

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality Agreement is entered into by and between Vita Bran / Natural Gourmet Foods LLC (“NCG” the “Disclosing Party”) and _____. In consideration of the covenants and agreements set forth herein, NCG and _____ (the “Receiving Party” and collectively the “Parties” hereinafter), hereby agree as follows:

1. The Receiving Party acknowledges that the Disclosing Party has developed certain information, incorporated herein by this reference as though fully set forth, which it believes it is a valuable trade secret, proprietary, and confidential property (hereinafter referred to as “the Property”).
2. As used herein, the “Property” shall mean any and all technical and non technical information provided by either Party to the other Party, including but not limited to the subject matter generally described hereto and any disclosed (a) patent and patent applications, (b) trade secrets, and (c) proprietary information such as ideas, samples, media, techniques, sketches, drawings, works of authorship models, inventions, know how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulas related to the current, future and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specification, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the Parties provide regarding third parties.
3. Accordingly, the Parties agrees to disclose to the other Party further information (oral and/or documentary as the case may be) about the Property (hereinafter referred to as “the Information”) to be used by Receiving Party for the sole purpose set out in section 2, above; and the Parties agree:
 - (a) that all Property Information shall be maintained by each respective Party in confidence, with each Party using their best efforts to maintain the confidentiality of the Property Information including, without limitation, using no less than the care it uses to maintain the confidentiality of its most important trade secrets and confidential information;
 - (b) that the Property Information will not be used for any purpose other than that set out in section 2 above;
 - (c) that the Property Information will not be disclosed to any individual other than (i) the Party’s representative signing this Agreement, and (ii) other full-time employees of each Party having a need to know, who agree in writing to be bound by the terms of this Agreement as if they were the Party under this Agreement, but only if the Disclosing Party is provided with a copy of such written agreement promptly after it is executed, and (iii) the Receiving Party’s attorneys and consultants who also agree to be bound by the terms of this Agreement;
 - (d) that no copies of any form (partial or complete) shall be made of any of the Property Information without the express written consent of the disclosing Party;

- (e) that any copies made with the written consent of the Disclosing Party will remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by the Disclosing Party;
 - (f) that upon request by the Disclosing Party, the Receiving Party will immediately return to the Disclosing Party any and all tangible things which embody all or any part of the Property Information; and
 - (g) that the disclosing Party shall have the right (but not the obligation) to enforce its rights in the Information in the legal proceeding directly against any employee, agent or independent contractor of the receiving Party violating such rights.
4. The confidentiality and non-use obligations of the Receiving Party under this Agreement shall not apply to the Property Information which the receiving Party can prove, by clear and convincing evidence:
- (a) is in or hereafter enters the public domain through no fault of the Receiving Party;
 - (b) is obtained by the Receiving Party from a third party having the legal right to use and disclose the same; or
 - (c) is in the possession of the Receiving Party prior to receipt from the Disclosing Party, as evidenced by the Receiving Party's written records pre-dating such receipt.
5. The Parties shall not undertake any searches or surveys for the purpose of attempting to negate the confidential nature of the Property Information and thereby relieve itself of the obligation to treat such Property Information as confidential in the future.
6. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Property of the Parties disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Property.
7. This Agreement shall inure to the benefit of and be binding upon any successor or assign of each Party. This Agreement may not be assigned by either Party without the express written consent of the other Party.
8. The Parties understand and agrees that monetary damages would not be sufficient to compensate either Party for the damage it may incur as a result of a breach of this Agreement. Consequently, the Parties agree that the Parties may enforce its rights by means of specific performance and injunctive relief (temporary, preliminary and permanent) as well as such further relief as may be granted by a court of competent jurisdiction.
9. All disputes arising out of or relating in whole or in part to this Agreement, or the breach thereof, shall be resolved by an action brought in-and the parties consent to the venue and jurisdiction of- the United States District Court for California if federal court jurisdiction is present, or, in the alternative, if no such federal court jurisdiction exists, in the California State Court having subject matter jurisdiction and located closest to the site of the Property exchange.

10. If any arbitration, litigation, or other legal proceeding occurs between the Parties relating to the enforcement or interpretation of this Agreement, the prevailing Party shall be entitled to recover (in addition to any other relief awarded or granted) its reasonable costs and expenses (including attorneys' fees) incurred in the proceeding.
11. The validity, construction, and performance of this Agreement are governed by the laws of the State of California. If any provision or provisions (or any part or parts thereof) of this Agreement shall be held by a court or administrative agency of competent jurisdiction to contravene (i.e., be illegal, invalid or unenforceable under) applicable laws, it is agreed that such contravention should not invalidate the whole Agreement, but this Agreement shall be construed as if it did not contain the provision or provisions (or part or parts thereof) held to contravene the applicable law, and this Agreement shall be enforced accordingly. Each provision (and part thereof) of this Agreement is thus independent and severable from all other provisions (and parts thereof) and shall not affect the enforceability of any other provision (or part thereof) or this Agreement as whole.
12. Ambiguities, inconsistencies, or conflicts in this Agreement shall not be construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time this Agreement is entered into. Where the context of this Agreement requires, singular terms shall be considered plural, and plural terms shall be considered singular.
13. This Agreement may be executed in the number of identical counterparts each of which for all purposes shall be deemed an original. This Agreement may also be executed separately by all or any of the Parties and all of such Agreements shall collectively be deemed as an original executed Agreement by all of the Parties. This Agreement shall not be binding on the Parties until all parties have signed the same Agreement or identical counterparts thereof and each Party has received the signature page signed by the other Party, whether that signature page be an original or a facsimile.
14. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgement of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the beginning of this Agreement or such other address as either Party may specify in writing.
15. Each of the Parties hereto are separate and independent legal entities. Nothing herein contained shall be construed or deemed hereby to create a principal/agent relationship between the Parties or any form of partnership or joint venture.
16. This Agreement constitutes the complete and final agreement between the Parties, and supersedes all prior and contemporaneous negotiations and agreements between the parties concerning its subject matter. This Agreement may not be altered, modified or waived in whole or in part, except in writing, signed by or on behalf of all the Parties.
17. This Agreement shall commence as of the Effective Date set out above and shall remain in full force and effect for five years thereafter.

18. Upon termination or expiration of the Agreement, or upon written request of either Party, the other Party shall promptly return all documents and other tangible materials representing the Property Information and all copies thereof.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date set forth above.

NATURAL CALIFORNIA GOURMET
FOODS LLC

By _____

By _____

Dated: _____

Dated: _____

Confidentiality.JEA.1