

**- CONTRACT -**

**Rental Use of Commissary Kitchen**

**Parties, Purpose, Premise:** This contract is between Prep – A Chef’s Kitchen, Inc., (‘PREP’) an Oregon corporation and operator of a commissary/commercial kitchen in Bend, Oregon, and \_\_\_\_\_, (‘CLIENT’). The contract is for CLIENTS rental and use of the facility, Prep – A Chefs’ Kitchen.

**One-time Use \_\_\_\_\_ Ongoing Use \_\_\_\_\_ Mobile Unit \_\_\_\_\_**

Prep charges CLIENTS by the hour for use of its facility. Pricing is on a tiered schedule based on the number of hours rented each month. Each CLIENT will then be invoiced at the end of the month for the previous month’s hours accumulated.

Mobile Units are charged a non-refundable \$300 to name Prep – A Chefs’ Kitchen, as their licensed commissary kitchen for the first year, and reduced price of \$150 annually for each year thereafter.

**PREP also offers DRY, COOLER & FREEZER storage which is available to rent for an additional monthly charge. EQUIPMENT storage may be available but must be pre-approved by management. All storage can be increased or decreased at any time with prior approval by management.**

Additional PREP services and rents may be appended to this contract in writing and signed by both parties.

The parties agree that the smallest separable unit of text in this document is the numbered section or subsection, irrespective of whether that unit is further subdivided, or how subdivided. In agreement, the parties initial:

\_\_\_\_\_ by CLIENT

\_\_\_\_\_ by PREP

**2. Incorporation of USER Handbook as Part of the Contract:** As part of the application for use process, PREP will give CLIENT a hard copy of the current “User Manual”, which gives details of day-to-day operation, operating hours and fees, descriptions of the rental ‘areas’ and what is included, and information about what PREP does and does NOT do or supply. It also covers such things as responsibilities of the parties for actual use, requirements for health, safety, cleanup and so forth, as well as matters of space reservation and payment.

Upon receipt of the User Manual, each CLIENT will sign a written acknowledgement of receipt, as well as a statement accepting responsibility for reading, understanding, and complying with all contents of the handbook.

If a new version of the handbook is published during the tenure of the rental, a copy will be supplied at no cost to the CLIENT. A new signed receipt will be required. In any dispute over a matter in the handbook, the version in effect at the time of the alleged basis of the dispute will be the governing rule of the dispute.

**3. Relationship of Parties:** This Agreement is a terminable at-will license that sets forth terms and conditions under which CLIENT is from time to time permitted to use certain kitchen facilities and attendant fixtures and equipment in exchange for an agreed charge, and by agreement of days and times.

CLIENT is a separate business entity from PREP and CLIENT is therefore responsible for discovering, learning, and complying with all necessary governmental regulations concerning but not limited to food production and sale, food health safety and sanitation, licensing and inspections, taxes, employment, etc. CLIENT will hold PREP harmless from any costs or damages resulting from CLIENT's failure of due diligence on this responsibility.

This Agreement is NOT a LEASE and gives CLIENT no interest of any kind in real property, nor any right of claim against any equipment owned by PREP.

This Agreement shall NOT be construed as a partnership, joint venture or otherwise, nor shall it be construed to offer CLIENT any benefit of such construction.

PREP has NO right, title, or interest in and to CLIENT's business or profits. NO employee or contractor of CLIENT shall be considered an employee or contractor of PREP.

*CLIENT AGREES to indemnify, defend and hold PREP harmless from any claim made by, through or on behalf of the CLIENT or by any employee or contractor of the CLIENT.*

#### **4. General Provisions & Limitations**

**4.1 General Administrative and Operating Policy:** Prep reserves the right to make changes at will, and at any time to its physical facilities and operating policies, including but not limited to fees, hours, delimitations of rental areas and spaces, changes in rules of operation or accessibility, CLIENT identification and vetting requirements, security procedures and support services.

**4.2 Limitations on Use:** CLIENT is limited to time and area usage of the PREP facility as designated in the contract and addendum. Space shall be paid for within 15 days of being invoiced, after the initial application and vetting process is complete.

**4.3 Prohibited Use:** CLIENT shall not permit the PREP facility to be used by any person in violation of any governmental statutory or administrative enactment. CLIENT shall not allow any person in its employ to be disruptive of the operation and the work of others in the PREP facility. CLIENT shall not use or permit the facility to be used in violation of this Agreement.

**4.4 Prohibition of Cannabis:** CLIENT is prohibited from bringing marijuana onto the property or into the PREP facility. CLIENT is strictly forbidden from processing, cooking or using marijuana in any way in production in the PREP facility. NOTE: VIOLATION of this policy will result in immediate termination of this contract, immediate expulsion from the premises with warning, and loss of future contract privileges or participation. Both parties acknowledge and agree to this zero-tolerance policy at the PREP facility:

\_\_\_\_\_ by CLIENT

\_\_\_\_\_ by PREP

**4.5 No Use of PREP Name or Logo:** CLIENT is prohibited from using the name 'PREP', or 'PREP – a Chef's Kitchen' in connection with any service of the CLIENT unless such use has been disclosed in writing to PREP and PREP has either approved in writing or been afforded a reasonable opportunity to object. Without limitation to the foregoing, CLIENT is prohibited from

using the PREP name in connection with any product manufactured at PREP, without either prior agreement or opportunity to object.

**4.6 Access and Inspection:** PREP and its agents shall have a right to access and inspect the PREP facility, including any area of the facility that the CLIENT may be using, and including storage areas and containers, and may do so at any time without prior notice to CLIENT other than notice as provided in this numbered section.

CLIENT agrees to immediately repair, correct or cure any problems that CLIENT may have caused or occasioned which PREP, or its representative brings to CLIENT's attention. This includes without limitation CLIENT's violation of any applicable law, ordinance or regulation, or CLIENT's breach of this Agreement or any of the requirements, policies, or procedures referenced in or incorporated into this Agreement. In the event of any serious violation or breach, or in the event any matter is identified which might involve threat to the public health, PREP reserves the right to immediately suspend CLIENT's use of the facility or any part thereof until the breach or other matter is fully and completely resolved. CLIENT acknowledges and agrees that any such exercise of PREP inspection rights and remedies are reasonable and will be without liability of any kind, including without limitation any loss, cost or expense CLIENT may experience should CLIENT's use of the facility be in any way disrupted.

**5. Security:** PREP assumes no responsibility for the security of any equipment or supplies provided by the CLIENT for its own use at the PREP facility. Any additional security or storage arrangements shall be the CLIENT's sole responsibility. This includes both the 'locked cage' and 'open shelf' storage for which rental is charged.

CLIENT acknowledges that the facility is equipped with a twenty-four-hour surveillance system both inside and out.

## 6. Risk and Liability

**6.1 Prep Representation of Facility Condition:** PREP makes no representations, warranties or guaranties, expressed or implied, including without limitation any warranties for the merchantability or fitness of the intended use of the PREP facility and appended equipment other than those contained in this Agreement.

CLIENT may inspect the PREP facility at the immediate commencement of the CLIENT's designated rental period; upon CLIENT commencement of work, the PREP facility will be deemed "AS-IS".

**6.2 Production Responsibilities:** CLIENT assumes all production risks arising from use of the PREP facility and equipment, including but not limited to any unavailability or failure of equipment during CLIENT's use of the facility.

Under no circumstances shall PREP be liable to CLIENT for any consequential damage, including but not limited to failure to meet volume production requirements, expected quality and/or other cost loss or expense the CLIENT may incur.

PREP assumes no responsibility for the supply of any other production requirements other than use of the facility and attendant equipment as previously set forth, including but not limited to ingredients, packaging, process, and recipes. PREP assumes NO responsibility for any loss, cost or expense CLIENT may incur because of time overlapping with other CLIENTS.

**6.3 Liability to CLIENT and to Third Party:** Unless otherwise agreed in writing, CLIENT agrees to use the PREP facility "AS IS". PREP shall NOT be liable for any damage to either

person or property sustained by the CLIENT or any employee agent or chattel of the CLIENT, or by any third party arising in any way from the CLIENT's use of the PREP facility.

In the event of any liability, loss, cost, injury, damage or expense that CLIENT may incur arising from such use, CLIENT agrees to look exclusively to such insurance as the CLIENT may maintain as required by law, pursuant to the Agreement, or that CLIENT may have personally elected to maintain.

Without limitation to any such rights PREP may have under the policies of insurance CLIENT may maintain, CLIENT now covenants and agrees to indemnify, defend and hold harmless PREP, its employees and independent contractors from any and all claims, costs and liabilities arising from or in connection with: damages or injuries to persons (including death) or property in, upon, or about PREP's premises, any portions thereof, or resulting from the sale, distribution, consumption or use of any product or service produced or manufactured by the CLIENT using the PREP facility.

**6.4 ALLERGENS: PREP can make NO WARRANT of facility safety from food allergens; while PREP has no enforcement power regarding CLIENTs, CLIENT is urged to show by signature or other notice to consumers of its products a warning that persons with serious allergen problems can have no certainty of safety from SOY, NUTS, SHELLFISH, DAIRY PRODUCTS, EGGS, and other food allergens.**

This notwithstanding, 'PREP – A Chef's Kitchen, Inc.' and its employees shall not be liable for any damage due to food allergies sustained by CLIENT or by any third party arising in any way from the CLIENT's use, operation, sale, or distribution of any product produced or packaged at the PREP facility.

CLIENT acknowledges that CLIENT is responsible for following any applicable laws and regulations regarding food allergy disclaimers and warnings. CLIENT acknowledges and accepts that PREP is not allergen free and could be subject to allergen cross-contamination.

**6.5 Damage to the PREP Facility:** CLIENT will be responsible for all damage and other loss to and in the PREP facility, including loss to fixtures, furnishings, equipment, and any durable supplies provided by PREP for use by CLIENT (collectively called the PREP equipment) which loss is caused or occasioned by the CLIENT, CLIENT's agent, employee or invitee. CLIENT will pay for such damage or loss immediately upon demand by PREP; CLIENT likewise agrees to pay the full amount of replacement cost for any equipment which is damaged or destroyed beyond cost-effective restoration.

**6.6 Liability Insurance Requirement:** CLIENT will maintain a minimum of One Million Dollars (\$1,000,000.00) of suitable product liability AND general liability insurance with 'Prep - A Chefs' Kitchen, Inc.' listed as a named insured. CLIENT will provide proof of such insurance to PREP management as part of the application process; PREP will not be a party to this contract without it. **Any deviation from this requirement requires a signed and dated document by PREP management.**

**6.7 Tax Liability:** CLIENT shall be solely responsible for all governmental taxes, tariffs, imposts or any other charges of any municipal, state or federal government or its agency, for any and all taxes due as a result of the production and sale of any product or service of the CLIENT connected in any way to PREP, and will hold harmless and recompense PREP for any loss or expenses incurred in defending against collection of such monies from PREP.

## 7. Remedies, Right of Repair, Nonpayment

**7.1 Remedies:** A violation, breach, or failure to keep or perform any terms or conditions of this Agreement shall constitute a default of the Agreement. As time is of the essence, CLIENT will have three (3) days after service by PREP in writing or by email of NOTICE to the CLIENT to remedy any default.

If more than three (3) days pass without any corrective action, or notice of speedy scheduling of corrective action, taken by CLIENT, PREP management may at their sole discretion declare CLIENT's rights under this Agreement terminated with not further notice. At such time PREP shall be entitled to all sums due and payable from CLIENT. In addition, PREP may remove and hold any chattels of CLIENT then in the PREP facility and may charge CLIENT a reasonable storage fee during the pendency of the dispute.

**7.2 Right of Repair:** In the event that CLIENT fails to perform any obligation or duty under this Agreement, including to remedy, repair or correct any damage or deficiency, then PREP shall have the right at its sole option to make such remedy, repair or correction as is necessary, and to pay any related cost or obligations of the CLIENT, and CLIENT agrees to promptly pay to PREP in recompense of such payments.

**7.3 Nonpayment:** In the event sums due to PREP under ANY term of this Agreement by CLIENT are not paid within thirty (30) days from the stated due date, eighteen percent (18%) interest will be charged to the invoice and the credit card on file will be charged.

Should further action be required for collection, CLIENT will be responsible for all PREP's collection of costs, including but not limited to reasonable attorney's fees and post-judgement collection fees.

## 8. Logistical Contact Matters

**8.1 Assignment:** This Agreement is solely between 'Prep – A Chef's Kitchen, Inc.' and CLIENT. CLIENT shall not transfer any right or privilege under this Agreement in whole or in part to any other person or entity without prior written agreement of PREP.

**8.2 Termination:** Notwithstanding any provision of this Agreement, PREP may, in its sole and absolute discretion, terminate this Agreement immediately upon written or email notice to CLIENT.

**8.3 Non-Binding Until Fully Executed:** This Agreement is not and will not be binding on either party until it is fully executed by both parties. As of the date of execution of this Agreement, all prior agreements and contracts between PREP and CLIENT are null and void unless specifically incorporated by addendum into this agreement.

**8.4 Notices and Communications:** All written notices or official communications which may be required under this agreement shall be delivered personally, e-mailed, faxed or sent by regular USPS mail, postage prepaid, addressed as follows unless additional mailing requirements are required by this agreement.

**PREP Address: 212 NE Revere Avenue**

**Email: info@prepbend.com**

**Bend, Oregon 97701**

**Fax: (541) 241-8337**

**CLIENT Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**9. CLIENT Acknowledgement:** CLIENT acknowledges that it has read this Agreement, understands the idea of addenda and incorporation, and has read or accepts responsibility for reading the content of the CLIENT Handbook as well as any addenda as an integral part of this contract, and agrees to be bound by the terms of this Agreement.

*CLIENT approves that this Agreement (including said addenda and incorporations) constitutes the entire agreement between the parties and supersedes all proposals oral and written and all negotiations, conversations, discussions, or correspondence between the parties related to the subject matter of the Agreement, unless those are specifically addended or incorporated into the Agreement.*

**10. Governing Law:** This Agreement shall be governed and construed by the laws of the State of Oregon. Both parties irrevocably consent to the jurisdiction of and waive any objection to venue in the Oregon Circuit Court of Deschutes County to adjudicate any disputes arising out of this Agreement, and both parties also agree that, to the extent permitted by law, venue for all disputes arising or related to this Agreement shall be in Bend, Oregon.

**TO EVIDENCE THIS AGREEMENT, the parties have subscribed their names to be effective the date this Agreement is fully executed.**

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**Business Name**

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**CLIENT Signature**

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**Print Name**

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**Date**

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**PREP Signature**

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**Print Name**

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**Date**