**NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT (the “**Agreement**”) is entered into on this the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (day) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Disclosing Party”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Receiving Party”).

WHEREAS, the parties wish to exchange information that they consider to be confidential for the purposes of facilitating their discussions and evaluation regarding a potential business relationship or transaction related to the development of commercial production of the disclosing Party’s “Shrimp Burger” recipe (collectively, the “Purpose”) and wish to provide for the confidentiality of such information; and

WHEREAS, neither party would disclose such Confidential Information without the assurances of this Agreement.

NOW, THEREFORE, the parties agree as follows:

**1. CONFIDENTIAL INFORMATION**

As used in this Agreement, “Confidential Information” means all information, knowledge and data of any nature whatsoever which is related to the Purpose and is disclosed by the Disclosing Party to the Receiving Party during the Disclosure Period (as defined in Section 2), regardless of the form or method of such disclosure and regardless of whether such disclosure was intentional. If disclosed in writing, Confidential Information shall bear a legend such as “Confidential” or “Proprietary” with the Disclosing Party’s name. If Confidential Information is disclosed orally, the Disclosing Party shall provide the Receiving Party with a written summary of such Confidential Information within ten (10) business days of such oral disclosure. Without limiting the generality of the foregoing, Confidential Information includes (a) recipe and method(s) of preparation; (b) financial information, information regarding future products, product plans or roadmaps, analysis of the products or services of any company, customer lists, marketing plans, methods of production, strategies, forecasts, identities and qualifications of key personnel, technical information, information regarding inventions or business methods and information learned by the Receiving Party by observation or by the study or inspection of physical or electronic materials; (c) the existence of discussions related to the Purpose between the parties; and (d) the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include any information which, at the time of its first disclosure by the Disclosing Party, is generally available to the public without the need to engage in considerable research or already in the possession of the Receiving Party, as evidenced by its written records. Confidential Information shall lose its status as such at such time as the Receiving Party acquires any proprietary rights to such Confidential Information from the Disclosing Party pursuant to a definitive written agreement.

**2. DISCLOSURE PERIOD**

As used in this Agreement, the “Disclosure Period” shall be the period starting on the Effective Date and ending \_\_\_\_\_\_\_ year(s) thereafter.

**3. LIMITATIONS OF OBLIGATIONS**

The provisions of Sections 4 and 5 of this Agreement shall terminate with respect to any Confidential Information at such time as such Confidential Information:

(a) becomes generally available to the public without any breach of this Agreement;

(b) is disclosed to the Receiving Party by a third party who is not under any obligation to keep such Confidential Information confidential; or

(c) is independently developed by personnel of the Receiving Party who have not had access to any of the Confidential Information, as evidenced by the Receiving Party’s contemporaneously-kept written records.

**4. DISCLOSURE RESTRICTIONS**

The Receiving Party:

(a) shall not disclose, directly or indirectly, any of the Disclosing Party’s Confidential Information to any third party other than to those of the Receiving Party’s employees, consultants, independent contractors, officers, directors, attorneys, accountants, and agents and those of its Affiliates (as defined below) (collectively, “Representatives”) who both (a) are bound to protect such Confidential Information by obligations at least as restrictive as those of this Agreement and (b) have a need to access such information in order to carry out the permitted uses of such Confidential Information under Section 5;

(b) shall be responsible for any disclosure or mis-use of the Disclosing Party’s Confidential Information by the Receiving Party’s Representatives;

(c) shall take all reasonable measures to protect the secrecy of the Disclosing Party’s Confidential Information in accordance with its obligations under this Agreement; and

(d) shall immediately notify the Disclosing Party of any actual or suspected unauthorized disclosure, misuse or misappropriation of the Disclosing Party’s Confidential Information.

As used in this Section 4, “Affiliates” means, with respect to a party, entities which (i) are controlled by such party, (ii) are under common control with such party, or (iii) control such party.

**5. USE AND COPYING RESTRICTIONS**

5.1 The Receiving Party shall not use the Disclosing Party’s Confidential Information except to evaluate whether it wishes to enter into a business relationship or transaction with the Disclosing Party and to perform its obligations related to such relationship or transaction if the parties do enter into such relationship or engage in such transaction. The Receiving Party shall not use any of the Disclosing Party’s Confidential Information for its own benefit or pecuniary gain or for the benefit or pecuniary gain of any third party.

5.2 The Receiving Party shall keep intact any tangible materials containing Confidential Information provided by the Disclosing Party and shall not:

(i) create copies of any portion of such tangible materials (including, but not limited to, electronic copies);

(ii) mark such materials; or

(iii) create written summaries, notes, memoranda, or other documents (whether physical or electronic) which contain any Confidential Information contained in such tangible materials;

5.3 If any Confidential Information is in the form of a password-protected electronic file, the password to such file shall be considered Confidential Information hereunder and the Receiving Party shall not create a version of such file which is not protected by such password.]]

**6. ORDERED DISCLOSURE**

If the Receiving Party is requested or required to disclose any Confidential Information by subpoena or other order of a court or regulatory agency (a “Required Disclosure”), then the Receiving Party shall promptly inform the Disclosing Party of such requirement and, before making such disclosure, provide an adequate opportunity for the Disclosing Party to oppose such requirement, to limit the Confidential Information to be disclosed, and/or to seek confidential treatment of such Confidential Information. The Receiving Party shall cooperate, at the Disclosing Party’s expense, with the Disclosing Party’s attempts to so oppose, limit or seek confidential treatment. Additionally, the Receiving Party shall disclose only such Confidential Information as is required under the Required Disclosure. Any disclosure under this Section 6 shall not reduce the Receiving Party’s obligations under Sections 3, 4 or 5, except as necessary to comply with the Required Disclosure.

**7. RETURN AND DESTRUCTION OF MATERIALS**

At the Disclosing Party’s request, the Receiving Party (a) shall deliver to the Disclosing Party all tangible materials received from the Disclosing Party or generated by the Receiving Party which contain Confidential Information; and (b) shall delete any electronic copies of such Confidential Information in its possession. Notwithstanding the foregoing, if any such tangible materials contain both Confidential Information and information which the Receiving Party considers to be confidential (e.g. through notes or memoranda), then the Receiving Party may destroy such materials and provide written certification of such destruction to the Disclosing Party in lieu of delivering such materials to the Disclosing Party. Furthermore, the Receiving Party may maintain copies of Confidential Information in its automated backups of its computer systems, provided that such backups are not accessed for the purpose of accessing such Confidential Information and such backups are deleted or destroyed according to the Receiving Party’s standard policy for maintaining its backups.

**8. OWNERSHIP OF CONFIDENTIAL INFORMATION**

As between the Disclosing Party and the Receiving Party, the Disclosing Party shall own all tangible materials provided by it and shall be the owner of all proprietary and intellectual property rights in Confidential Information. This Agreement does not transfer any such rights to the Receiving Party, other than a limited license to use the Confidential Information in accordance with Section 4.

**9. NO WARRANTIES**

Confidential Information disclosed under this Agreement is provided without any warranties of any kind. The Disclosing Party does not warrant that its Confidential Information is fit for any particular purpose, that it is accurate or complete or that it does not infringe any rights of any third party. The Disclosing Party shall not be required to update any Confidential Information provided hereunder, for any reason.

**10. REMEDIES**

The Receiving Party agrees that its breach of this Agreement is likely to cause irreparable harm and result in significant damages which may be difficult to ascertain. Therefore, in the event of any breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to immediate injunctive relief without the requirement to demonstrate actual harm from such breach or threatened breach, in addition to any other remedies the Disclosing Party may have at law and in equity.

**11. TERMINATION**

The Receiving Party’s obligations with respect to any portion of the Disclosing Party’s confidential information shall terminate one (1) year following the Disclosing Party’s first provision of such information. This Agreement shall terminate upon the later of (a) the end of the Disclosure Period, or (b) when no remaining Confidential Information is subject to the restrictions of this Agreement.

**12. NO OBLIGATION TO ENTER INTO DEFINITIVE AGREEMENT**

Each party reserves the right, in its sole discretion, to reject any and all proposals made by the other party with regard to any business transaction and to terminate discussions and negotiations with the other party at any time. Nothing in this Agreement requires either party to enter into any business transaction with the other party or to negotiate such transaction for any specified period of time. Subject to the obligations specifically set forth herein, nothing in this Agreement shall be construed to prohibit a party from engaging in its normal business operations, including without limitation, engaging in activities that may compete with the other party.

**13. SUCCESSORS AND ASSIGNS**

Neither party may assign this Agreement without the written consent of the other party except in connection with the transfer of substantially all of the assets, stock or business of such party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

**14. CHOICE OF LAW AND VENUE**

This Agreement shall be governed by the substantive law of North Carolina. Any disputes arising from this Agreement shall be heard in the state and federal courts whose judicial districts include Dare County, North Carolina, and the parties consent to venue in, and the jurisdiction of, such courts.

**15. COUNTERPARTS; FACSIMILE SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Electronically scanned signatures and facsimile signatures shall be accepted as originals for the purpose of this Agreement.

**16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties regarding the protection of each party’s confidential information related to the Purpose and supersedes all prior agreements and any contemporaneous oral agreements related thereto. The parties may amend this agreement or waive any of its provisions only in a writing executed by both parties, and no waiver in one instance shall constitute a waiver in any other instance unless specified in such writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Disclosing Party: Receiving Party:

*Company X* *Company Y*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Disclosing Party:

*Individual from Company X*

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_