**MUTUAL NONDISCLOSURE AGREEMENT**

WKDGp7co52YBsw+VK87H/VnAuT9K/qkMzxkw3Qit/Aa1ueP7ZaXkIPFj15LhtgWZnxY4JXU1J3SXcN1ItifKve6gG13Zzn80lEYI3AxsruA+EyOt5zp5KuPMy3+w2QCwAWzob4nxNcx4kBHLzsFX/XTNVG6XyLLzeZ/Pwh/H9PDmvQk9xltaNA==

 This MUTUAL NONDISCLOSURE AGREEMENT (the “Agreement”), dated as of [Insert Effective Date]

(the “Effective Date”), is entered into by and between, Ferrara Candy Company, an Illinois corporation with offices at 404 W. Harrison Street, Suite 650, Chicago, Illinois 60607 (“Ferrara”), and [Insert Supplier Name],

 a [insert state and organization type (i.e., corporation, LLC, etc.)]with offices at [Insert Address] (“Company”).

 WHEREAS, the parties wish to explore the following project (the “Project”): Company utilizing Ferrara to produce confectionary goods as a co-manufacturer.

 WHEREAS, the parties wish to provide each other access to the Confidential Information (as defined below) relating to the Project;

 NOW, THEREFORE, in consideration for the promises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, each of the parties, intending legally to be bound, hereby agrees to the following:

1. **Definitions**
	1. “Affiliate” means another entity that is Controlled by a party hereto, that Controls a party hereto, or that is under common Control with a party hereto.

* 1. “Agreement” has the meaning set forth in the preamble above.
	2. “Company” has the meaning set forth in the preamble above.
	3. “Confidential Information” means all material and information, in whatever form or manner presented, which relate to the Project(s), that is either (a) designated as confidential in writing at or near the time such Confidential Information is disclosed; or (b) is reasonably apparent from the nature of the information or material and/or circumstances of the disclosure of such information or material to be confidential. Confidential Information includes without limitation clinical and non-clinical data, formulae, business plans, product or raw material samples and specifications, know-how, trade secrets, technical and non-technical materials, financial information, processes, methods, recipes, product prototypes, research and development activities, customers, cost of products, and other information that is not publicly available, disclosed by either party, and any discussions and proceedings relating to any of the foregoing.
	4. “Control” means the direct or indirect ownership of more than fifty percent (50%) of the shares or interests entitled to vote for the directors thereof or the equivalent, for so long as such ownership subsists, or equivalent power over management thereof.
	5. “Disclosing Party” means the party disclosing Confidential Information pursuant to this Agreement.
	6. “Effective Date” has the meaning set forth in the preamble above.
	7. “Ferrara” has the meaning set forth in the preamble above.
	8. “Project(s)” has the meaning set forth in the preamble above.
	9. “Receiving Party” means the party receiving Confidential Information pursuant to this Agreement.
	10. “Representative” means a party’s directors, officers, employees, and/or third-party consultants.
1. **Treatment of Confidential Information**

 2.1. The parties will treat the Confidential Information as strictly confidential and proprietary, and each party will safeguard the Confidential Information with at least the same degree of care with which it holds its own Confidential Information, but in no event less than a reasonable level of care.

2.2. The parties recognize that each of them may be part of an organization of multiple legal entities in several jurisdictions and that it may be necessary or appropriate for each party to provide Confidential Information to or from its Affiliates. For this purpose, each party agrees (both as the Disclosing Party and as the Receiving Party hereunder) that:

(a) the Receiving Party may disclose Confidential Information to an Affiliate but only to the extent that such Affiliate has a need to know such Confidential Information in order to carry out the Project;

(b) disclosure by or to an Affiliate of a party hereto shall be deemed to be a disclosure by or to that party, as applicable; and

(c) each party guarantees the observance and proper performance by all of its Affiliates of the terms and conditions of this Agreement.

 2.3. The Receiving Party acknowledges and agrees that the Confidential Information is proprietary to the Disclosing Party and a valuable asset of the Disclosing Party and that the Receiving Party shall not, without the prior written consent of the Disclosing Party, (a) disclose to any third party any of the Confidential Information, or (b) use such Confidential Information for any purpose other than to evaluate the Confidential Information for the Project. The above confidentiality obligations shall not apply to any information which:

1. was in the possession of the Receiving Party or any of its Affiliates or Representatives prior to the time of disclosure;
2. is or becomes public knowledge through no fault, omission or other act of the Receiving Party or any of its Affiliates or Representatives;
3. is rightfully obtained on a non-confidential basis from a third party without, to the Receiving Party’s knowledge, the third party violating any obligation to the Disclosing Party or its Representatives; or
4. is independently developed by the Receiving Party or any of its Affiliates or Representatives without reference to or use of the Disclosing Party’s Confidential Information.

 2.4. If the Receiving Party is legally compelled to disclose the Confidential Information or the substance of this Agreement in connection with a legal or administrative proceeding or otherwise to comply with a requirement under the law, the Receiving Party will, if legally allowed to do so, give the Disclosing Party prompt notice of such legal requirement so that the Disclosing Party may seek an appropriate protective order or other remedy, or waive compliance with the relevant provisions of this Agreement. If the Disclosing Party seeks a protective order or other remedy, the Receiving Party, at the Disclosing Party’s expense, will cooperate with and assist the Disclosing Party in such efforts. If the Disclosing Party fails to obtain a protective order or waives compliance with the relevant provisions of this Agreement, the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose.

 2.5. Unless earlier terminated as provided herein, this Agreement shall be effective from the Effective Date until two (2) years. Either party shall have the right, at any time, to terminate this Agreement by providing thirty (30) days’ prior written notice to the other. Termination or expiration of this Agreement shall not relieve either party from the confidentiality and nonuse obligations regarding the Confidential Information.

 2.6. Upon the termination or expiration of this Agreement, the Receiving Party shall, upon request, return or destroy any Confidential Information, including any and all full or partial copies thereof in any media and any documents derived from the Confidential Information, in its possession, except for one copy of the documents disclosed which may be kept in its files for archival purposes.

 2.7. Each party shall be entitled during its evaluation of the Confidential Information to disclose the Confidential Information to its Representatives who (a) reasonably need to know such Confidential Information, and (b) are under obligations of confidentiality no less restrictive than those contained herein. The Receiving Party shall ensure that such Representatives comply with the Receiving Party’s obligations under this Agreement and the Receiving Party shall be responsible for any breach of its obligations by its Representatives.

1. **General Provisions**

 3.1. Each party represents and warrants to the other party that it has the right to enter into this Agreement and disclose its Confidential Information to the other party, and that it is not under any obligation to any third party that would prevent it from entering into this Agreement. The Disclosing Party does not make any representation or warranty (express or implied) concerning the completeness or accuracy of any Confidential Information furnished under this Agreement, except that the Disclosing Party will not intentionally disclose false or misleading information.

 3.2. Neither this Agreement, nor either party’s performance under it, will (a) transfer to the Receiving Party, or create in the Receiving Party, any proprietary right, title, interest or claim in or to any of the Disclosing Party’s Confidential Information; (b) obligate either party to enter into any other agreement or undertaking of any nature whatsoever with the other party; (c) prohibit either party from entering into any other agreement with any other party, if doing so will not violate such party’s obligations hereunder; or (d) be construed as granting a license to the Confidential Information to either party.

 3.3. Both parties acknowledge that, in the event of any breach of this Agreement, the parties would be irreparably harmed and may not be made whole by monetary damages. Accordingly, in addition to any other remedy to which they may be entitled at law or in equity, both parties shall be entitled, without the requirement of posting a bond or other security, to seek injunctive relief to prevent any breach of the provisions of this Agreement and/or to compel specific performance of this Agreement. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to the Disclosing Party.

 3.4. Neither party shall assign its rights hereunder without the express written consent of the other; provided, however, that Ferrara may assign its rights hereunder to its Affiliates or to a successor in interest by reason of a merger, reorganization, consolidation, sale of all or substantially all of its assets, or any change in the ownership of more than fifty percent (50%) of the voting stock of Ferrara in one or more related transactions. This Agreement shall be binding upon the parties and their respective successors and assigns.

 3.5. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws principles. Any action or proceeding brought by either party hereto, which is related to this Agreement, shall be brought in Federal or State court having proper subject matter jurisdiction and located within Cook County, Illinois.

 3.6. Any notices hereunder shall be in writing and sent by (a) hand delivery, (b) prepaid certified mail (return receipt requested), (c) nationwide overnight courier, or (d) confirmed facsimile or electronic mail transmission, to the addresses below (or such other address as amended in writing at a later date). Notices shall be deemed effective upon receipt.

 If to Company:

 [Insert Supplier Address for Notices]

 If to Ferrara:

 Ferrara Candy Company

 404 West Harrison Street, Suite 650

 Chicago, IL 60607

 With a copy to: Ferrara Candy Company

 404 West Harrison Street, Suite 650

 Chicago, IL 60607

 Attn: Legal Department

 LegalNotices@Ferrarausa.com

 3.7. Nothing in this Agreement shall create or be deemed to create the relationship of partners, employer-employee, or principal-agent between the parties. No party to this Agreement is authorized to bind any other party to this Agreement and shall not have the right to act as the agent for any other party hereto without the express written consent of the other party. Neither party shall be bound to enter into any proposed business relationship due to the entering into by such party of this Agreement.

 3.8. If any term of this Agreement or the application thereof shall be deemed invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each remaining term of this Agreement shall be valid and enforced to the fullest extent permitted by law. The parties agree that a court may modify any invalid, overbroad or unenforceable term of this Agreement so that such term, as modified, is valid and enforceable under applicable law. No waiver of any breach of any provision of this Agreement by either party shall be effective unless it is in writing and no waiver shall be construed to be a waiver of any succeeding breach or as a modification of such provision.

 3.9. This Agreement contains all the representations and agreements between the parties relating to the Confidential Information and any representation, promise, or condition concerning the same which is not contained herein or in a superseding written agreement referring to this Agreement shall not be binding on either party hereto. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by the authorized representatives of both the parties. The parties to this Agreement have not, will not and cannot rely on any representations not expressly made herein.

 3.10. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

 3.11. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same Agreement. Facsimile and other electronically transmitted signatures shall be binding.

 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

|  |  |
| --- | --- |
| [Insert Supplier Full Company Name in all Caps] | **FERRARA CANDY COMPANY** |
|  |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:  |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:  |