

CONFIDENTIALITY (NON-DISCLOSURE) AGREEMENT

This CONFIDENTIALITY (NON-DISCLOSURE) AGREEMENT (“Agreement”) is made and entered into this [REDACTED] day of [REDACTED], 201[REDACTED], by and between BROOKS’ BOTTLING COMPANY, LLC, a New York Limited Liability Company (“BROOKS”) and [REDACTED] (“CLIENT”) (BROOKS and CLIENT are sometimes collectively referred to as the “Parties”)

RECITALS

- A. BROOKS is engaged in the business of bottling products for various CLIENTS and has entered into discussion with relating to establishing a business relationship in connection with preparing and bottling certain of CLIENT’s product(s). As such, BROOKS will need access to certain personal, financial and product information relating to CLIENT and its products.
- B. CLIENT desires to maintain the confidentiality of all personal, financial and product information disclosed to BROOKS. BROOKS is willing to receive all such personal, financial and product information in confidence, and the Parties deem it to be in their mutual best interest to protect such personal, financial and product information as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, agreements, covenants, conditions and undertakings herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Confidential Information

- 1.1 With the understanding that CLIENT’s Formulations and Processing Procedures are proprietary to CLIENT, to the extent that CLIENT shall disclose to BROOKS personal, financial and product information, including their Formulations and Processing Procedures (“Confidential Information”), then all the Confidential Information disclosed to BROOKS shall be received by BROOKS in confidence for purposes of this Agreement except as otherwise provided under Section 3 below.
- 1.2 BROOKS, its directors, employees, agents and representatives shall not disclose, disseminate, publish, communicate or divulge any Confidential Information to anyone outside BROOKS, or to any employee of BROOKS not having reasonable need for access to such information, unless CLIENT expressly consents to such disclosure in writing.

2. **Representations and Warranties**

- 2.1 Each of CLIENT and BROOKS represents and warrants that neither their discussions nor their anticipated business relationship do not and will not breach any agreement which either of them may have with any other party.
- 2.2 BROOKS acknowledges that any failure by BROOKS to fulfill any obligation under this Agreement, or any breach by BROOKS of any provision herein, will constitute immediate and irreparable harm to CLIENT, which harm cannot be fully and/or adequately compensated in monetary damages and which will warrant injunctive relief, an order for specific performance, or any other available equitable relief.
- 2.3 Under no circumstance will BROOKS approach any of CLIENT's Private Label Condiment Customers for BROOKS' own benefit.

3. **Exceptions**

Notwithstanding anything herein contained to the contrary, no obligation of confidentiality applies to any Confidential Information BROOKS:

- 3.1 Already possesses;
- 3.2 Develops independently;
- 3.3 Rightfully receives without obligation of confidentiality from a third party;
- 3.4 Inadvertently discloses where BROOKS has exercised reasonable care consistent with the effort BROOKS exercises with respect to the preservation of BROOKS' own confidential information;
- 3.5 Discloses Confidential Information with the prior written consent of CLIENT ;
- 3.6 Discloses such Confidential Information to others which necessarily results from performing the services has contracted with BROOKS to perform.

In addition, no obligation of confidentiality shall apply to any Confidential Information that is, or becomes, publicly available without breach of this Agreement or which is disclosed by the discloser to a third party without restriction.

4. **COMPELLED DISCLOSURE**. If BROOKS is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information, BROOKS shall immediately notify the CLIENT in writing of such requirements so that the CLIENT may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof. BROOKS will use its best efforts, at

the CLIENT'S expense, to obtain or assist CLIENT in obtaining any such protective order. Failing the entry of a protective order to the receipt of a waiver hereunder, BROOKS may disclose, without liability hereunder, that portion (and only that portion) of Confidential Information that BROOKS has been advised by written opinion counsel reasonably acceptable to CLIENT that it is legally compelled to disclose; provided, however, that BROOKS agrees to use its best efforts to obtain assurance, at no cost to BROOKS, that confidential treatment will be accorded such Confidential Information by the person or persons to whom it is disclosed.

5. **Return of Material**

Upon termination of the business relationship between the Parties, BROOKS shall, upon written request of CLIENT, deliver any records, data, information and other documents, and all copies thereof, furnished by CLIENT to BROOKS. If CLIENT does not request in writing the return of the above material, BROOKS will retain said material for three (3) years after which BROOKS is free to dispose of material if it so desires and will do so after ten (10) days written notice to CLIENT.

6. **Governing Law** This Agreement shall be governed, construed and interpreted by, and in accordance with, the laws of the State of New York.
7. **Survival**. This Agreement shall remain in full force and effect until the earliest of:
(a) one (1) year after the termination of the business relationship between the Parties;
or (b) any alternate termination date specified in a written amendment modifying or waiving the term of this Agreement.
8. **Headings**. The headings of the sections of this Agreement are inserted for convenience of reference only and shall not constitute a part hereof or affect the meaning or interpretation of this Agreement.
9. **Complete Agreement**. This Agreement sets forth the entire and complete understanding of the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, with respect to the subject matter hereof. No subsequent agreements or contracts between the Parties affect the obligations set forth herein unless this Agreement and the affected sections are explicitly cited in writing.
10. **Amendment and Modification**. This Agreement may not be amended, modified or supplemented except by a written document of subsequent date hereto, executed by each of the parties hereto, which explicitly references this Section 10.
11. **Notice**. Any and all notices required or permitted to be given under this Agreement shall be furnished in writing, and delivered either by hand delivery, by overnight courier such as Federal Express or by certified or registered U.S. Mail, postage

prepaid, return receipt requested, to the intended recipient at such party's last known business address.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth above.

BROOKS' BOTTLING COMPANY, LLC

By: _____
Ryan Brooks, Manager Date

[Company Name]

By: _____
Name, Title Date

By: _____
Date