

## **NON-DISCLOSURE AGREEMENT**

This NON-DISCLOSURE AGREEMENT is dated to be effective on and as of \_\_\_\_\_, 20 \_\_\_\_, between Custom Chemical Formulators, Inc. and/or Morgan-Gallacher Company (“Manufacturer”), and \_\_\_\_\_. (“Customer”).

WHEREAS, Manufacturer and Customer recognize that there is a need for Customer to disclose to Manufacturer certain confidential information in order for Manufacturer to perform manufacturing, product development, and other services for Customer. It is agreed between Manufacturer and Customer that the disclosure of this certain technical information concerning ingredients, formulations, methods, know-how, equipment and other technical information (herein referred to as “Technical Information”) is essential in order to allow Manufacturer to properly perform its services; and,

In consideration of \$1.00 and Customers disclosure of Technical Information heretofore disclosed to Manufacturer pursuant to the attached Technical Information Disclosure Notice, attached hereto as Exhibit “A”, and all such further Technical Information which may be later furnished to Manufacturer contains information valuable to Customer which has been developed or otherwise acquired by Customer through substantial expenditure of time and money and which Customer desires to withhold from others. Manufacturer acknowledges that such Technical Information has been, and will be, disclosed to Manufacturer with the understanding that it will not be communicated to any other party, nor shall it be used by Manufacturer except under terms and conditions prescribed by Customer.

Further, it is agreed between Manufacturer and Customer that certain of the Technical Information required to be disclosed is considered secret, and requires confidential treatment, and that Manufacturer agrees to treat all such Technical Information confidentially, and acknowledges a confidential relationship between Manufacturer and Customer.

Further, it is agreed between Manufacturer and Customer that certain of the Technical Information required to be disclosed is not considered secret, but will nonetheless require confidential treatment, and that Manufacturer agrees to treat all such non-secret Technical Information confidentially.

In consideration for the mutual promises contained herein, the parties agree as follows:

1. This agreement applies to Technical Information, which is the confidential and proprietary information disclosed by Customer to Manufacturer, and is identified in the attached Exhibit A, and to all such additional Technical Information which may be disclosed by Customer. If both Customer and Manufacturer agrees that additional Technical Information disclosed shall be governed by this Agreement, each of Customer and Manufacturer shall sign and date the expanded Exhibit “A”, which shall then be attached to and made a part of this Agreement.

2. Manufacturer agrees to hold all Technical Information in strict confidence and secrecy, and to use it only for the purpose of formulating, manufacturing and other services performed on behalf of Customer. Manufacturer agrees not to disclose such Technical Information to any third parties unless directed to do so by Customer, and at Customer’s sole expense. Manufacturer agrees not to use the Technical Information in whole or in part of the benefit of the Manufacturer other than provided above, and agrees not to use the Technical Information in any manner without the prior written approval of the Customer. Manufacturer shall not, nor shall its agents or employees, directly use, disclose or disseminate any Technical Information disclosed under Exhibit “A” to any person or organization other than Customer.

3. The obligation under paragraph 2 shall not apply to the Technical Information which was:
  - (a) Already known to the Manufacturer at the time it was disclosed; or
  - (b) Before being divulged to the Manufacturer has become publicly known through no wrongful act of Manufacturer.

Exemption of any portion of the Technical Information under the preceding subparagraphs shall not extinguish the obligations of the Manufacturer under this Agreement on the remaining portions of the Technical Information. If Manufacturer claims exemption by the virtue of the above paragraphs, Manufacturer shall so notify Customer within 7 days of receipt of the Technical Information from Customer. Manufacturer shall provide copies of all substantiating documents forming the basis of any of the above exemptions claimed by Manufacturer within 60 days of written request therefore by Customer.

Manufacturer and Customer hereby acknowledge that the Technical Information shall be owned solely by Customer and that unauthorized disclosure or use of such Technical Information could cause irreparable harm and significant injury, for which damages may be difficult to ascertain. Accordingly, Manufacturer and Customer agree that Customer shall have the right to seek an injunction enjoying any further breach of this Agreement in the event of any such breach.

4. In the event of termination of manufacturing by Manufacturer for any reason, such termination shall not relieve Manufacturer of any obligations herein set forth with respect to any Technical Information that is disclosed to Manufacturer, or is developed by Manufacturer for Customer at Customer's direct expense. Upon written request of Customer, Manufacturer shall return to Customer all papers, plans, drawings, and other documents and tangible items obtained from Customer, and shall turn over to Customer all information and documents relating to, derived from, or based on Customer's Technical Information and all copies thereof. At the termination of services by the Manufacturer, the Customer agrees to the following.

(a) All procured and unused packaging and raw material specific to the Customer's formulations and/or manufactured product produced using the Technical Information, for which Manufacturer has no other market, shall be purchased by the Customer at the material's cost to Manufacturer, plus 5%.

(b) The Customer agrees to purchase all formulations and/or manufactured product produced using the Technical Information on hand or on order. If the formulations and/or manufactured products produced using the Technical Information are not paid for, in full, within the time provided for in the agreed terms of sale, the Manufacturer may make whatever arrangements are necessary to dispose of such formulations and/or manufactured products with proceeds credited to Customer's outstanding balance.

5. No warranties, express or implied, are made by Manufacturer with respect to any warranties of merchantability, fitness for a particular use, or product performance for any formulations and/or manufactured products produced using the Technical Information.

6. The Agreement herein shall be binding on the parties, their agents, employees, heirs, successors and assigns and the companies they control or which control them. This Agreement is a perpetuation guarantee for three (3) years from the date of termination agreed to by both parties, and is to be applied to any and all transactions entertained by the signatories, including subsequent follow-up, repeat, extended or renegotiated transactions, as well as to the initial transaction.

7. Manufacturer and Customer recognize and agree that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, to use of any Technical Information disclosed pursuant to this Agreement, except as expressly provided above.

8. This agreement shall be governed and construed in accordance with the laws of California. If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this agreement, the legality, validity and enforceability of the remaining provisions (or the balance thereof) shall not be effected thereby.

9. Customer shall indemnify, defend, and hold harmless Manufacturer, and its officers, directors, shareholders, employees, agents, and representatives against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, accounting fees, expert witness fees, costs and expense) incurred by Manufacturer, known or unknown, contingent or otherwise, directly or indirectly arising from or in any way related to the products formulated and/or manufactured by Manufacturer for Customer pursuant to the terms of this Agreement or from:

- (a) Any breach of this contract by Customer; or,
- (b) The inaccuracy or breach of any of the representations, warranties or covenants made by the Customer.

Manufacturer shall submit any claim for indemnification under this Agreement to Customer in writing within a reasonable time after Manufacturer determines that any event has occurred which has given rise to a right of indemnification under this Agreement, and shall give Customer a reasonable opportunity to investigate and cure any default of Customer under this Agreement and eliminate or remove any claim by a third party. Notwithstanding the foregoing, if the nature of Customer's default or the third party claim is such that it would be impractical or unreasonable to give Customer an opportunity to investigate and cure such default and remove such claim, Manufacturer need not give Customer such opportunity.

10. This Agreement and the Exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings and communications between the parties, whether written or oral, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to the subject matter of the Agreement which are not expressly set forth herein. This Agreement may not be modified except by a written assignment signed by both Manufacturer and Customer.

11. This Agreement is entered into for the sole benefit of Manufacturer and Customer, and no other parties are intended to be direct or indirect beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

12. In case of disputes relating to this Agreement, the parties hereto agree to waive their right to have this matter determined by court action, and agree that this matter will be settled by arbitration administered by the American Arbitration Association in accordance with provisions of its applicable rules. The parties agree that each party may be represented by counsel and/or authorized representatives,

who shall have the right to attend and participate in all arbitration proceedings. Reasonable notice of the time, date and location of all arbitration proceedings of any nature shall be given to all parties.

13. Each of the undersigned hereby warrants that the undersigned is duly authorized to execute this Agreement on behalf of the indicated party.

IN WITNESS WHEREOF the parties here cause this Agreement to be executed below.

**“MANUFACTURER”**  
**Custom Chemical Formulators, Inc.**  
**Morgan-Gallacher Company**

**“CUSTOMER”**

By: \_\_\_\_\_  
Stacey Roselli

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

Title: Vice President

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

# NONDISCLOSURE AGREEMENT

## SCHEDULE A

Affix the following as part of Schedule A:

Product formulation(s)

Quality Control Instructions

Manufacturing Instructions

Label Copy

Packaging & labeling instructions  
if not part of mfg. instructions

MSDS of Product(s)

C.C.F.I. makes a practice of maintaining lot specific product samples for a period of one (1) year.

Approved

Other as stated herein: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C.C.F.I. records and retains lot specific Q.C. testing results and maintains these files for a period of three (3) years.

Approved

Requires written lot specific C of A.