

Incubator Program Participation Agreement

This is an Incubator Program Participation Agreement (the "Participation Agreement"), dated as of _____, 20____, between [_____] a California nonprofit corporation, and _____ ("Business"), _____.

Background

Client is a nonprofit created to cultivate low-income food entrepreneurs [_____] To reduce the obstacles that often prevent these entrepreneurs from creating successful and sustainable small businesses, the Client Incubator Program (the "Program") is a business incubator that helps these entrepreneurs to formalize, launch, and grow businesses that produce high-quality artisan food by providing mentorship, industry-specific technical assistance, and access to market and capital opportunities. Client also makes available to such entrepreneurs the shared use of affordable, high-quality commercial kitchen facilities located at [_____] (the "Facilities") under a Kitchen Facilities Use Agreement (the "Facilities Agreement") and Rules, Policies and Procedures for Use of Facilities document (the "Rules"). Business is a low-income food entrepreneur. Business wishes to participate in the Program on the terms set out in this Participation Agreement.

1. Program Participation

1.1 Participation. Business will participate in the Program on the terms set out in this Participation Agreement. Client will advise Business of the start date for the Program. Length of Program participation will be determined by Client but in any case will not exceed five years.

1.2 Program Elements. Program components and phase are described on **Exhibit A**. Client will provide Business when appropriate a pre-incubation plan, in the form attached as **Exhibit B**, and an incubation plan, in the form attached as **Exhibit C**.

2. Program Services

2.1 Program Services. Client will provide, in such manner as it believes appropriate, support services to Business while Business participates in the Program. These services may include, without limitation:

(a) **Food Safety Manager's Certification Assistance.** Client staff may assist Business in preparing for the "Food Safety Manager's Certification" course and exam. Client will reimburse Business for the cost of the course and exam.

(b) **Technical Assistance.** Client will provide Business with technical assistance. Technical assistance may entail one-on-one work between Business and an industry professional or member of Client staff to solve a specific problem. Client will not charge Business for any scheduled use of the Facilities for the purposes of technical assistance. While technical assistance typically will be provided free of charge, Client may charge fees for certain services. Client will advise Business of any such fees before the service is provided.

(c) **Mentorship.** Client will provide Business with at least one industry mentor, who will be an experienced industry professional who can provide personal and professional assistance. Mentors offer a broad range of advice and support and will serve as a resource for Business in the intangible areas of starting a new food business. Most of the mentor relationship will be conducted over the phone or online. Client will not charge Business for mentorship.

(d) **Workshops.** Client holds periodic workshops, which consist of classes or field trips designed to address fundamental aspects of business operations and assist Business in applying the lessons to its own operations. Client will not charge Business for workshops while Business is a participant in the Program.

(e) **Pre-incubation Rates.** During pre-incubation, Client will bill Business's use of the Facilities at a reduced pre-incubation rate, as outlined in the Rules.

2.2 Adjustments by Client. Program services are subject to periodic review by Client. Client may at its sole discretion modify, remove, increase, or make other changes to the services provided to Business or other participants in the Program.

2.3 Services After Graduation. Business may continue to receive technical assistance and attend workshops at discounted rates for program graduates as set out in the Rules.

3. Participant Obligations

3.1 Program Requirements. Business will participate in Program activities. These activities include, without limitation:

(a) **Monthly Goal Planning Meetings.** Business will meet with Client on a monthly basis to review Business's progress against its pre-incubation or incubation plan, set goals and next steps, and connect with additional resources. These meetings are referred to as "Monthly Goal Planning Meetings".

(b) **Program Participant Meetings.** Business will attend group meetings with other Program Participants, referred to as "Program Participant Meetings", twice a month. Unless otherwise approved by Client in its sole discretion, Business may miss one Program Participant Meeting with no penalty. After a second missed meeting, Business will be required to provide dinner for everyone at the following meeting. After three missed meetings Client may put Business on probation. After a fourth missed meeting, Client may dismiss Business from the Program.

(c) **Financial Disclosure.** Business will maintain good records of its business activities and make these records available to Client upon request. Upon request, Business will give Client customary evidence of Business's financial condition. Such evidence may include, without limitation, financial statements, bank records, and trade references. Upon request, Business will also furnish or authorize Client to obtain Business's credit report from standard credit reporting agencies.

3.2 Facilities Agreement and Rules. Business will sign and comply with the provisions of the Facilities Agreement and the Rules.

3.3 Recommended Activities. Business will make best efforts to participate in any additional activities recommended by Client staff and industry advisors, including, for example, Client fundraising events, its annual food festival and Program Participant group dinners.

4. Acknowledgments

4.1 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 sales or profits or public awareness of Business. Business has made its own independent business evaluation in deciding to enter into this Participation Agreement and engage in the food business.

4.2 Independent Businesses. Business is and will be an independent enterprise. Nothing in this Participation Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Business and Client for any purpose. Neither Business nor its Associates 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.

4.3 Confidentiality. 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. Client shall use the same efforts to keep Business's financial information confidential as it uses in protecting its own private information.

5. Termination

5.1 Graduation. This Participation Agreement will terminate on Business's graduation from the Program, as decided by Client.

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

5.3 Termination by Business. Business may terminate this Participation Agreement at any time. Such a termination will be effective 30 days after delivery by Business to Client of a notice to that effect.

5.4 Termination of Facilities Agreement. This Participation Agreement will terminate if Business's Facilities Agreement is terminated.

5.5 Termination on 30 days Notice. When Section 5.4 does not apply, Client will take the following steps if Business not comply with this Participation Agreement. Client reserves the right to skip steps as it finds appropriate.

(a) **Warning.** A violation of any of the terms of this Participation 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 violation of this Participation Agreement, Client may notify Business that continued failure to cure within a reasonable time period may result in termination of this Participation 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 Participation Agreement. Such a termination will be effective 30 days after delivery by Client to Business of a notice to that effect.

5.6 Consequences of Termination.

(a) **Graduation.** If this Participation Agreement terminates due to Business's graduation from the Program, Business will be eligible to receive services at the rates for program graduates and Business's Facilities Agreement will continue to be in force.

(b) Termination without Graduation. If termination is due to Business's failure to comply with this Participation Agreement, or is terminated by Business, Client, at its sole discretion, may terminate Business's Facilities Agreement, and Business will no longer receive Program services or be able to use the Facilities.

5.7 Grievance Procedure. If this Participation Agreement is terminated by Client, Business may submit to the Program Director a written petition requesting to enter into a new agreement. Business must submit the request within 48 hours of termination. Client may choose to accept or reject the request in its sole discretion. If Business believes it has been unfairly treated by Client staff, Business should discuss this matter with the Program Director.

5.8 Cumulative Remedies. All Client's rights, powers, and remedies under this Participation 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.

6. General Provisions

6.1 Entire Agreement; Amendment. This Participation Agreement, together with the Facilities Agreement and the Rules, 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 which conflicts with or adds to this Participation Agreement. This Participation Agreement may be amended only as stated in a writing signed by both Business and Client which recites that it is an amendment to this agreement.

6.2 Severability. If any provision in this Participation 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.

6.3 Assignment. Business may not assign its rights or delegate its duties under this Participation Agreement to anyone else without the prior written consent of Client.

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

6.5 No Third Party Beneficiaries. This Participation 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.

6.6 Notices. Notices and consents under this Participation Agreement must be in writing and delivered by mail, courier, or fax to the addresses set out on the signature page of this Participation Agreement. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section 6.6 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.

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

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

Client

By: _____

Name: _____

Title: _____

Business Address:

Business

By: _____

Name: _____

Title: _____

Business Address:

EXHIBIT A

Program Levels

Pre-Incubation

Pre-incubation is the first phase of the Program and does not exceed 6 months. Pre-incubation is designed to focus Business on establishing the foundations of its business in the areas of product development, marketing, finances, and operations and on preparing for a healthy launch.

- **Pre-incubation Plan.** Client will give Business a pre-incubation plan in the initial intake meeting with Client staff, typically the Program Director and Culinary Director. The benchmarks in the pre-incubation plan will be based on recommendations from Client staff and industry advisors. A sample pre-incubation plan is provided in **Exhibit B**; Business's pre-incubation plan may vary based on Business's unique benchmarks and recommendations.
- **Pre-incubation Rates.** During pre-incubation, Client will bill Business's use of the Facilities at a reduced pre-incubation rate, as outlined in the Rules.
- **Satisfaction of Pre-incubation Plan.** After Business reaches all benchmarks in its pre-incubation plan, Business will move into the incubation phase.

Incubation

Incubation is the second phase of the Program and proceeds in two phases, the growth phase and the exit phase, as described below. The length of the incubation period will depend on the needs of Business as mutually determined by Business and Client, but will not exceed 4 years.

- **Incubation Plan.** Client will give Business an incubation plan when Business moves into the incubation stage. Client staff will work with industry advisors to develop the benchmarks in the incubation plan. A sample incubation plan is provided in **Exhibit C**; Business's incubation plan may vary based on Business's unique benchmarks and recommendations.
- **Growth Phase.** The growth phase of incubation focuses Business on growing its market and generating sales
- **Exit Phase.** The exit phase of incubation focuses Business on preparing to exit the Program and establish its own premises.

Graduation

After Business reaches all benchmarks in its incubation plan, Business will graduate from the Program. After graduation Business may continue to access Client services and the Facilities at special rates as a program graduate.

EXHIBIT A
Pre-Incubation Plan

Program Participant:

Business Name:

Program Start Date:

[_____]

EXHIBIT B

Incubation Plan

Program Participant:

Business Name:

Growth Phase Start Date:

[_____]