



## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA") is effective as of this \_\_\_\_ day of \_\_\_\_, 2024, and is entered into by and between \_\_\_\_\_ ("\_\_\_\_") having an office at \_\_\_\_\_ and Krinos Foods, LLC., its subsidiaries and affiliates, having an office at 1750 Bathgate Avenue, Bronx, NY 10457.

### WITNESSETH

**WHEREAS**, each Party possesses business, financial and/or technical information and data relating to the operation of its own business, which is Proprietary, secret and confidential (hereinafter referred to as the "Proprietary Information"); and

**WHEREAS**, the Parties wish to disclose Proprietary Information to one another only in accordance with all applicable laws; and

**WHEREAS**, the Parties have indicated a willingness to preserve the secrecy and confidentiality of any Proprietary Information that is disclosed to other Parties;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the Parties to this NDA hereto agree as follows:

#### 1. Definitions:

*"Disclosing Party"* means the party disclosing the Proprietary Information.

*"Receiving Party"* means the party receiving the Proprietary Information. A party may be both a Receiving Party and a Disclosing Party, since it may both receive and disclose Proprietary Information.

*"Trade Secrets"* means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

*"Confidential Information"* means any non-public information, other than Trade Secrets, and all copies thereof in whatever form or medium that is designated or treated by Disclosing Party as being confidential. For the avoidance of doubt, no information is required to be marked or otherwise explicitly designated as "confidential" in order to be "confidential information" under this Agreement.

*"Proprietary Information"* means Trade Secrets and Confidential Information; and includes, but is not limited to: information relating to the Disclosing Party and/or its business including, without limitation, intellectual property; financial statements, information and data, projections and forecasts; business plans, contacts and relationships; marketing plans and strategies; customer, supplier, reseller and partner lists and information; employee lists and information; business methods; product and service plans, prices, pricing models, information and technical specifications and manuals; service specifications; research and development projects; tools; methodologies; know-how; and product source code or object code whether furnished directly or indirectly by a Disclosing Party to a Receiving Party, and whether disclosed in anticipation of this Agreement or after the date of this Agreement.

**2. Purpose:** This Agreement is made in order for each party to obtain from the other certain technical and/or business information for the purpose of establishing a potential business relationship between the Parties, and in the case such business relationship is established, to continue that business relationship, ("Permitted Use") under terms that will protect the proprietary and confidential nature of such information. Proprietary Information disclosed under this Agreement may be used by a Receiving Party for the sole purpose of the Permitted Use and shall not be used for any other purpose.

**3. Confidentiality and Permitted Disclosures:** Receiving Party shall not disclose any of Disclosing Party's Proprietary Information except as specifically provided in this Agreement. Receiving Party shall protect Proprietary Information from disclosure with the same degree of care Receiving Party uses to protect its own Proprietary Information similar in nature, provided such degree of care is at least a reasonable degree of care ("Confidentiality"). Receiving Party shall not disclose Proprietary Information to any person other than directors, officers, employees and consultants of Receiving Party or of its parent companies or affiliates (affiliates being entities under common control and ownership with Receiving Party) who have an absolute need to know solely in connection to the Permitted Use, the Proprietary Information, who are informed by Receiving Party of the confidential nature of the Proprietary Information and who are bound by obligations of confidentiality, at least as strict as those contained herein, either by written agreement or by professional duty of confidence ("Permitted Persons"). The Receiving Party may make only so many copies of the Proprietary Information as is absolutely necessary for Permitted Use. Each party shall be responsible for any breach of the terms of this Agreement by it or its directors, officers, employees, and consultants, or by its parent company or affiliates. In the event the Receiving Party becomes aware of any misappropriation or misuse of Proprietary Information, Receiving Party shall promptly notify Disclosing Party in writing and assist Disclosing Party in any proceedings related thereto.

**4. Exceptions to Confidentiality:** The obligations of confidentiality shall not apply to any item of Proprietary Information to the extent Receiving Party can establish by legally sufficient evidence that such item of Proprietary Information:

- a. is or becomes part of the public domain through no fault or omission of Receiving Party;
- b. is disclosed by Disclosing Party to others without restrictions on use and disclosure;
- c. becomes known or available to Receiving Party without restriction from a source other than Disclosing Party without breach of agreement by Receiving Party or source;
- d. is disclosed with the prior written approval of Disclosing Party;
- e. is independently developed by Receiving Party without the use of any Proprietary Information provided by Disclosing Party;
- f. is known to Receiving Party on a non-proprietary basis prior to disclosure by Disclosing Party to Receiving Party as evidenced by the records of Receiving Party; or,
- g. is required by court order or government agency to be disclosed, in which case, Receiving Party shall, unless prohibited by law or other valid governmental order, give Disclosing Party as much notice as is reasonably practical so that Disclosing Party may seek a protective order or other confidential protection as Disclosing Party, in its sole discretion, may elect and Receiving Party shall reasonably cooperate, at Disclosing Party's expense, with the Disclosing Party in the Disclosing Party's efforts to obtain such order or protection.

The burden of proving that information is not Proprietary Information shall be on the party asserting such exclusion.

**5. Rights of Ownership:** All Proprietary Information disclosed to the Receiving Party pursuant to this Agreement shall be and shall remain the property of Disclosing Party or its licensors. Receiving Party recognizes and agrees that nothing in this Agreement shall be construed as granting any property rights to Receiving Party, by license or otherwise, to any Proprietary Information disclosed pursuant to this Agreement, including but not limited to any trade secret, copyright, trademarks or patent, or any other intellectual property right that has issued or that may issue based upon the Proprietary Information.

**6. Indemnification and Choice of Law:** The Parties agree that each of them will be responsible for maintaining the secrecy and confidentiality of the Proprietary Information disclosed, and each will be responsible in this regard for the actions and activities of all of their respective agents, employees, and designees working with any of the Proprietary Information, and each Party agrees to indemnify, defend, and hold harmless the other Party from and against all costs, claims, losses, damages and expenses (including reasonable attorneys' fees) that a Party may suffer or incur as a result of any unauthorized disclosure that can be traced to the disclosure of such Proprietary Information by the Indemnifying Party, their respective agents, employees, or designees. The Indemnifying Party shall have sole control over any negotiations or litigation, but shall not settle or compromise a claim under this paragraph without the Indemnified Party's prior written consent, if i) the settlement or compromise would impose an injunction or other equitable relief upon the Indemnified Party, or ii) the settlement or compromise includes an admission of liability or wrongdoing on the part of the Indemnified Party, or iii) the settlement or compromise does not include the release of the Indemnified Party from all liability arising from or relating to such claim. At its own expense, the Indemnified Party may hire consulting counsel of its choosing and has the right to participate in any defense and settlement negotiations.

The Parties agree that any breach of this Agreement, including without limitation any actual or threatened disclosure of Proprietary Information without the express prior written consent of the Disclosing Party, would cause irreparable injury to the Disclosing Party for which no

adequate remedy at law exists. Therefore, each party shall have the right, in addition to any other rights and remedies it may have at law, in equity or otherwise, to seek injunctive relief to restrain any breach or threatened breach hereof or otherwise to specifically enforce any of the provisions of this Agreement. Furthermore, in no event shall either Party be liable for exemplary damages arising from the breach of this Agreement, whether or not the possibility of such damages has been disclosed to the other Party in advance or could have been reasonably foreseen by such breaching party. Should an action be brought, the prevailing party (as determined by the court) shall be entitled to a reasonable sum for attorneys' fees and costs in addition to any other relief which may be awarded.

The Parties agree that the courts of the Commonwealth of Pennsylvania, County of Blair, shall have exclusive jurisdiction for any matter arising out of or relating to this Agreement. This Agreement shall be governed and construed by the laws of the State of New York without regard to its choice-of-law rules, and shall be binding upon the Parties and their respective successors and assigns.

**7. Return or Destruction of Proprietary Information:** At the request of Disclosing Party, Receiving Party shall return or destroy all Proprietary Information disclosed by the requesting party, including all copies thereof. If Receiving Party chooses to destroy, rather than return, the Proprietary information, Receiving Party will inform Disclosing Party in writing, signed by an officer of Receiving Party, of the manner and date that such has been done. However, Receiving Party shall not be required to return or destroy copies stored on off-site back-up discs or tapes. If no such off-site back-up discs or tapes exist, legal counsel for Receiving Party may keep one copy as evidence of the disclosure. Notwithstanding anything to the contrary contained in this Agreement, any copy retained under the terms of this Section 7 shall be afforded confidentiality protections while such copy is in the possession of Receiving Party.

**8. Disclaimers:** Nothing in this Agreement shall obligate either party to disclose any information to the other party or obligate either party to enter into any other agreements. The information disclosed under this Agreement is provided AS IS- No representation or warranty of any kind is given by Disclosing Party with respect to the Proprietary Information disclosed to Receiving Party including, but not limited to, any representation or warranty as to its accuracy or completeness. The Disclosing Party shall not have any liability or responsibility for errors or omissions in, or any decisions made by the Receiving Party in reliance on any Proprietary Information disclosed under this Agreement.

**9. Term and Termination:** Either party may terminate this Agreement upon ninety days (90) written notice to the other party at the address set forth in this Agreement or at such other address that a party may hereafter give to the other in writing, it being understood that the notice shall be given to an officer of the other party. Notwithstanding the termination of this Agreement by either party, all provisions of this Agreement relating to the rights and obligations concerning Proprietary Information disclosed prior to the effective date of termination of this Agreement shall continue for a period of seven (7) years from the date of disclosure of the Proprietary Information or for the maximum period provided under applicable law, whichever is longer, but such rights and obligations with respect to individually identifiable personal information and software in human-readable form (e.g., source code), shall continue indefinitely. Notwithstanding anything to the contrary found in this Agreement, neither party may terminate this Agreement while any other agreement under

which Proprietary Information is or may be exchanged between the Parties is still in effect in any case where such other agreement does not contain specific confidentiality provisions accounting for the protection of any Proprietary Information disclosed between the Parties.

**10. Expenses and Compliance with Laws:** Except as provided for in paragraph 6 herein, each party shall bear its own expenses in relation to this Agreement. Each party will comply with all applicable laws (including the Export Administration Act), rules, and regulations of competent public authorities relating to its performance of this Agreement. The obligations of this Section as to the Export Administration Act shall survive any expiration or termination of this Agreement.

**11. Assignment:** Neither party shall assign this Agreement without the other party's prior written consent. Notwithstanding the foregoing, either Party may assign this Agreement upon notice and without the other Party's consent to a person or entity (i) that controls, is controlled by or is under common control with the assigning Party, (ii) which purchases all or substantially all of its assets or equity, or (iii) resulting from any merger, consolidation or other reorganization involving such Party.

**12. Modifications and Waivers:** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

**13. Severability and Notice:** If any provision of this Agreement is held to be invalid or unenforceable under applicable law in any jurisdiction, the validity or enforceability of the remaining provisions thereof shall be unaffected as to such jurisdiction and such holding shall not affect the validity or enforceability of such provision in any other jurisdiction. To the extent that any provision of this Agreement is held to be invalid or unenforceable because it is overbroad, that provision shall not be void, but rather shall be limited only to the extent required by applicable law and enforced as so limited. Any notice under this Agreement shall be effective upon delivery to the party's address provided herein, or any substitute therefore provided by notice, by a courier or delivery service, overnight or otherwise, or the U.S. Postal Service, and will be evidenced by a return receipt or the signature of appropriate company employee on the courier log.

**14. Entire Agreement:** This writing constitutes the entire Agreement between the Parties with respect to the matters herein set forth, and no representations have been made by any of the Parties except as are herein specifically set forth. No rights or obligations other than those expressly recited herein are to be implied from this Agreement.

**15. No Party a Drafter; Titles and Subtitles:** No party will be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

**16. Relationship Between the Parties:** Nothing contained in this Agreement shall be construed to constitute either party hereto as the partner, employee, agent or other representative of the other party hereto.

**17. Execution/Counterparts:** For the convenience of the Parties, copies of this Agreement may be executed in two or more counterparts and signature pages exchanged by facsimile or electronic mail. The Parties intend that counterpart copies signed and exchanged as provided in the preceding sentence shall be fully binding as an original handwritten executed copy hereof and thereof and all of such copies together shall constitute one instrument.

*[Remainder of page intentionally blank; signature page follows]*

By their signature below, each of the following represent they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

**Krinos Food, LLC**

**[Company]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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