

Blue Ridge Food Ventures, LLC Co-Packing Agreement

This person or organization joins this Agreement as User of the Blue Ridge Food Ventures facility.	
Full Legal Name of Business	Legal Status of User (Check One): <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other _____
Name Authorized Representative	Title (e.g., Sole Proprietor, Partner, President, Manager)
Mailing Address	Email
Telephone	Fax

Please check box if your information has changed since last contract period.

This Agreement is intended to serve as a master agreement setting forth the general procedures, terms and conditions that will govern the relationship between Blue Ridge Food Ventures, LLC, a North Carolina Limited Liability Company, (“Supplier”) and _____ (“Customer”) for the provision of contract manufacturing/co-packing services (“Services”) for the manufacture/co-packing of [product description] (“Product”). The parties contemplate that separate requests for quotations and separate orders (“Purchase Order”) for specific Product will be issued by Customer to Supplier under the framework of this master Agreement.

NOW THEREFORE, in consideration of the mutual and dependent promises hereinafter set forth, the parties, intending to be legally bound, do hereby agree as follows:

1. **SERVICES.** Supplier offers to perform on behalf of Customer the following Services:
 - a. **Services.**
 - i. Receiving and intake and inventory of all raw materials necessary for the completion of Customer’s Product (“Components”);
 - ii. Manufacturing services for producing the Customer’s Product including, but not limited to: filling; capping; lot coding; tamper banding; labeling; casing and palletizing; development and implement of a master manufacturing records and batch process records to be utilized during the productions;
 - iii. Lot coding and Processes Production Records, and preparation for shipping;
 - iv. Supplier will also provide a copy of the Certificate of Attendance at an approved Better Process Control School.

2. CUSTOMER PREREQUISITES AND PRODUCTION SCHEDULING.

- a. **Customer Perquisites.** All Customers must complete the following and provide all appropriate documentation to the Executive Director of Supplier prior to Supplier beginning its Services. In no event will Supplier begin its Services until Customer completes and delivers the following:
 - i. User Services/Customer Contract;
 - ii. Customer information Packet;
 - iii. Non-disclosure Agreement;
 - iv. Documentation of Process Authority/Schedule Process, if applicable;
 - v. Proof of Product Liability and General Liability insurance;
 - vi. Certificate of Insurance from all packaging and/or container Vendors;
 - vii. Down payment for services;
 - viii. FDA bioterrorism registration of the products production at the facility;
 - b. **Production Scheduling.** Upon Supplier's approval of Customer's satisfaction of all Prerequisites contained in Section 2, Customer may deliver its Purchase Order and all Components necessary for Supplier to perform its Services to Supplier's facilities. Production will be scheduled by Supplier fourteen (14) days after Customer delivers its Purchase Order and all necessary Components to Supplier's facilities. In the event Supplier schedules production begins without the certain Components Customer later determines are necessary for completion of its Product, additional charges may apply for Services necessary to finish the production, and Customer must comply with the provisions of Section 6 below.
3. **AUTHORIZED PRODUCTS.** If the product is an acidified food which requires a Schedule Process, a copy of must be on file. Other products such as fermented, dried, or unpasteurized products must be approved by a University-based food scientist.
4. **PURCHASE ORDERS.**
- a. **Agreement on Purchase Order.** Upon Customer and Supplier agreeing to a particular quotation, Customer shall issue a specific Purchase Order for the Services, which each party shall execute.
 - b. **Governing Terms and Conditions.** The terms and conditions set forth in this Agreement are intended to govern the relationship between the parties and shall

take precedence over any additional or inconsistent terms and conditions contained in any standard forms or documents used by either party, including purchase order forms or otherwise.

5. PAYMENT TERMS.

- a. **Prices.** Prices for the Services provided in connection with any Purchase Order shall be as agreed between the parties in connection with that Purchase Order.
- b. **Terms.** The parties agree that payment for each Purchase Order under this Agreement shall be due and payable as follows: forty percent (40%) upon issuance of the Purchase Order and sixty percent (60%) upon Supplier's completion and Customer's inspection of the Product. Supplier will retain the Product until Customer delivers the remaining sixty percent (60%) of the balance owed.

6. CHANGE ORDERS.

- a. **Engineering Change Orders ("ECO").** In the event Customer requests a design change relating to the Services being provided by Supplier after Supplier has scheduled performance of Customer's Product, Supplier will promptly furnish Customer with a quotation regarding any extra costs or adjustments to delivery schedules that will be required in connection with the ECO. Customer will be permitted to decide whether it wishes to proceed on that basis or whether it decides to cancel the ECO. All ECOs by Customer must be in writing.
- b. **General Change Orders.** In the event Customer requests a change in a Purchase Order other than an ECO, Supplier will promptly furnish Customer with a quotation regarding any extra costs or adjustments to delivery schedules that will be required in connection with the Change Order. Unless otherwise agreed, any request for a change must be made by the first business day of the calendar month preceding the scheduled delivery date to avoid an impact on delivery schedules. Customer will be permitted to decide whether it wishes to proceed on the proposed terms from Supplier or whether it desires to cancel the proposed Change Order. All Change Orders by Customer must be in writing.

7. SHIPPING AND STORAGE.

- a. **Pre-Production.** It will be the Customer's responsibility to arrange for the delivery of all Components to Supplier necessary for Supplier to complete its Services unless it is agreed upon by the Parties that Supplier will order the Components from an agreed upon Vendor on Customer's behalf to be shipped directly to Supplier's facilities.
- b. **Post-Production.** It will be Customer's responsibility to arrange for the removal of Customer's Product upon the completion of Supplier's Services. In no event will Supplier be responsible for shipping or delivering Customer's Product to

Customer upon Supplier's completion. Upon completion of the Product, Supplier, as a courtesy to Customer, will provide storage for Customer's Product at its facilities for up to two weeks after the Product's completion free of charge to Customer. In the event the Product remains at Supplier's facilities for more than two weeks after its completion, Customer will be charged \$_____ per day, and, upon written notice to Customer, Supplier will have the right to dispose of Customer's Product.

- c. **No Bailment.** Customer acknowledges it can remove its product from Supplier's facilities upon completion of Customer's Product at any time. After the completion of Customer's Product but while the Product remains at Supplier's facilities, the parties do not intend that a Bailment relationship will be created and specifically disclaim that one will arise. At and Supplier will not be acting as a Bailee of Customer's Product.

8. TESTING.

- a. **Generally.** Supplier generally does not intend to furnish product testing services to Customer in connection with the Services. Customer will be responsible for arranging for any required testing.
- b. **Optional Testing.** Customer may request that Supplier perform in-testing at the premises of Supplier. If Customer requests such testing, and Supplier agrees to perform such testing, and, to the extent any set-up charges, specialized parts and fixtures or programming is required, Customer will be responsible for the costs of such items. Customer will be charged on a per-piece basis over and above usual pricing for the costs of such testing.
- c. **Defective Parts, Components, etc.** Unless otherwise agreed, Supplier will use only Customer approved vendors for Components necessary to performing Services on Customer's behalf. However, because Supplier's ability to detect defects in such Components during the manufacturing process is limited (particularly where Customer has not purchased testing services from Supplier), Customer agrees that it will accept and pay Supplier for any Products which are determined during acceptance testing to contain defective Components if such Components were defective at the time of their delivery to Supplier. If such a defective Component is discovered during acceptance (or during the warranty period described in Section 7(a) below), Supplier will, to the extent possible, assign any rights it may have against its vendor to Customer and use its best efforts to provide reasonable cooperation to Customer to resolve the matter with the vendor. Supplier will also take all practicable steps to mitigate the effects on its delivery schedule of any defective Components discovered by it during the manufacturing process.

9. **RIGHT OF ENTRY.** Customer acknowledges Supplier's facilities are private property. Customer shall have a right to enter Supplier's facilities upon Supplier's completion of

Customer's Product and notice from Supplier of its completion for the purposes of inspecting the Product. Customer has no other right of entry to Supplier's facilities for any purpose whatsoever without prior approval of Supplier.

10. WARRANTY.

- a. **Warranty.** Supplier warrants that for a period of time up to 6 months from the production date of any Products for Customer or up to the expiration date of the product itself, whichever time period is shorter, such Products will be free from defects in workmanship in connection with the assembly of the Components into the finished products and that the assembly work will be done in accordance with documentation furnished by Customer to Supplier. Supplier agrees, without charge, to repair or, at Supplier's option, replace any Product shown to be otherwise than as warranted
- b. **Exclusions.** The warranty obligations hereunder shall not apply to any defects caused by neglect, misuse or other actions caused by the negligence of Customer or any customer of Customer. Without limiting the foregoing, Supplier shall have no responsibility for defects caused by the design or configuration of the Product, the effects of integration of the Product with other products, the selection of any Components or products, any defects in Components or products (not resulting from their handling or assembly by Supplier) or compliance with Customer-furnished documentation.
- c. **Exclusive Warranty.** Except for its obligation to repair or replace Products as set forth above, Supplier shall have no other liability for defects in the Products under any theory, including contract, tort or equity. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SUPPLIER GIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED (INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE), IN CONNECTION WITH SERVICES PROVIDED HEREUNDER.

11. LIMITATION OF LIABILITY.

- a. **Limitation.** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER PLACED HEREUNDER.

12. CERTAIN BUYER OBLIGATIONS.

- a. **Certain Liability.** Customer may terminate all or any part of any Purchase Order issued at any time by written notice to Supplier. In such event, however, Customer will remain liable to Supplier for expenses incurred by Supplier for:

- i. The cost plus a profit margin of 10% raw materials already purchased to be used specifically for the Purchase Order and non-cancelable materials ordered to be used specifically for the Purchase Order, including handling or restocking charges;
 - ii. The purchase, rental or lease of equipment to be used in accordance with the Purchase Order if part of the quotation;
 - iii. Commitments or contractual arrangements made with a third party to complete the Purchase Order if part of the quotation;
 - iv. Labor incurred for all work in process at time of cancellation; and
 - v. Fitting up of Supplier's facility to accommodate buyer's product or service if part of the quotation.
- b. **Indemnification of Supplier.** Customer will indemnify and hold harmless Supplier from and against any and all liability, damages, costs or expenses incurred by Supplier as a result of any claims by third parties relating to the Services furnished in connection with any Purchase Order hereunder unless such claims were caused solely by the breach by Supplier of this Agreement or the terms of any Purchase Order issued hereunder.

13. CUSTOMER'S DESIGN, SPECIFICATIONS, ETC.

- a. **Customer's Designs and Specifications.** Customer warrants that all designs, drawings, patterns, specification and other material it furnishes to Supplier for use in performing Services will not infringe on any patents or other rights of any other entity. Customer shall also indemnify and hold Supplier harmless from and against any liability, damages or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Supplier resulting from infringement of patents or trademarks arising from or relating to (1) compliance by Supplier with Customer's designs, specifications or instructions; (2) modifications by Customer of the Products furnished; or (3) use of Products to make any product or part that may infringe upon the patents or other proprietary rights of others.

14. **NON-EXCLUSIVITY.** This Agreement does not grant to Supplier any privileges or rights to be the exclusive supplier of Services to Customer, nor does this Agreement in any way restrict Supplier from providing Services to other parties. The parties shall operate as independent contractors hereunder and, notwithstanding anything to the contrary contained in this Agreement, the parties will have no legal relationship as partners, joint venturers or otherwise.

15. TERM.

- a. **Term.** This Agreement shall commence on the date first written above and shall continue for a period 1 year unless earlier terminated as otherwise permitted in this Agreement.
- b. **Impact of Capital Stock Transfer.** This Agreement shall remain binding on each of the parties regardless of any transfer of shares in the capital stock of either party (whether as between existing shareholders, to related shareholders or to new shareholders or any combination thereof), de facto or de jure change of control of either party, amalgamation with one or more corporations, restructuring of the capital stock of either party or other corporate reorganization of either party.
- c. **Customer's Right to Terminate.** The occurrence of any one or more of the following events shall entitle Customer to terminate this Agreement within ten (10) business days of the receipt of written notice of such event where the default in question may be cured:
 - i. Should Supplier make an assignment for the benefit of its creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, file a petition or apply to any tribunal for any receiver, trustee, liquidator or sequestrator of any substantial portion of its property, commence any proceeding under any law or statute of any jurisdiction respecting insolvency, bankruptcy, reorganization, arrangement or readjustment of debt, dissolution, winding-up, composition or liquidation, or otherwise take advantage of any bankruptcy or insolvency legislation whether now or hereafter in effect, or if any receiver, trustee, liquidator or sequestrator of any substantial portion of its property is appointed;
 - ii. Should Supplier violate any provisions of Article 10 hereof;
 - iii. Should Supplier fail to fill any two Purchase Orders within 60 days of receipt thereof during the Term; or
 - iv. Should Supplier fail to fill any Purchase Order within 30 days of receipt thereof.

16. DISPUTE RESOLUTION.

- a. **Dispute Resolution.** In the event of any dispute under this Agreement, the parties, during the pendency of such dispute, will in good faith, except as otherwise provided in this Agreement, perform all other respective obligations without prejudice to the rights of any party to the dispute. Any dispute or action for breach which cannot be resolved by agreement of the parties shall be resolved in the courts of Buncombe County, North Carolina, and according to the laws of North Carolina.

17. GOVERNING LAW.

- a. **Governing Law.** This Agreement and its interpretation and performance shall be governed by the laws of the State of North Carolina (as if by residents thereof).

18. CONFIDENTIALITY.

- a. **Confidentiality.** The parties recognize that technical and business information that is to be made available hereunder may be confidential and proprietary to the Disclosing Party, and the Receiving Party agrees to keep such information confidential and not to use it unless in accordance with this Agreement. Notwithstanding the foregoing, Supplier acknowledges and agrees that the design of any Product, information submitted to Supplier in connection with any Purchase Order, and information concerning any related information disclosed by Customer to Supplier, will constitute valuable proprietary information of Customer, unauthorized disclosure of which will cause irreparable harm to Customer, and that all such information whether or not specifically designated as confidential by Customer, shall be deemed "confidential" for purposes of this Agreement.
- b. **Marking of Information.** In the event confidential and proprietary information is disclosed in written form, it shall be marked as "Confidential" in order to be protected under this Agreement. In the event such information is disclosed orally, as may happen in business meetings or in other conversations, the Disclosing Party shall, within [number] days of such disclosure, transmit to the Receiving Party a fax or other writing specifically identifying the confidential and proprietary information and indicating that it is to be protected under this Agreement.
- c. **Exclusions.** Notwithstanding the provisions of Sections 10.1 and 10.2, the above restrictions shall not apply to the following Disclosing Party Information:
 - i. Information in the public domain or information which comes into the public domain due to no fault of the Receiving Party;
 - ii. Information obtained by the Receiving Party on a non-confidential basis from a person duly authorized to disclose;
 - iii. Information in respect of which the Receiving Party can confirm by contemporaneous written evidence that it already knew the same; or
 - iv. Information developed by a Receiving Party independently of the disclosed information.
- d. **Survival of Requirements.** Section 17(a) shall survive the expiration or termination of this Agreement.

19. GENERAL TERMS.

- a. **Assignment.** Neither party may assign any of its rights hereunder without the prior written consent of the other party.
- b. **Notices.** Any notices hereunder shall be in writing and shall be deemed effectively given when delivered in person or when sent by fax or registered mail to the address of the other party first above written or at such different address as such party may hereafter designate by notice.
- c. **Complete Agreement.** The terms and conditions herein set forth the entire agreement between the parties and shall supersede all previous communications and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement. This Agreement can be modified only by a written amendment executed by both parties.
- d. **Section Headings.** Section headings are for ease of reference only and are not intended to affect the substantive interpretation of this Agreement.

This Agreement is executed this _____ day of _____, 20____, by the duly authorized representative of each party.

BLUE RIDGE FOOD VENTURES, LLC

By: _____
Smithson Mills
Executive Director

Legal Name of User's Business

By: _____
Signature of Business
Owner/Authorized Representative

Name Printed

Title