

Kitchen Use Agreement

This is a Kitchen Use Agreement (the "Agreement") dated as of _____, 20__ between [____], a California nonprofit corporation ("Client"), and _____ ("Business"), a _____.

Background

Client is a nonprofit created with the mission of promoting equal access to economic opportunity by supporting underserved entrepreneurs. Client's commercial kitchen incubator program ("CKI") is has the goal of supporting underserved and/or low-income food industry entrepreneurs in [____]. To reduce the obstacles that often prevent small food entrepreneurs from creating successful and sustainable small businesses, Client makes available to them the shared use of affordable, high-quality commercial kitchen facilities located at [____] in [____], California (the "Facility"). Business is a small food preparation business. Client and Business have agreed that Business may use the Facility on a shared use basis on the terms set out in this Agreement.

1. Documents and Definitions

1.1 Agreement. This Agreement sets out business terms for use of the Facility. It covers, among other things, length of use; fees and payment; management responsibilities; compliance with contract, training, and legal requirements; use of the Client name; legal relationship between Client and Business; liability including Business's responsibilities, waivers, and indemnification obligations; insurance; termination of the Agreement; and other parts of the relationship between Client and Business.

1.2 Operating Manual. This Agreement includes an exhibit, a document called the "Operating Manual." The Operating Manual covers matters such as fee amounts and billing procedures; Facility access, scheduling, and documentation policies; training and licensing requirements; instructions on proper equipment use; safety and sanitation policies; and general rules for use of the Facility. Business's obligations under this Agreement include complying with the Operating Manual.

2. Use and Term

2.1 Use of Facility. Client grants and Business accepts the right to use the Facility on a shared basis on the terms set out in this Agreement. Such use may include, without limitation, the use of workstations, stoves, sinks, refrigerators, freezers, other cooking and packaging equipment, commissary station, individual storage areas and units, loading dock, and any other Facility, equipment, and services that Client may provide to Business, as available and at the rates set out in the Operating Manual.

2.2 Term. Business may use the Facility for six months(s), starting on [_____, 20__] and ending [_____, 20__]. This Agreement will terminate upon the expiration of this term or the renewal term, if any, or if Client or Business terminate this Agreement as described in Section 10.

2.3 Renewal. Business may apply for renewal of this Agreement no later than 60 days before the expiration of the current term. This Agreement may be renewed only if Business is in compliance with all terms contained in this Agreement at the time the request to renew is

delivered and again at the time of the start of the renewal term. Client will notify Business whether or not the Agreement will be renewed no later than 30 days before the expiration of the current term, it being understood that Client may make that decision in its sole discretion. Failure by Business to deliver a timely notice of renewal may be treated by Client as a final decision not to renew.

3. Fees, Fines, and Payment

3.1 Fees. In consideration of the right to use the Facility, Business will pay Client use fees as set out in the Operating Manual. Client reserves the right to agree to different pricing arrangements for individual users.

3.2 Billing and Payment. Business will prepay all fees on a monthly basis as set out in the Operating Manual. Client may require businesses to provide a credit card for payment of fees, fines and other amounts a business may owe Client. Client will charge the card each month. Client may agree at its discretion to other payment arrangements.

3.3 Fines. Client may charge fines for noncompliance with the Operating Manual as set out in the Operating Manual. Business will pay all fines charged by Client no later than three days after receipt of invoice from Client.

3.4 Late Fees. If Business does not pay fees, fines or other amounts owing within three days after they are due, or if credit cards, checks or other forms of payment are dishonored, Business will upon Client's demand pay an additional sum equal to 5% of the amount overdue as a late charge to compensate Client for costs associated with the late payment.

3.5 Security Deposit. On the day Business signs this Agreement, Client may require Business to pay Client a security deposit in the amount specified in the Operating Manual to secure performance of Business's duties under this Agreement. If Business breaches this Agreement, Client may apply all or any part of this security deposit to rent, to any repair, clean-up, or other amounts Client pays by reason of Business' breach, and to any damages or other amounts to which Client is entitled under this Lease. Client will refund remaining security deposit amounts, without interest, to Business when this Agreement terminates. Business waives the provisions of Section 1950.7 of the California Civil Code.

3.6 Subject to Change. Client may change the amount of all fees and fines in its sole discretion by amending the Operating Manual as contemplated by Section 11.2.

4. Use, Safety, and Compliance

4.1 Reservations. Business will reserve use of the Facility through a system specified in the Operating Manual. Client reserves the right to schedule, limit or assign hours in accordance with capacity restrictions in order to preserve access for new and small businesses in line with its mission.

4.2 Method of Work. Business will have sole responsibility for the planning, management, and carrying out of its operations in the Facility whether or not it obtains educational or technical support from Client. Business is responsible for hiring, monitoring, and paying any labor it uses in its operations, and for procuring and paying for its own ingredients and packaging materials. Client may facilitate purchasing opportunities through third party distributors, but is not obligated to do so, will not manage or be responsible for the relationship between Business and third party, and will not guarantee the performance of any party in such an arrangement.

4.3 Compliance with Laws and Operating Manual. Business will comply with all applicable federal, state, and local laws and regulations, including, without limitation, those relating to licensing and permitting, safe handling of food, use of the Facility, marketing, and employment. Business will comply with the Operating Manual.

4.4 Training. Business, before using the Facility, must attend and complete mandatory training sessions, including food safety and sanitation training, and, as applicable, training in use of specialized equipment. Courses must be ANSI certified and approved by Client. Business must attend and complete an Operating Manual training regarding Facility operations, including safe use and proper cleaning of all equipment.

4.5 Permits and Licenses. Business will maintain all permits, licenses, and other regulatory permissions required to conduct its business and use the Facility. Such permits and licenses may include, without limitation, business licenses, seller's permits, caterer's permits, food safety manager certifications, food handler cards, and processed food registrations. Business will keep all required food safety and food handler certifications on file at the Facility and will keep such records current. Client may suspend or terminate Business's right to use the Facility if Business fails to maintain, or fails to keep appropriate records of, all permits, licenses, and permissions.

4.6 Cooperation with other Users. Because the Facility is a shared use kitchen, cooperation among users is crucial to safe and efficient operation of the Facility. For this reason, Business will: (i) conduct its operations in a safe manner; (ii) treat other users and their property with respect; (iii) be courteous and cooperative when sharing portions of the Facility with other users; (iv) make best efforts to accommodate the reasonable requests of other users who are working in the Facility at the same time; (v) refrain from disruptive or unsafe behavior; and (vi) report repeated instances of unsafe or disruptive behavior by other users to Client.

4.7 [_____]

4.8 Notice. Business will notify Client promptly of: (i) any change in ownership or key personnel; (ii) loss of any necessary license or permit; (iii) any breach of this Agreement that has not been corrected within 10 days of its occurrence; (iv) claims or litigation against Business arising from its food preparation business; (v) a material change in Business's product mix or business plan; (vi) any damage to Facility equipment or building beyond typical wear and tear observed by Business; (vii) any unsafe conditions observed in the Facility; or (viii) dissolution of, or filing of bankruptcy by or against, Business.

5. Business's Property

5.1 Personal Property. Business will be solely responsible for the security of its personal property at the Facility including, without limitation, property left in secured storage, refrigerators, lockers, and other containers. Client will not be liable for any claims arising from theft, loss, or damage of Business's personal property brought to the Facility except in instances of gross negligence or willful conduct on the part of Client.

5.2 Deliveries. Business has sole responsibility for loss of or damage to any personal property delivered to the Facility for or at the request of Business. Such items may include, without limitation, supplies and equipment used by Business. Business must have a representative at the Facility to receive, inspect, secure and store any goods or other property delivered to Business at the Facility. Client may prevent Business from accepting delivery of and/or require the immediate removal of any delivered property that Client believes is defective, spoiled, or otherwise unsatisfactory for its intended use. This Section 5.2 does not imply that Client has a duty to inspect or approve of any supplies or other materials delivered for Business.

5.3 Inspection of Business's Property. Client and government agencies may inspect, for any reason, any and all property belonging to Business that is present at the Facility. This right to inspect extends to any private or semi-private storage areas or units in the Facility, including, without limitation, cages and lockers. To facilitate inspections, Business will provide a key to any locks used by Business to secure any such private storage area or unit. Business will fully cooperate with all inspections of its property. The presence of Client representatives in the Facility will not limit or affect in any way Business's obligations under this Agreement. This Section 5.3 does not and will not impose any duty on Client to inspect the Facility or Business's property, report to Business the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the Facility and Business's property.

5.4 Right to Dispose of Property or Take other Action. Client may take any action with respect to Business's property that it deems necessary for ensuring health and safety or preserving the orderly operation of the Facility, including, without limitation, discarding any of Business's property kept in private or semi-private storage areas. Business waives all rights to seek reimbursement for any property discarded by Client. Business will reimburse Client for any expenses incurred by Client in disposing of Business's property.

5.5 Property as Security. Business understands and agrees that Client may hold any of Business's property stored at the Facility as security for any balances that remain unpaid 90 days from the date of invoice. Client may, in its sole discretion sell such property in accordance with law and apply the proceeds of the sale to any amount owed by Business. Client may also retain such property and grant credit for the reasonable value of the property against any amount owed by Business. Client will determine the reasonable value of the property in its sole discretion.

6. Marketing

6.1 Use of Client's Name and Brand. Business will not use the trademarks or service marks, trade names, service names, copyrights, or other intellectual property belonging to Client (together, the "Marks") without first obtaining the prior written consent of Client. If Client permits Business to use any Marks, such license will be non-exclusive, non-transferable, non-sublicensable, revocable by Client at any time, and only for such purposes as Client may permit. Business will use the Marks only in the form provided to it by Client and will not combine any trademarks included in the Marks with any other trademark, work, symbol, letter, design, or mark. Client may object to any proposed or actual use of the Marks; Business will terminate this use within 10 days after receipt of written notice of disapproval. Business acknowledges that it has no interest in the Marks other than the rights granted under this Agreement and that Client will remain the sole and exclusive owner of all right, title, interest and goodwill in the Marks.

6.2 Publicity. Client in its discretion may identify Business as a CKI participant and Facility user, including using its trade name and logo and describing its products, in Client's internal and external communications, including on its website and outreach materials. Client is under no obligation to promote Business and retains sole discretion in determining if and how to publicize businesses in conjunction with CKI. Business agrees that, except as expressly provided in this Agreement and/or as may be required by law, it will not issue any public communication concerning this Agreement or its relationship with Client without Client's prior written approval.

6.3 Media Release. Client may film, tape, photograph, interview, and otherwise document Business's and Client's operations and activities at the Facility and at related events. All video, photographic, audio, written, and other materials produced by Client in connection with Business's activities and all copyrights in these materials will be the sole property of Client and may be made available by Client to third parties, on Client's website, in Client publications, or through any other media, in Client's sole discretion. Business is not entitled to inspect or approve

versions of any media prior to its use by Client, nor is Business entitled to receive any payment for any such use by Client. Business grants to Client all copyrights and other rights it may have in any media created and distributed by Client under this Section 6.3, including, without limitation, any right to copy, edit, change, or transfer the media.

6.4 Misrepresentations. Business will not make any false or misleading statement or representation about whether any product Business sells has been produced at the Facility.

7. Relationship

7.1 Independent Businesses. Business is and will be an independent enterprise. Business and Client are not running a business together. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Business and Client for any purpose. Neither Business nor its employees or contractors will be entitled to or eligible for any benefits that Client makes available to its employees, including, without limitation, coverage under any Client medical, dental, liability, automobile, or other insurance policies.

7.2 No Authority to Act for Other. Neither Client nor Business will hold itself out as an agent or representative of, or purport to speak or act on behalf of, the other, and neither will have the power or authority to act for the other or to bind or obligate the other to a third party or commitment, in any manner.

7.3 Taxes, Contributions, and Withholding. Business is responsible for all tax returns and payments required by any federal, state, or local tax authority in connection with operation of its food business. Business must make all required contributions, including, without limitation, disability, unemployment insurance, and workers' compensation contributions. Client will not withhold income, Social Security, or Medicare taxes, make unemployment or disability insurance contributions, or obtain workers' compensation or other insurance on behalf of Business or its employees or contractors.

8. Acknowledgments

8.1 Facility As-Is. The Facility, including all equipment in the Facility, are provided to Business "as-is." Client makes no express or implied representations, warranties, or guarantees relating to the Facility or the equipment, including, without limitation, representations, warranties or guarantees concerning condition, functionality, safety, quality, merchantability or fitness for a particular purpose.

8.2 Repairs and Maintenance. Client may limit Facility operating hours, limit use of specified equipment or portions of the Facility, or temporarily close the Facility in order to carry out cleaning, repair, and maintenance activities. Client will make reasonable efforts to provide as much notice as practicable to Business of such limitations or closures. Client will not refund fees or be responsible for time, sales, or profits lost, or for inventory purchases or other costs, arising from such actions.

8.3 Program Assessment. Client collects, analyzes, and disseminates data about its programs. Such work is intended to help Client evaluate the effectiveness of its programs, assist businesses better, comply with its external reporting obligations, and carry out its internal and external communication efforts. Business consents to Client using Business's information for data analysis and aggregation purposes and incorporating such information in its external reporting and communications activities. Subject to Section 6.2 of this Agreement and to applicable law, Client will disclose information about Business on a no-name basis unless Client has Business's prior approval to disclose Business's name.

8.4 No Guarantees. Business acknowledges that Client has not made and is not making any representations, warranties, promises, or guarantees of any kind about Business's success, including, without limitation, representations about Business's sales or profits or public awareness of Business. Business has made its own independent business evaluation in deciding to enter into this Agreement and engage in the food business. Business acknowledges and confirms that Client has no liability to Business for any failure by Business to meet its own quantity and quality expectations or those of its customers, including, without limitation, when production may have been limited by the failure of a particular piece of equipment or machinery or by damage to the Facility.

8.5 Building Lease. Client leases the building in which the Facility is located. Such lease is referred to as the "Master Lease." This Agreement is and will remain in every manner subject and subordinate to the terms of the Master Lease. Client has no obligation to Business to renew the lease, exercise its option to purchase the building, or otherwise take action in respect of the Master Lease.

8.6 Not a Lease. This Agreement is a terminable license that permits Business to use the Facility on the terms set out in this Agreement. This Agreement is not a lease and does not constitute a grant of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the Facility.

9. Liability; Waiver and Indemnification; Insurance

9.1 Responsibility for Claims. Business will be liable for any damage to either person or property sustained by Business; Client, its directors, officers, employees, affiliates, and building owner (together, the "Client Parties"); or any third party, in each case caused by or arising from Business's use, operation, or occupancy of the Facility, or sale or distribution of any product it makes in the Facility.

9.2 Damage to Facility. Business will be responsible for any damage or loss, including personal injury and property damage, that results from improper use or cleaning of the Facility, including, without limitation, any equipment used by Business. If Business causes damage to the Facility or equipment, Business will reimburse Client for repair or replacement costs within three days after receipt of invoice from Client.

9.3 No Liability for Production. Client has no liability to Business for any failure by Business to meet its own quantity and quality expectations or those of its customers. This is true even when production has been limited by the failure of a particular piece of equipment or machinery or by damage to the Facility.

9.4 Waiver and Release. To the fullest extent allowed by law, Business waives all claims and rights against any Client Party, including, without limitation, claims arising from: (i) any injury, accident, or death of any person or loss or damage to any property on or about the Facility, from any cause whatsoever, known or unknown; (ii) flood, fire, or explosion; (iii) theft or other criminal or tortious act of third parties including other Facility users; (iv) interruption of any public utility or service; (v) water or any other substance leaking into any part of the Facility, by natural occurrence or otherwise; or (vi) any legal claims including, without limitation, any claims relating to copyright, rights of publicity or privacy, or moral rights it may have in relationship to media created and distributed by Client under Section 6.3 or to Client's use and ownership of such media.. Business agrees not to sue Client on the basis of these waived and released claims. Business understand that the releases and waivers in this Agreement extend to claims that it does not know of or does not expect to exist at this time, and it waives the protections of Section 1542 of the California Civil Code.

9.5 Indemnification. Business will defend, indemnify and hold the Client Parties harmless from and against any and all claims, liabilities, losses, damages, and attorney's fees that may be suffered by any Client Party arising directly or indirectly from: (i) a claim by any third party arising from Business's presence and activities in the Facility or in the related operation of its food business, including, without limitation, claims relating to the sale and consumption of food prepared or processed by Business, whether the claim involves product liability, consumer protection, health and safety, permitting, negligence, or other tort, (ii) any third party claim that any permitted use by Client of Business's name and logo under this Agreement infringes the third party's patent, copyright, trademark, or trade secret rights; (iii) a claim by any of Business's employees, contractors, clients, suppliers, creditors, tax authorities, or other persons in a relationship with Business; (iv) any breach of this Agreement; or (v) any other act or omission by Business in connection with this Agreement, except to the extent the liability is solely caused by the gross negligence or willful misconduct of any Client Party.

9.6 Limitation of Liability. Client will not be liable to Business for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement (including, without limitation, claims for loss of revenue, loss of profits or loss of use), even if Client has been apprised of the likelihood of such damages. Client's total liability under this Agreement will not exceed that which Business has paid or will pay Client in fees for use of the Facility, except that no such limitation will apply in respect of liabilities involving gross negligence, willful misconduct, or fraud by Client.

9.7 Insurance

(a) **Liability Insurance.** Business will, at its sole cost and expense, procure and maintain in full force and effect an insurance policy or policies providing liability coverage of \$1,000,000 per incident and \$2,000,000 on an aggregate basis. The policy will expressly cover claims based on product liability, property damage, and personal injury, and must meet any other requirements set out in the Operating Manual. Client and the building owner will be named as an additional insured in such policy or policies and Business will execute a waiver of subrogation in favor of Client and building owner. No later than ten days from the day the parties sign this Agreement, and prior to using the Facility, Business will furnish to Client evidence showing compliance with the provisions of this Section 9.7. Business will provide Client the information required by this Section 9.7 as Client may request from time to time.

(b) **Worker's Compensation Insurance.** Business will provide workers' compensation insurance in an amount that complies with statutory limits in the State of California for all employees of Business who use the Facility for or on behalf of Business, including a waiver of subrogation in favor of Client and the building owner. Business will provide Client with the information required by this Section 9.7 as Client may request from time to time. If Business is not required to obtain workers' compensation insurance, at Client's request Business will provide Client with a signed statement stating that Business does not have any employees and is not required to obtain such insurance.

9.8 Medical Care and Consent Waiver. Business authorizes Client to provide Business with first aid and, through medical personnel of its choice, medical assistance, transportation, and emergency medical services. This consent does not impose a duty upon Client to provide such assistance, transportation, or services. In addition, Business waives and releases any claims against the Client Parties arising out of any first aid, treatment, or medical service, including the lack or timing of such, made in connection with Business's presence in the Facility.

10. Termination and Suspension

10.1 Mutual Agreement. This Agreement may be terminated by a writing signed by both Client and Business which states their intent to terminate this Agreement and the date upon which such termination will take effect.

10.2 Termination by Business. Business may terminate this Agreement at any time. Such a termination will be effective 30 days after delivery by Business to Client of a notice to that effect. Client will refund security deposit amounts as may be appropriate under Section 3.5.

10.3 Termination by Client on 5 Days Notice. Client may terminate this Agreement immediately if (i) Business engages in conduct considered by Client to be violent, dangerous, or reckless; (ii) Business dissolves, liquidates, ceases to engage in its operations, commences any proceeding under any bankruptcy or insolvency law, or makes any false statements to Client; (iii) damage or destruction has rendered the Facility substantially unfit for use by Business as determined by Client; or (iv) Client ceases operations. Such a termination will be effective 5 days after delivery by Client to Business of a notice to that effect. As provided in Section 10.4, Client, in its sole discretion, may exclude Business from the Facility immediately and until termination is effective.

10.4 Suspension. Client may at time suspend Business from Facility use if Client reasonably determines that such suspension is appropriate in view of Business' non-compliance with this Agreement, health and safety concerns, or other matters relating to Business's conduct or financial condition or the safe and orderly operation of the Facility. Such a suspension will be effective upon delivery by Client to Business of a written notice to that effect. If Client suspends Business, Business will stop using the Facility and vacate it until Client indicates that Business may resume use. Client will not refund fees or be responsible for time, sales, or profits lost, or for inventory purchases or other costs, arising from such suspension and exclusion.

10.5 Termination by Client on 30 Days Notice. When Section 10.3 does not apply, Client will take the following steps if Business breaches this Agreement, the Operating Manual. Client reserves the right to skip steps as it finds appropriate.

(a) **Warning.** A violation of any of the terms of this Agreement may result in a verbal or written warning. Client will document warnings in Business's file. Client will provide Business with an opportunity to fix the violation. Client may also require Business to take any other curative actions or pay any fines that Client, in its sole discretion, deems necessary.

(b) **Failure to Cure.** If Business does not fix the violation, fails to take curative action required by Client, or commits further violations of this Agreement, Client may notify Business that continued failure to cure within a reasonable time period may result in termination of this Agreement.

(c) **Termination.** If, after taking steps (a) and (b), Client deems that Business has failed to cure any violation or violations, Client may, at its discretion, terminate this Agreement. Such a termination will be effective 30 days after delivery by Client to Business of a notice to that effect.

10.6 Termination of CKI. Client reserves the right to terminate CKI at its sole discretion for financial, programmatic or other reasons and to close the Facility. If Client terminates CKI, it will use reasonable efforts to give Business as much notice as is practicable and refund fees as appropriate as provided in Section 10.8. Client will have no liability to Business if CKI terminates and the Facility closes.

10.7 Termination of Master Lease. If the Master Lease terminates, or if Client loses or forfeits its rights to access, sublet, license, or otherwise use the Facility or the surrounding area, this Agreement will terminate and the Facility may close. If that happens, Client will use reasonable efforts to give Business as much notice as practicable and refund fees as appropriate as provided in Section 10.8. Client will have no liability to Business if the Master Lease terminates and the Facility closes.

10.8 Consequences of Termination. Upon termination of this Agreement, Business will (i) pay all unpaid amounts owed to Client under the terms of this Agreement, (ii) remove all of its property, including food, supplies and equipment, from the Facility, (iii) leave the Facility it has used in a clean, sanitary, and orderly condition, ordinary wear and tear excepted, and (iv) stop using the Marks in connection with its business or otherwise. If this Agreement terminates because of termination of CKI or the Master Lease as provided by Sections 10.6 and 10.7, Client will refund a portion of any prepaid fees proportional to the remaining days in the month of termination, if any, when Business will not be able to use the Facility.

10.9 Cumulative Remedies. All Client's rights, powers, and remedies under this Agreement are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to Client at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's right to exercise any other right or remedy.

10.10 Survival. Sections 6, 9, 10, and 11 of this Agreement will survive termination of this Agreement.

11. General Provisions

11.1 Entire Agreement; Amendment. This Agreement, together with the Operating Manual and, if applicable, any incubator program participation or other agreement between Business and Client relating to Business' food preparation business, is the entire agreement between Business and Client and supersedes prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between Business and Client relating to the same subject matter. Client rejects any term or condition in any letter, e-mail, or other document of Business which conflicts with or adds to this Agreement. This Agreement may be amended only as stated in a writing signed by both Business and Client that recites that it is an amendment to this Agreement. If there is any conflict between this Agreement and the Operating Manual or any other agreement between Business and Client, then this Agreement will control.

11.2 Modification of Operating Manual. Client may modify or amend any of the Operating Manual from time to time in its sole discretion. Client will use reasonable efforts to provide Business with copies of any modified rule but its failure to do so does not relieve Business from its obligation to comply with the Operating Manual previously in effect until Business has actually received the modified Operating Manual.

11.3 Severability. If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

11.4 Assignment. Business may not assign its rights or delegate its duties under this Agreement to anyone else, and Business may not allow any other person to use or occupy the Facility without the prior written consent of Client.

11.5 Waiver. Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

11.6 No Third Party Beneficiaries. Except as specifically provided in Sections 9.3, 9.4, and 9.7, this Agreement is for the exclusive benefit of Business and Client and not for the benefit of any third party including, without limitation, any employee, affiliate, or vendor of Business or Client.

11.7 Translations Not Binding. Client may provide Business with a Spanish translation of this Agreement and other explanatory materials. Client does so as a convenience. Should there be any ambiguity or conflict between the English and Spanish language versions of these documents, the English language versions will control. They, not the Spanish translations, are the official, legally-binding documents.

11.8 Notices. Notices and consents under this Agreement must be in writing and delivered by mail, courier, or fax to the addresses set out on the signature page of this Agreement. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section 11.8 will be considered given two business days after deposit in the mail or the first business day after delivery to a courier or delivery by fax.

11.9 Governing Law. This Agreement is governed by California law. Business consents to the exclusive jurisdiction of the state and federal courts of [_____], California.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

This Agreement was signed by Business and Client as of the date stated in its first paragraph:

Client

Business

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Client Address:

Business Address:

Attachment: Operating Manual