

# FAX

TO:	Food Business Consulting	FROM:
FAX:	913-825-0054	FAX:
PHONE:	913-438-7926	PHONE:
SUBJECT:	Signed NDA	DATE:
COMMENTS:		

## MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT is made and entered into as of (insert date) \_\_\_\_\_, between Food Business Consulting Inc., with its principal place of business at: 13444 Santa Fe Trail Drive, Lenexa, KS 66217 and ( insert company name ) \_\_\_\_\_, with its principal place of business at: ( insert company address ) \_\_\_\_\_

1. Purpose. The parties wish to explore a business opportunity of mutual interest and, in connection with this opportunity and the resulting business relationship, if any, each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.

2. "Confidential Information" means any information disclosed by either party to the other party either directly or indirectly, in writing, orally, or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), whether or not designated as "Confidential", "Proprietary" or some similar designation. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already legally in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order -- if necessary -- protecting the information from public disclosure.

3. Non-use and Non-disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except (i) to evaluate and engage in discussions concerning a potential business relationship between the parties and, (ii) to the extent the parties enter into a business relationship, as provided in the definitive agreement executed in connection with such relationship. Each party agrees not to disclose any Confidential Information of the other party to third parties or to any of the receiving party's employees, except to those persons (including, parents, subsidiaries or affiliates), who are required to have the information for the permissible uses set forth above. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

4. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

5. No Obligation. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by any party hereto to any other party hereto, and all copies thereof which are in the possession of such party, shall be and remain the property of the disclosing party and shall be promptly returned upon the expiration of the term of this Agreement or when otherwise requested by the party, as applicable. All electronic copies (including data on computer hard drives, floppy disks, DVDs, CD-roms, tapes, or other media) of Confidential Information of either party shall be and remain the property of that party and shall, upon written request of that party, be promptly returned to it or, at its sole option, destroyed. Upon return or destruction, the party destroying or returning such copies shall certify in writing that all such copies have been returned or destroyed.

8. No License. Nothing in this Agreement is intended to grant any rights to either party under any patent mask work right or copyright of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.

9. Term. The obligations of each receiving party hereunder shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party.

10. Remedies. Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

11. Conflict with Definitive Agreement. To the extent that any terms contained in a definitive agreement entered into between the parties at or following the effective date hereof in connection with the establishment of a business relationship are inconsistent with any terms hereof, the terms of such definitive agreement shall control.

12. Miscellaneous. This Agreement shall bind and inure to the benefit of the parties hereto and their parents, subsidiaries, affiliates, successors and assigns. This Agreement shall be governed by the laws of the State of Kansas, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

Food Business Consulting Inc.

By:  
Name:  
Title:

By:  
Name:  
Title: