

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, _____, by and between Crush Provisions LP, a California Limited Partnership (“COMPANY”), and _____, a _____ (“RECIPIENT PARTY”). COMPANY and RECIPIENT PARTY are sometimes collectively referred to herein as the “Parties” and singularly by their individual names or as a “Party”.

Recitals

A. COMPANY and RECIPIENT PARTY have initiated discussions regarding the possibility of entering into a business venture or distribution or broker relationship (the “Transaction”).

B. The Parties acknowledge that the Transaction may require the exchange of information considered to be Confidential Information (as hereinafter defined) regarding their respective business operations.

C. The Parties wish to provide for procedures to protect their Confidential Information from inappropriate disclosure. For purposes of this Agreement, a Party shall be considered a disclosing Party with respect to its own Confidential Information and a non-disclosing Party with respect to the other Party’s Confidential Information.

NOW THEREFORE, in consideration of the disclosure of all or any portion of the Confidential Information as may be required in the Transaction, and for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Confidential Information.** For purposes of this Agreement, “Confidential Information” shall mean all trade secrets and all confidential business information of or relating to either Party, including, without limitation, compilations of financial or other information, financial statements, test results, designs, plans, specifications, proprietary products, procedures, processes, techniques, methods, supplier lists and sources of supply, files and records, trade names, trademarks, service marks, and labels, customer lists, grower lists, co-packers, vendors, marketing techniques, information and programs, pricing information and programs, customer contracts and orders, employee lists, details of employee compensation and benefits, forecasts, studies and all other confidential information. The Confidential Information shall not include information which (i) at the time of its disclosure is already known to the non-disclosing Party, provided said knowledge is clearly supported by documentary evidence that the source was not originally disclosed by the disclosing Party, its agents or employees pursuant to this Agreement; (ii) was available to the public prior to the non-disclosing Party’s receipt of the same from the disclosing Party; (iii) subsequently becomes available to the public other than as a result of a disclosure by the non-disclosing Party, or its representatives in breach of this Agreement; (iv) becomes available to the non-

disclosing Party from a third person who is under no confidentiality obligation to the disclosing Party; or (v) is required to be disclosed by laws, regulations, court order or other legal process, provided that the Party asserting the obligation to disclose first provides the original disclosing Party with prompt written notice of such disclosure so that it may seek an appropriate protective order. For purposes of this Agreement the term “Confidential Information” shall also include the confidential and proprietary information of all of Disclosing Party’s subsidiaries and affiliated entities, and a Disclosing Party’s co-packers and vendors, including, without limitation, any information and/or materials provided by such co-packer and/or vendor.

2. **Trade Secrets.** The Parties acknowledge and agree that each Party’s respective Confidential Information, if any, constitutes trade secrets and/or confidential business information of or relating to such Party. Moreover, each Party acknowledges and agrees that this Agreement is necessary to protect their present and future business, and that disclosure of all or any part of the other Party’s Confidential Information in breach of this Agreement may cause irreparable injury to such Party for which there is no adequate remedy at law.

3. **Restrictions on Use of Confidential Information.** Each Party shall maintain the other Party’s Confidential Information in accordance with the following terms and conditions:

a. The non-disclosing Party shall keep the Confidential Information in strict confidence and shall not disclose the Confidential Information to any other persons, except as otherwise set forth herein. In connection therewith, the non-disclosing Party shall take all steps reasonably necessary to prevent the Confidential Information from falling into the possession of others.

b. The non-disclosing Party shall use the Confidential Information solely in connection with the Transaction and for no other purpose. In connection therewith, the non-disclosing Party shall disclose the Confidential Information only to those of its employees, its agents, representatives, attorneys, accountants and advisors (hereinafter collectively referred to as “Affiliates”) who need to know the information for purposes of evaluating the Transaction. The non-disclosing Party will notify the disclosing Party in writing and in advance of the names of such persons to whom the non-disclosing Party proposes to disclose such Confidential Information, including all employees who are provided Confidential Information. The non-disclosing Party shall not utilize all or any part of the Confidential Information for its own benefit (other than in connection with the Transaction or the evaluation thereof) or for the benefit of any other corporation, partnership, enterprise, business entity or person.

c. The non-disclosing Party and its Affiliates shall not photograph, copy or otherwise reproduce by any means all or any part of the Confidential Information without the prior written consent of the disclosing Party.

d. All of the Confidential Information shall be kept and maintained by the non-disclosing Party in a safe and secure place with adequate safeguards to ensure that unauthorized persons do not have access to the Confidential Information.

e. Any written correspondence or memorandum or other documents by and between the Parties and/or their respective Affiliates which in any way relate to the Confidential Information shall be kept secret and confidential by the non-disclosing Party and are deemed to be part of the Confidential Information and are subject to all of the restrictions set forth in this Agreement.

f. Upon termination of negotiations regarding the Transaction, or at the termination of the Transaction itself if it is entered into by the Parties, the non-disclosing Party and its Affiliates shall (i) immediately return to the disclosing Party at the business address specified below all of the Confidential Information provided by the disclosing Party or its Affiliates, as well as any reports, notes, proposals, or other documents, materials or property belonging to the disclosing Party or its Affiliates, which was provided to the non-disclosing Party and/or its Affiliates, and (2) certify, in writing, that all Confidential Information and any and all copies thereof provided to the non-disclosing Party and/or its Affiliates by the disclosing Party and/or its Affiliates, or otherwise in the possession of the non-disclosing Party or its Affiliates, have been returned to the original disclosing Party.

4. **Non-Solicitation.** Each Party hereby agrees that neither it nor its Affiliates shall, without the express written consent of the other Party, directly or indirectly contact, negotiate with, or enter any contract or agreement with, the other Party's growers, employees and customers for any purpose whatsoever, if the identity of those growers, employees and customers has been disclosed to such Party as part of the Confidential Information disclosed hereunder.

5. **Acknowledgment.** The Parties acknowledge that Company is and continues to operate in the cube manufacturing business, and that Company has extensive experience in all aspects of the cube manufacturing business. The Parties agree that nothing in this Agreement shall be construed to prohibit or restrict Company from developing its own products in the cube manufacturing space while this Agreement is in effect, or at any time after the termination of this Agreement.

6. **No Title, Ownership, Property Right or License Conveyed.** The Parties agree that this Agreement does not provide the Parties or their respective Affiliates with any type of title, ownership or other property right, intellectual or otherwise, or any license to the Confidential Information or anything which may relate to the Confidential Information. Upon termination of negotiations in connection with the Transaction, or upon the termination of the Transaction itself if entered into by the Parties, each Party shall execute any and all documentation which the other Party may reasonably require in order to document this lack of title, ownership or any other type of property rights in the other Party's Confidential Information.

7. **No Disclosure of Negotiations.** Except as may be required by law, regulation, court order or other legal process, and except with respect to those persons who have a need to receive the Confidential Information for the purpose of evaluating the Transaction, the Parties shall not disclose, and shall direct their respective Affiliates not to disclose, to any person that discussions or negotiations are taking place concerning the Transaction.

8. **Injunctive Relief.** The Parties hereto acknowledge and agree that the Confidential Information is unique and that should either Party or its respective Affiliates breach any term or condition of this Agreement, the remedy of damages would be an inadequate remedy for the other Party or its equity holders. Therefore, the Parties agree that should either of them or their respective Affiliates breach any term or condition of this Agreement, the other Party or its equity holders shall have the right to seek equitable remedies directly against the alleged breaching Party or directly against that Party's Affiliates including, without limitation, specific performance and injunctive relief, in order to require the breaching Party and/or its Affiliates to specifically perform under the terms and conditions of this Agreement and/or enjoin the breaching Party and/or its Affiliates from breaching any term or condition of this Agreement including, without limitation, the disclosure of the Confidential Information. These rights shall be interpreted so as to not limit the aggrieved Party or its equity holders' right to recover any damages otherwise allowable by law including, without limitation, exemplary damages of up to twice the amount of any award as provided in California Civil Code Section 3426.3(c) for willful and malicious misappropriation.

9. **Enforcement and Indemnification.** It shall be the sole responsibility and obligation of each Party to enforce all of the terms and conditions of this Agreement as they relate to the non-disclosure obligations hereunder of its Affiliates. Each Party shall indemnify the other Party and its Affiliates against any and all losses, costs, expenses, damages and deficiencies of every nature (including any legal action related thereto and reasonable attorneys', paralegal, and other professional fees and costs), that any of them shall incur or suffer that arise out of, in connection with, or are related to any breach of, this Agreement. The aggrieved Party to the extent it becomes actually aware of them, shall notify the other Party of the existence of any breach to which this indemnification applies, and shall give that Party a reasonable opportunity to bring an action to enjoin any use of disclosed information, or any further disclosure, at its sole cost and expense, and with counsel of its selection, provided such counsel is reasonably acceptable to the aggrieved Party; provided, however, that the aggrieved Party shall at all times also have the right to fully participate in the prosecution of such action (including, without limitation, the right to be represented by separate legal counsel of its own selection). If that other Party shall, within ten (10) calendar days after receipt of such notice, fail to prosecute, the aggrieved Party shall have the right, but not the obligation, to undertake the prosecution of, and to compromise or settle said matter on behalf, for the account, and at the risk of the other Party. If said matter is one that cannot, by its nature, be prosecuted solely by the aggrieved Party, then the other party shall make available all information and assistance that the aggrieved Party may reasonably request.

10. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the matters covered in this Agreement.

11. **Notices.** All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of receipt, if sent by telecopier to the person to whom notice is to be given at the telecopier number set forth below, or (iii) on the third day after mailing, if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To COMPANY at: Crush Provisions LP
 8686 S Rio Vista Ave
 Reedley, CA 93654
 Phone: 818-699-6381

To RECIPIENT PARTY at: _____
 Address _____
 City, State Zip _____
 Attention: _____
 Phone: _____

A Party or other designated recipient may change its number and/or address by notifying the Party and the designated recipients (or other designated recipients) of its new number and/or address in accordance with the procedures set forth in this Paragraph 10.

12. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

13. **No Implied Waivers.** A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or of any breach of another provision of this Agreement.

14. **Assignment.** No Party shall assign all or any part of this Agreement, or any interest therein, or delegate all or any part of its obligations under this Agreement, without the prior written consent of an authorized officer of the other Party.

15. **Binding Effect.** Subject to the provisions of Paragraph 13 above, the covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the Parties hereto.

16. **Time.** Time is of the essence of this Agreement and all of its provisions.

17. **Effect of Headings.** The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

18. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

19. **Survival of Agreement.** Except as otherwise specifically provided herein, the provisions of this Agreement, and the covenants and conditions contained herein, shall remain in full force and effect for a period of five (5) years from the termination of negotiations between the Parties in connection with the Transaction.

20. **Amendments and Modifications.** No amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the Parties hereto, or their authorized representatives.

21. **Attorneys' Fees.** If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys', paralegal and other professional fees and costs in addition to any other reasonable relief to which it may be entitled.

22. **Jurisdiction and Venue.** With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the Parties hereby submit to the jurisdiction and venue of the courts of County of Fresno, State of California, if instituted in the State courts, or the Eastern District of California, if instituted in the Federal courts.

23. **Joint and Several Liability.** Each Party and any of its Affiliates who have signed this or a similar agreement shall, by signing such agreement, agree that each of them shall be jointly and severally liable for each and every obligation, agreement, liability, claim, cost or the like as herein required of that Party.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

“RECIPIENT PARTY”

By: _____

Name: _____

Title: _____

“COMPANY”

By: _____

Name: _____

Title: _____