

MUTUAL NON-DISCLOSURE & CONFIDENTIALITY AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into as of [Effective Date], by and between Bomasource, LLC, an Oregon limited liability corporation, with principal offices at 1501 Desantis Drive, Woodburn, OR 97071 ("Discloser"), and _____, with principal offices at _____ ("Recipient").

Discloser and Recipient are collectively referred to as the "Parties" and individually as a "Party."

Purpose. The purpose of this Agreement is to protect Confidential Information, as defined in this Agreement, which one or both of the Parties may disclose to the other for purposes of evaluating a future business relationship (the "Purpose"). During their discussions, the Parties may disclose Confidential Information to each other in written, oral or electronic/data form. All disclosures of Confidential Information between the Parties, whether for the Purpose or for another purpose, shall be governed by the terms and conditions of this Agreement.

Definition of Confidential Information. For purposes of this Agreement "Confidential Information" shall mean all information, products and materials disclosed by or on behalf of a Party (the "Discloser") to, or otherwise received, observed, or accessed by, the other Party (the "Recipient") in connection with the Purpose, in whatever form (whether oral, visual, written, electronic, or other tangible or intangible), and whether prior to, on, or after the Effective Date hereof, including without limitation:

- a. all business, financial, accounting, marketing, sales, business strategies, business plans and analyses, mergers and acquisitions, methods, contracts and pricing information concerning the Discloser or its affiliates;
- b. all trade secrets, know-how, inventions, and other creative, technical, information systems and other technology, product and service information concerning the Discloser or its affiliates, including data, reports, specifications, proposals, studies, recipes, formulas, product standards, software, manufacturing processes and techniques, ingredient sources, equipment and temperature settings, mixing times and other processes;
- c. all customer or potential customer, customer contact, employee, vendor or potential vendor, and human resources information, records, and lists of the Discloser or its affiliates;
- d. all observations made through inspection, evaluation, testing, or use of confidential or proprietary products, services, facilities, equipment or other property, methods or processes of the Discloser or its affiliates; and
- e. all work product, work papers, analyses, and summaries generated by the Recipient from the foregoing. Confidential Information may be marked as "confidential" or

“proprietary” or may be the type of information that by its nature would logically be considered confidential by a reasonable person familiar with the industry.

Notwithstanding the foregoing, Confidential Information does not include any information or materials that:

- a. were known or in the Recipient’s possession prior to the date of disclosure by the Discloser (whether disclosed before or after the Effective Date), without restriction as to its use or disclosure;
- b. is rightfully acquired by the Recipient from a third party that is legally entitled to make such disclosure, without restriction as to its use or disclosure;
- c. is independently developed by or on behalf of the Recipient without reference to or reliance on the Confidential Information of the Discloser; or
- d. was or is placed in the public domain through no act or failure to act (including in violation of this Agreement) on the part of the Recipient.

Obligations of Recipient. The Recipient shall protect all Confidential Information against unauthorized access, use or disclosure and shall do so with at least the same degree of care used to protect its own Confidential Information of a similar nature, but with no less than reasonable care. Except as expressly permitted herein, the Recipient shall not, nor shall it permit any third party to access, use, or disclose the Confidential Information of the Discloser for any other purpose, whether for the Recipient’s own benefit or the benefit of any third party, without the prior written authorization of Discloser in each instance. The Recipient may disclose Confidential Information only to those officers, employees, members, advisors, attorneys, accountants, independent contractors, bankers or consultants of the Recipient (each a “Representative”) who have a need to know the Confidential Information, have been clearly informed of their obligation to maintain the confidential status of such Confidential Information, and, in the event the Representative is not an officer, employee or member of Receiving Part, are bound by obligations of confidentiality of at least the same level of restrictions, terms and conditions as required herein. Any unauthorized access to, use or disclosure of Confidential Information by a Representative shall be deemed a direct breach of this Agreement by the Recipient, allowing the Discloser to recover damages and seek injunctive relief directly against the Recipient as though such breach was committed directly by the Recipient.

Legally Required Disclosure. If the Recipient is requested to disclose any Confidential Information of the Discloser in any judicial or administrative proceeding or in response to a formal subpoena or other legal process, then, except as otherwise required to comply with applicable law, the Recipient shall first notify the Discloser in writing of such request as promptly as possible so that the Discloser may resist such disclosure or seek an appropriate protective order (at the Discloser’s sole expense). The Recipient shall provide all information and assistance reasonably requested by the Discloser in connection therewith. If the Recipient is nevertheless compelled to disclose any Confidential Information of the Discloser, the Recipient shall limit its

disclosure to that which, in the reasonable opinion of counsel, is required under applicable law.

Term. The Agreement has a term of three (3) years from the Effective Date. The obligations of confidentiality and non-disclosure created by this Agreement will continue indefinitely, without regard to trade secrets.

Return or Destruction. After thirty (30) days from the termination date of this Agreement or the actual disclosure of Confidential Information, whichever is later, and upon the request of the Discloser, the Recipient promptly will:

- a. return all tangible items relating to the Confidential Information of the Discloser, including all written material, photographs, models, compounds, compositions and the like made available or supplied by the Discloser to the Recipient, and all copies thereof; and
- b. destroy, and certify to the Discloser as to the destruction of all derivative materials created by the Recipient that contain any of the Discloser's Confidential Information. Notwithstanding the foregoing, the Recipient
 - i. may retain one archival copy of the Discloser's Confidential Information in its legal files until the expiration of applicable statutes of limitations, and
 - ii. is not required to destroy or redact electronic back-up media that may contain Confidential Information, provided that the Recipient certifies that such materials are maintained as set forth in this Agreement.

No Warranty. All confidential information is provided under this agreement "As-Is" without warranties of any kind, express or implied, and disclosure disclaims any warranties of any kind, express or implied, including but not limited to any implied warranties of accuracy, completeness, validity, or fitness for a particular purpose. Without limiting the foregoing, the disclosure does not represent or warrant that such confidential information is accurate, complete, or current.

Ownership. The Parties hereto agree that any written Confidential Information or intellectual property and other physical or technological form of Confidential Information brought into this Agreement by Discloser will remain property of Discloser; and that any written Confidential Information or intellectual property and other physical or technological form of Confidential Information brought into this Agreement by Recipient will remain the property of Recipient. No express or implied license, right, title or interest under any intellectual property rights of the Discloser is granted or conveyed to the Recipient, nor shall this Agreement grant either Party any rights in or to the other Party's Confidential Information, except the limited right to review such Confidential Information in connection with the Purpose. The Parties agree that as of the date of signing this Agreement, no jointly developed intellectual property exists between the Parties.

No Obligation to Proceed. Neither Party shall be obligated under this Agreement to

- f. commence or continue with any discussions,
- g. enter into any particular business relationship or further agreements with the other Party,
- h. disclose any particular Confidential Information to the other Party; or
- i. refrain from entering into any agreement or negotiation with any other third party regarding the same or similar subject matter. Each Party expresses its intent and agreement that, except as otherwise expressly provided herein, no contract or any other binding obligation exists or shall arise between them regarding the Purpose or any other potential transaction unless a fully integrated, definitive written agreement has been duly authorized, executed and delivered by each of the Parties.

Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated:

- j. by personal delivery, when delivered personally; (b) by overnight courier, upon verification of receipt; or
- k. by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may specify in writing. For Discloser, all notices should be sent to the attention of the signatory with a copy to the Legal Department.

Miscellaneous. Neither Party may assign or transfer this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and lawful assigns. No such assignment shall relieve the assigning Party of its confidentiality obligations hereunder. Each Party recognizes that the unauthorized use or disclosure by the Recipient of any Confidential Information could cause irreparable harm to the Discloser, the extent of which would be difficult and impracticable to assess, and that money damages alone would not be an adequate remedy for such breach. Accordingly, in addition to all other remedies available under the circumstances, each Party shall be entitled to seek immediate injunctive and other equitable relief as may be necessary or appropriate to prevent such unauthorized use or disclosure in any court of competent jurisdiction. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise. Each Party recognizes and acknowledges that the other Party has expended significant amounts of time, skill and money to develop, maintain and protect its Confidential Information and that such information gives such party a significant competitive advantage over its competitors. In any action, suit or proceeding to enforce this Agreement, the prevailing Party shall be entitled to recover from the other Party all of its costs (including reasonable attorneys' fees, court costs and expert witness fees) incurred in connection therewith, in addition to any other relief that it may receive. The Recipient's evaluation of the Confidential Information of the Discloser will be at its own risk. Except for claims arising out of a Discloser's breach of the warranties contained herein, the Recipient will defend, hold harmless and indemnify the Discloser against any and all claims,

judgments, costs, awards, expenses (including reasonable attorneys' fees) and liabilities of every kind arising from any use or disclosure made by the Recipient of such Confidential Information. The Agreement will be governed by and construed according to the laws of the State of Oregon, without regard to its choice of law principles. The Parties agree that the exclusive venue for judicial determination of any disputes will be the state and federal courts located within Marion County, Oregon. The Parties have caused this Agreement to be signed in multiple counterparts, each of which is deemed an original, by their duly authorized representatives, intending to be legally bound as of the Effective Date set forth on the first page

Entire Agreement. This Agreement represents the entire agreement between the Parties regarding this subject matter and supersedes all previous communications, representations, understandings and agreements, whether oral or written, by or between the Parties with respect to the Confidential Information, whether previously or subsequently disclosed to the Recipient. No change, modification, extension, termination or waiver of this Agreement, or any of its provisions, will be valid unless made in writing and signed by duly authorized representatives of the Parties intended to be bound. No rights shall be waived by any delay, act, omission or knowledge of a Party, except by an instrument in writing expressly waiving such rights and signed by a duly authorized representative of the waiving Party. If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, such provision shall be amended by a court of competent jurisdiction to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement shall continue in full force and effect.

This Agreement represents the complete understanding between the Parties...

IN WITNESS WHEREOF, the Parties have executed this Agreement:

Bomasource, LLC	[Recipient Company]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____