

Eastern Carolina Food Ventures User Services Contract

This person or organization joins this Agreement as User of the Eastern Carolina Food Ventures commercial kitchen 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

This User Services Agreement is between the User (identified above) and Eastern Carolina Food Ventures, owned and operated by James Sprunt Community College (also referred to here as “ECFV”), and is effective upon the date of execution shown below. User and ECFV agree to the following terms:

1. **SERVICES.** ECFV will provide User with nonexclusive access to and use of ECFV’s commercial kitchen facility (“Kitchen”), subject to the terms of this Agreement.

- a. **Facility.** The Kitchen is a shared-use facility; equipped with commercial stoves, ovens, tilt kettles, steam kettles, mixers, sinks, refrigerators, tables, dry and cooler storage and other food preparation equipment. ECFV shall maintain the Kitchen in a sanitary and orderly state and ensure that all equipment available to User operates to all applicable health and safety standards.

- b. **Business Services.** ECFV may also provide user with the following services: advice on business development, product development, and/or packaging and label design; assistance with complying with food safety regulations, business plan development and/or accessing small business financing; training in safety and sanitation; and marketing support activities (“Business Services”).

- c. **User Prerequisites.** All Users of ECFV will have completed the following activities and provided appropriate documentation to the Kitchen Technician of ECFV before User may enter and use the facility:
 - Completed application form, pay application fee and deposit;
 - Successfully completed the ECFV Facility Orientation & Training;
 - Provide proof of product liability insurance, as detailed in Section 4.c, below.
 - Provide proof of permit/permits from appropriate regulatory agency.

- d. **Food Products.** User must obtain specific authorization from ECFV prior to producing each food product.

- e. **Scheduling of Use.** Because the Kitchen is a shared use facility, ECFV shall control the times and manner of all Users' access to and use of the Kitchen. User shall request use of the Kitchen in advance. ECFVC will make its best efforts to create a schedule for use of the Kitchen that accommodates all Users' reasonable requests.

2. **PAYMENT TERMS.** User will pay ECFV rent for each hour (or part thereof) User occupies the Kitchen and uses the Services described in Section 1 of this Agreement according to the following terms:

- a. **Fee Schedule.** The fees for various uses of the Kitchen and/or equipment are set out in the Fee Schedule, attached to this Agreement as Exhibit A. ECFV may change this fee schedule at any time and will notify users as soon as possible in advance of changes.
- b. **Payment Terms** –ECFV will bill User for Facility and storage use at the end of each calendar month. Payment is due within fifteen days. If User pays any bill late, ECFV may require User to pay as you go. Five percent (5 %) Fee may be charged for payments made more than 30 days after print date of invoice.

3. **USER DUTIES.** User agrees to assume the following duties in its use of the Facility under this Agreement:

- a. **Rental and Use Policies.** User acknowledges that User has received and read the *Rental and Use Policies*, which includes the *ECFV Standard Operating Procedures*, copies of which are attached to this Agreement as Exhibits B & C. ECFV reserves the right to amend the Rental and Use Policies at any time upon written notice to User. If User violates these Policies, ECFV may impose a fine upon User and upon repeated violation ECFV may in its discretion terminate Agreement. User agrees to comply with all of the rules and obligations set forth in the *Rental and Use Policies* as currently stated and as modified at any time in the future.
- b. **Contact Information.** User promises that the identification, address and contact information stated at the beginning of this document is current and correct. User agrees to keep ECFV informed of any changes in User's legal identity, address or other contact information.
- c. **Security.** ECFV is equipped with both open and individual/locked storage areas. User agrees that ECFV assumes no responsibility for the security of any equipment or supplies the User brings for their use in the facility. Individual storage areas shall be equipped with locks and keys, and will be assigned upon availability to the User upon request. User agrees to provide a key to cage locks to ECFV. If any additional locked storage is brought into the facility by the User, User shall supply a duplicate key to the Kitchen Technician.
- d. **Food and Equipment Safety and Sanitation.** All Users and their employees are required to successfully complete the ECFV Facility Orientation & Training before they may use the Kitchen. Each person using the facility must receive specific authorization before using the Facility and certain equipment from the Kitchen Technician.

e. **Housekeeping Policies.** User policies include but are not limited to the following:

- 1) Users will provide their own cleaning towels, cooking items, ingredients, utensils, small wares and other special items necessary to their specific production needs.
- 2) No equipment or items owned by ECFV shall ever leave the premises.
- 3) Users will strictly follow the SOP's and Equipment Cleaning Guidelines provided by ECFV before, during and after each use of the facility.
- 4) If User fails to leave the facility in the proper condition, User will receive a warning and be responsible to pay the actual cost of cleaning the facility as determined by ECFV. Upon a second such failure, User shall pay a fine (set out in the *Rental and Use Policies*) and actual cleaning costs. Upon a third such failure, this Agreement shall be terminated.

f. **Assignment.** Except for User's properly trained and authorized employees, User may not transfer or assign User's privileges under this Agreement to any third party. This includes the disclosure of the User's security entrance code. The User shall not grant access or allow a third party to operate in the kitchen any time. Violation of this duty is grounds for immediate termination of this Agreement and the immediate discharge of that User from the kitchen.

g. **Signs and Advertising.** No signs or advertising matter shall be painted or attached in any way on the ECFV premises.

4. **HEALTH AND SAFETY RESPONSIBILITIES.** To ensure the safety of all persons associated with the ECFV facility, User shall also comply with the following:

- a. **Worker Safety.** User is exclusively responsible to ensure that User and its employees observe proper safety procedures while using the Kitchen. All User employees must have registered with the Kitchen Technician and provided contact information in case of emergencies before being authorized to work at ECFV. No children under 16 are allowed in the kitchens .
- b. **Right of Inspection.** The staff of ECFV retains the right to enter and inspect operations at any time during use. The health department of Duplin County as well as the Food & Drug Administration shall have the right to inspect without prior notice at any time deemed necessary by their organizations.
- c. **Product Liability Insurance.** Each User will maintain a minimum coverage of \$2,000,000 of general liability and product liability insurance, with Eastern Carolina Food Ventures and James Sprunt Community College named as "added named insured" on each policy. Users must provide proof of insurance to the ECFV Kitchen Technician before User may enter and use the facility.

5. **LIMITATION OF LIABILITY.** User agrees that any and all claims involving ECFV are strictly subject to the following limitations:

- a. **Indemnity Clause.** User will further indemnify and hold the ECFV harmless from and against any and all liabilities, claims, demands, suits, losses, damages, costs, attorney's fees and expenses for bodily injury to, or death of any person, or damage to or destruction of any property, caused by any negligent or intentional act or omission on the part of User, its officers, employees or former employees. Except ECFV shall not be held harmless for any such liabilities, claims, demands, suits, losses, damages, costs, attorney's fees and expenses caused by any negligent or intentional act of omission on the part of the ECFV, its officers, employees or agents.
- b. **Business Services.** All Business Services provided by ECFV and/or any officers, staff, or other agents of ECFV are provided solely for the purpose of assisting User in the operation of its business. ECFV make no representations, warranties or guarantees that the business services provided will result in the success of the Company. User understands and acknowledges that User is solely and completely at freedom to accept or reject any business services, and that the principal(s) or owner(s) alone are in control of the Company and its success or failure. User acknowledges and agrees that ECFV and any officers, staff, trustees or other agents of ECFV are not liable to the Company or its principal(s) or owners(s) for any damages resulting from the use of or reliance upon the business services provided by ECFV.
- c. **Liability.** Eastern Carolina Food Ventures shall not be liable for any damage to either person or property sustained by the tenant or by any third party arising in any way out of the User's use, operation, occupancy of ECFV premises, or sale or distributing of any product manufactured on the premises. The Users covenant and agree to indemnify, defend, and hold harmless Eastern Carolina Food Ventures, and its employees from all claims, costs, and liability arising from or in connection with damages, injuries to persons (including death), or property in, upon, or about the ECFV premises, or any portions thereof, or resulting from the sale, distribution, and use of any product manufactured by the User on the ECFV premises.

6. **CONFIDENTIALITY.** User and ECFV agree and acknowledge that the Kitchen is a shared-use facility, and may be occupied and used simultaneously by similarly situated third-party Users ("Others"). The Parties further acknowledge and agree that the conduct of User's business and the production of User's food products may involve the use of recipes, techniques, sources of ingredients, financial and business records and other information that is owned and used exclusively by the User that constitute trade secrets or proprietary knowledge that must remain confidential for the protection of User's business ("Confidential Information"). User acknowledges and agrees that Others may also have Confidential Information that applies to the conduct of their own business. User and ECFV acknowledge and agree that User's Confidential Information may be disclosed to ECFV for the purpose of providing product authorization, training, or Business Services to User.

- a. ECFV is required to report to its grantors and sponsors on the economic impact of the services it provides. Users agree to provide an estimated sales value (wholesale and/or retail) on all of the goods they produce each time they use the Facility. ECFV will treat this as Confidential Information and will provide only aggregate statistics in its reports.
- b. In the course of using the Facility, User shall make reasonable efforts to not give User's Confidential Information to Others or any third party. User shall also respect that Others using the Facility may be applying their Confidential Information and shall take care not to discover Others' Confidential Information. Any spying or deliberate intrusion into Others' Confidential Information is grounds for terminating this Agreement.
- c. In the course of dealing with ECFV and its officers and employees under this Agreement, User shall take care to inform ECFV whenever User is disclosing Confidential Information to ECFV. ECFV shall make all reasonable efforts to prevent disclosure of User's Confidential Information to any third party.
- d. Confidential Information does *not include* information that is already known to ECFV, to the public or any third party beyond User's control, or obtained by User from an independent source or otherwise developed independently from the User. This agreement does not cover any disclosure required by applicable law or regulation.

7 TERMINATION. This Agreement shall continue indefinitely unless terminated as provided in this Section. User's obligations pursuant to Section 6 (Confidentiality) of this Agreement and any financial obligation to ECFV shall survive the termination of this Agreement.

- a. **Voluntary Termination.** This Agreement may be terminated at any time upon mutual agreement of ECFV and the User. User may terminate this Agreement at any time upon written notice to ECFV.
- b. **Breach or Default.** User must correct any violation, breach, or failure to keep or perform any conditions of this Agreement or the *Rental and Use Policies* within three (3) days after receiving written notice of such from the Kitchen Technician of ECFV. If more than three (3) days pass without any corrective action taken by the User, ECFV may, in its sole discretion, terminate this Agreement. This Agreement may also be terminated as provided in Sections 3.a, 3.e , 3.f and 6.b of this Agreement.
- c. **User Property.** Upon termination, User shall remove all of User's property from the Facility. If User's property is not promptly removed, ECFV may enter, take possession of and remove User's property. User shall be liable to ECFV for a reasonable storage cost for any property removed in this way.

8. MISCELLANEOUS PROVISIONS.

- a. **Jurisdiction and Venue.** Any disputes regarding this Agreement shall be resolved in the courts of Duplin County, North Carolina, and according to the laws of North Carolina.

- b. **Relationship of Parties.** This Agreement shall not be construed to form a partnership or any other business association between the Parties other than independent parties to contract. User, its officers, agents and employees are not employees or agents of ECFV.
- c. **No Oral Modification.** This Agreement may only be modified in writing signed by the parties.

9. **ENJOYMENT.** This shared-use commercial kitchen is a unique facility meant to be useful to and enjoyed by its Users. The kitchen has been furnished to accommodate a wide variety of start-up food businesses. It is necessary that all Users work collectively to make this shared-use space work for all. Cooperation will benefit everyone and will allow harmony in the entire space. It is the desire of ECFV to aid the many persons that may desire to start their business and provide a clean and workable space for all parties. We wish each User's business the greatest success with their product and with their business. May each grow and prosper and become a part of our community.

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

EASTERN CAROLINA FOOD VENTURES owned and operated by James Sprunt Community College

Legal Name of User's Business

By: _____
Eastern Carolina Food Ventures
Representative

By: _____
Signature of BusinessOwner/Authorized Representative

Name Printed