

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “**Agreement**”) is effective the 24 day of March 2020, by and among FLORIDA BOTTLING, INC., a Florida corporation, (the “**Owner**”) and Clever Fox, a Florida LLC (the “**Recipient**”).

RECITALS:

Owner has developed what it considers valuable, proprietary, and confidential matter or information, relating to or consisting of certain nonpublic technology and information for a food product in the form of product specifications and production methodology (the “**Confidential Matter**”).

Owner wants to disclose the Confidential Matter to Recipient for Recipient’s observation, evaluation, and testing for the purpose of aiding Owner in the further development of the Confidential Matter. Recipient’s observation, evaluation, and testing will be conducted under the terms of a Product Review Agreement between Owner and Recipient dated March 24, 2020 (the “**Product Review Agreement**”).

Owner wants to impose obligations on Recipient to maintain the confidentiality of the Confidential Matter that are in addition to those set forth in the Product Review Agreement. Recipient is willing to commit to these obligations in consideration for Owner’s entering into the Product Review Agreement.

AGREEMENTS:

SECTION 1. CONFIDENTIALITY

1.1 Maintenance of Confidentiality. Except as required to perform its obligations under the Product Review Agreement, Recipient may not disclose the Confidential Matter to others, must follow reasonably prudent procedures designed to maintain in confidence and safeguard the Confidential Matter, and may not use the Confidential Matter.

1.2 Employees. If it is necessary for Recipient’s employees to access the Confidential Matter, each such employee must sign a short form confidentiality agreement in the form attached as **Exhibit A**.

1.3 Limitations on Use. Recipient may not use the Confidential Matter except in a manner consistent with this Agreement unless otherwise agreed to in writing by Owner. Specifically, Recipient may not distribute or sell copies of the Confidential Matter to others, either manually, through electronic transfer, or other means. Recipient may not reproduce, reverse engineer, decode, decompile, modify, adapt, translate, rent, lease, sell, distribute, create derivative works of, or otherwise use or transfer the Confidential Matter.

SECTION 2. LIMITATIONS ON RECIPIENT’S OBLIGATIONS

2.1 General Limitations. Recipient’s obligations under this Agreement do not apply to the following:

2.1.1 Known Matters. Matter or information that is known to Recipient at the time of Owner's disclosure of the Confidential Matter to Recipient. A list of related information and matters already known to Recipient is attached as **Exhibit B**.

2.1.2 Public Information. Matter or information that is or becomes publicly known or available through no fault of Recipient.

2.1.3 Information from Third Parties. Matter or information that is acquired by Recipient from a third party who had the legal right to disclose it to Recipient.

2.1.4 Legal Requirements. Matter or information that Recipient is required to disclose by law.

2.2 Time Limitation. The obligations of Recipient to maintain the confidentiality of the Confidential Matter will terminate 5 years from the effective date of this Agreement.

SECTION 3. MARKING CONFIDENTIAL MATTER

Owner agrees that all written information disclosed as part of the Confidential Matter subject to this Agreement will be prominently marked as "confidential" or "proprietary." For purposes of this Agreement, software programs and files and any information contained therein, including, without limitation, layouts, method of operations, product formulas, product specifications, production methods, product testing methods, graphics, routines, and codes, are not considered to be written material that must be marked separately, but it must nonetheless be treated as confidential. To the extent that Confidential Matter is disclosed orally, it must be treated by Recipient as confidential, unless otherwise directed by Owner.

SECTION 4. BURDEN OF PROOF

4.1 Disclosure of Confidential Matter. The burden of demonstrating that specific items that are part of the Confidential Matter were, in fact, disclosed to Recipient, the date of the disclosure, and the fact that the items fall within the general definition of the Confidential Matter set forth in this Agreement, will rest with Owner. Owner will be required to demonstrate that it is more likely than not that the alleged facts exist.

4.2 Application of Exceptions. The burden of demonstrating that any of the exceptions in the section of this Agreement relating to limitations on Recipient's obligations will rest with Recipient. Recipient will be required to demonstrate the application of the exception by clear and convincing evidence.

SECTION 5. PATENT, TRADEMARK AND COPYRIGHT

If the Confidential Matter is or becomes the subject of a patent, trademark, or copyright application, or of a patent, trademark, or copyright registration, Recipient understands and agrees that Owner will have all the rights and remedies available to Owner under patent, trademark, or copyright law, as the case may be, in addition to the rights and remedies available under this Agreement.

SECTION 6. LIMITED LICENSE

It is understood by both Recipient and Owner that this Agreement does not constitute a license to use the Confidential Matter other than for evaluation and testing as outlined in the recitals and that it does not constitute an offer for sale of any type.

SECTION 7. RETURN OF CONFIDENTIAL MATTER

Within the earlier of (i) 30 days of receipt of a written demand from Owner or (ii) 15 days before the expiration of the term described in Section 2.2, above, Recipient agrees to return to Owner all copies of the written explanations, instructions, information, manuals, software, drawings, samples, and any other materials containing the Confidential Matter.

SECTION 8. SPECIFIC PERFORMANCE

Recipient acknowledges that it is impossible to measure in money the damages that will accrue if Recipient should fail to perform any of the obligations contained in this Agreement. Therefore, the terms and provisions of this Agreement may be specifically enforced in equity, and Recipient hereby waives the claim or defense that the remedy at law is adequate for a breach of any of the terms and provisions of this Agreement.

SECTION 9. PRODUCT REVIEW AGREEMENT

In the event of any conflict between the terms of this Agreement and those of the Product Review Agreement, the terms of this Agreement will be controlling.

SECTION 10. MISCELLANEOUS PROVISIONS

10.1 Delegation. This Agreement is a personal service contract, and Recipient's obligations under this Agreement may not be delegated.

10.2 Binding Effect. The provisions of this Agreement are binding on and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

10.3 Notice. Any notice or other communication required or permitted to be given under this Agreement must be in writing and personally delivered or mailed by certified mail, return receipt requested, with postage prepaid. Notices mailed to a party must be addressed as follows:

Owner: FLORIDA BOTTLING, INC.
2125 Northwest 10th Court
Miami, Florida 33127

with a copy to:

MALCOLM B. WISEHEART III, PLLC
2840 Southwest Third Avenue
Suite 201
Miami, Florida 33129

Recipient: Clever Fox LLC
750 SW 64 Terrace
Pembroke Pines, FL 33023

The address of a party to which notices must be mailed may be changed by the party's giving written notice to the other. All mailed notices will be deemed to be given at the expiration of three days after the date of mailing unless Recipient acknowledges receipt prior to that time.

10.4 Litigation Expense. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party is entitled to recover reasonable attorneys' fees and costs in the proceeding, or any appeal, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.

10.5 Governing Law. This Agreement is governed by the laws of the State of Florida without regard to conflicts of laws provisions.

10.6 Authority. Each individual executing this Agreement on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this Agreement constitutes a legally binding obligation of the Company or other entity that the individual represents.

10.7 Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to its subject matter, and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by both parties.

OWNER:

FLORIDA BOTTLING, INC., a Florida corporation

Recipient: Clever Fox

By: _____

By: Mariela Lopez

Name: _____

Name: Mariela Lopez

Its: _____

Its: Owner

Date: 3/24/2020

Exhibit A: Employee Short-Form Confidentiality Agreement

[Attached]

Exhibit B: Related Information and Matters Already Known to Recipient

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.
