

*"It may be our Laboratory..."*



*...But it's your Company!"*

## **Non-Disclosure Agreement**

This agreement is made as of the \_\_\_ day of \_\_\_\_\_ 20\_\_ by and between Vitakem Nutraceutical Inc, a New York Corporation (VITAKEM) having offices at: 811 W. Jericho Turnpike Smithtown, N.Y. 11787 and \_\_\_\_\_ having offices at: \_\_\_\_\_ (Customer).

This Agreement shall govern the conditions of disclosure between VITAKEM and Customer, hereinafter referred to as "the Parties" and each a "Party", of certain Confidential Information. "Confidential Information" shall mean confidential information of a Party, including formulations, prototypes, drawings, data, trade secrets, business information, product concepts, packaging designs, unpublished research, and other confidential or trade secret information owned by, or otherwise belonging to the Parties.

With regard to the Confidential Information, the Parties hereby agree:

1. Not to use the Confidential Information disclosed by the other Party except for evaluating its interest in entering a business relationship between the Parties.
2. To safeguard the Confidential Information of the other Party against disclosure to others with at least the same degree of care as exercised with its own information of a similarly confidential nature.
3. Not to disclose the Confidential Information of the other Party to others, without the express written permission of the disclosing Party.
4. Restrictions on use or disclosure shall not apply to the extent that the Confidential Information is:
  - a. now, or becomes in the future, public domain other than through breach of this Agreement by the Party to which such information is disclosed (the "Recipient");
  - b. known by the Recipient without breach by that Party of this Agreement at the time such information is used or disclosed, as evidenced by documentation in the Recipient's possession; or
  - c. required to be disclosed by judicial action; provided, however, that prompt notice of said judicial action shall have been given to the disclosing Party.

5. That VITAKEM shall not design, create, manufacture or sell any product formula being provided by Customer that is being purchased from VITAKEM and manufactured solely by VITAKEM for Customer, except as may be expressly agreed to in writing by either Party. This Agreement shall not constitute or imply any promise or intention to make, purchase, or market any products or services of the other Party, or constitute permission to make commitments on behalf of the other Party. In addition, VITAKEM shall not make the same product formula for more than one customer, unless VITAKEM created the formula without input from Customer and Customer agrees to purchase the product formula exclusively from

VITAKEM The aforementioned "input from Customer" shall be considered a suggestion of an additional ingredient or a combination of additional ingredients not currently contained in the formula.

6. Any limitations imposed on VITAKEM in the foregoing paragraph, except as indicated elsewhere in this Agreement, shall expire automatically in the event that Customer fails to purchase any product formula from VITAKEM within thirty days of providing a product formula to VITAKEM.
7. Customer shall retain all of its intellectual property rights, title and interest in the formulas submitted to VITAKEM during the term of this agreement and after its termination. The secrecy obligations of both Parties with respect to the Confidentially Disclosed Information shall continue in full force and duration throughout any business relationship formed between VITAKEM and Customer and thereafter, except as provided in this Agreement.
8. Customer agrees to indemnify and defend VITAKEM from any and all claims brought by third parties arising out of or relating to product formulas that Customer submits to VITAKEM, including but not limited to claims of infringement, negligence, breach of contract, interference, unfair competition, and any other claims that may exist in law or equity.
9. This Agreement shall be governed by the State of New York substantive law. In the event of any dispute any litigation arising out of or relating to this Agreement, the parties agree that the sole forum for shall be the state or federal courts located within Suffolk County, New York. The Parties further agree that personal jurisdiction and venue are proper in the state and federal courts physically located in Suffolk County, New York.

IN WITNESS WHEREOF the Parties have hereunto executed this Agreement as of the day and year first above written.

Vitakem Nutraceutical Inc.

Customer: \_\_\_\_\_

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