at _____, and _____, a _____ entity, together with its operating subsidiaries and affiliates, (“**Agency**”) with its principal place of business at _____ (collectively the “**Parties**”).

WHEREAS, Agency serves agent to one or more suppliers/manufacturers (“**Principals**”) in providing agency sales and marketing services in the foodservice trade channel (“**Agency Sales and Marketing Services**”), and

WHEREAS, in the course of the provision of Agency Sales and Marketing Services for Agency’s Principals, each party (a “**Disclosing Party**”) may disclose to the other party (the “**Recipient**”) certain Confidential Information (as such term is defined herein below), which shall be deemed to be confidential; and

WHEREAS, the Confidential Information may be disclosed in many such form(s) including oral and/or written disclosure, disclosure through training and/or disclosure through observation of products or prototypes of products, services, business plans, business documents, materials and/or property;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definition.

“**Confidential Information**” means, in respect to each Party:

- (a) any information in which such Party claims a proprietary and/or confidential interest;
- (b) all confidential matters of such Party including, without limitation, technical know-how, trade secrets, technical data, new product strategy, new products or processes, analysis, compilations, concepts, technical processes, formulae, recipes, specifications, inventions, research projects, customer lists, pricing, pricing policies, operational methods, financial information, marketing information and other business affairs;
- (c) any information of a confidential nature concerning such Party’s customers, suppliers or employees; and
- (d) any information such Party has received from others which they are obliged to treat as proprietary and/or confidential.

The Confidential Information of either Party includes all of the above information with respect to any entity controlling, controlled by, or under common control with, such Party.

Confidential Information shall not include information which: (a) is in the public domain prior to the date of its disclosure to Recipient by the Disclosing Party; (b) is known and can be shown to be known by Recipient prior to the date of its disclosure to Recipient by Disclosing Party; (c) becomes part of the public domain by publication or otherwise, and is not the result of any unauthorized act or omission on the part of Recipient; (d) can be demonstrated to have been supplied to Recipient by a third party who is under no obligation to the Disclosing Party to maintain such information in confidence; or (e) is independently developed by Recipient without the use of the Confidential Information.

2. Obligation of Confidence. Each Party hereby acknowledges and agrees that the Confidential Information constitutes valuable information, and the provisions of this Agreement are necessary to protect the secrecy and confidentiality thereof.

(a) Recipient shall (i) maintain the Confidential Information in strict confidence and take all reasonable steps to prevent its disclosure to third parties; (ii) use at least the same degree of care as Recipient uses in maintaining the secrecy of its own Confidential Information (but no less than a reasonable degree of care); and (iii) prevent the removal of any proprietary, confidential or copyright notices placed on the Confidential Information.

(b) Recipient may use the Confidential Information only in connection with the performance of the Agency Sales and Marketing Services with Distributor. Recipient shall not, at any time, make any use of the Confidential Information for any other purpose.

(c) Recipient shall keep the Confidential Information confidential at all times and shall not disclose the Confidential Information to any person including its employees except to its employees, representatives, advisors and agents who have a need to know such information in connection with assisting Recipient for the purposes set forth in paragraph 2(b) above and who are required to keep such information confidential.

(d) Notwithstanding the foregoing in this Section 2, Recipient may disclose to Principals, on whose behalf it is performing Agency Sales and Marketing Services with Distributor, and who have a need to know the Confidential Information provided that: (i) Distributor has been notified of the identity of such Principals and has agreed to the disclosure of Confidentiality Agreement under this Section 2(d), (ii) only the necessary portions of Confidential Information required by such Principals to evaluate and utilize the Agency Sales and Marketing Services is disclosed, and (iii) Principal has a Confidentiality Agreement in place with Distributor or has a Confidentiality Agreement acceptable to Distributor in place with Recipient.

3. Return of Materials and Information. All Documents made available hereunder, including all copies, notes, summaries, and abstracts thereof, shall be returned to the Disclosing Party or destroyed upon completion of the Agency Sales and Marketing Services with Distributor or upon written request by the Disclosing Party, and Recipient shall certify in writing that it has complied with the provisions of this Agreement.

4. Opportunity to Seek Protective Order. In the event Recipient is requested or required by applicable law, regulation or legal process (including a subpoena or other administrative or judicial request), to disclose any Confidential Information of the Disclosing Party, Recipient shall promptly notify the Disclosing Party so that it may seek a protective order or other appropriate remedy. Unless the demand shall have been timely limited, quashed or extended, Recipient shall thereafter be entitled to comply with such demand to the extent required by law. If requested by the Disclosing Party, Recipient shall provide reasonable cooperation (at the expense of the Disclosing Party) in the defense of a demand to disclose Confidential Information.

5. Patent, Copyright or Trademark Infringement. Nothing in this Agreement is intended to grant any new or additional rights under any patent, copyright or trademark, nor shall this Agreement grant the Parties any new or additional rights in or to the Confidential Information, except the limited right to review and use such Confidential Information for the purpose outlined herein.

6. Ownership. As between the Parties, all Confidential Information shall remain the property of the Disclosing Party. Recipient agrees not to assert any claim of ownership to the Confidential Information of the Disclosing Party or any portion thereof. Nothing set forth in this Agreement shall require Parties to share any Confidential Information with the other, and the Disclosing Party makes no representation or warranty as to the accuracy or completeness of any Confidential Information disclosed hereunder.

7. Injunctive Relief. It is understood and agreed that damages are an inadequate remedy in the event of a breach or intended or threatened breach by any Party under this Agreement and that any such breach by any party will cause irreparable harm, injury and damage; accordingly, the Parties agree that the damaged party may be entitled, without waiving any additional rights or remedies (including monetary damages) otherwise available to it at law, or in equity, or by statute, to seek preliminary and permanent injunctive relief in the event of a breach or intended or threatened breach by any Party.

8. Survival. The foregoing obligations of all Parties shall continue for a period of two (2) years from the date of last disclosure of Confidential Information by either party, unless a specific portion of the Confidential

Information disclosed becomes generally known to the public before the expiration of such two (2) year period through no fault of the Receiving Party. However, with respect to trade secrets, such obligations will survive for so long as such Confidential Information constitutes a trade secret under the Uniform Trade Secrets Act.

9. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF THE PRINCIPAL PLACE OF BUSINESS OF DISTRIBUTOR AS SET FORTH IN THE FIRST PARAGRAPH ABOVE (REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAW) AS TO ALL MATTERS, INCLUDING BUT NOT LIMITED TO MATTERS OF VALIDITY, CONSTRUCTION, EFFECT, PERFORMANCE AND REMEDY. The county in which the principal place of business of Distributor is located as set forth in the first paragraph above and the closest state or federal court to the principal place of business of Agency shall each be a proper (but not exclusive) place of venue for any suits to enforce this Agreement, and any legal proceedings to enforce the provisions hereof may be brought in the state or federal Court sitting in such county or the closest state or federal court to the principal place of business of Agency. Each Party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim, in any legal action or proceeding with respect to this Agreement brought in any of the aforesaid courts, that any such court lacks jurisdiction over it or that such court is located in an inconvenient forum.

10. Miscellaneous. This Agreement constitutes the final, complete and exclusive agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, written or oral, between the Parties with respect thereto. Any modification, rescission or amendment of this Agreement shall not be effective unless made in a writing executed by both Parties. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision(s) had never been contained herein, provided that such invalid, illegal or unenforceable provision(s) shall first be curtailed, reformed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied. Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the party making said waiver or promise. The undersigned each represents that it has been duly authorized to execute and deliver this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, including facsimile copies, but such counterparts together shall constitute but one and the same instrument.

DISTRIBUTOR: _____

AGENCY: _____

By: _____

By: _____

Printed Name _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____