

## MEMBER SERVICES AGREEMENT

### I. Services.

1. This Agreement ("Agreement") entered into between \_\_\_\_\_ ("Member") with an address of \_\_\_\_\_ and Kitchen Commons, Inc. doing business as **e.terra Harlem** ("e.terra Harlem" or "e.terra" or "Facility") with an address of 2191 Third Avenue, 3<sup>rd</sup> floor, NY, NY 10035.
2. **e.terra Harlem** will provide Members with nonexclusive access to, and use of, the desired commercial kitchen facility location ("Facility") at 2191 Third Avenue, NY, NY 10035, subject to the terms of this Agreement.
3. **Start Date** This agreement shall be in effect as of \_\_\_\_\_, and be in effect for Six (6) months, and unless terminated, automatically renewing therein pursuant to Article VI herein.
4. **Facility.**  
Facilities are shared-use, equipped with commercial food production equipment, dry and refrigerated storage, as well as in some locations - ghost kitchen suites, a retail market and demo kitchen/cooking classroom/event rental facilities. **e.terra** shall maintain the Facility in a sanitary state and ensure that all equipment available to Kitchen Members meets all applicable health and safety standards. Member shall take all reasonable measures to maintain the aforementioned items in working and safe condition during Member's use and shall promptly notify e.terra of any repairs or other issues.
5. **Delivery acceptance.**  
Member agrees to permit Facility personnel to accept vendor deliveries for Members. Facility will log packages received into the delivery log. Any received items will be deposited into appropriate dry or cold storage for Member. Facility will not verify the quality, quantity or type of merchandise or other delivered items received. Member expressly acknowledges that under no circumstances, shall Facility be responsible for the quality, quantity, type or state of the items received, nor for any missing item(s). Member must make direct arrangements with their vendors to allow 24 to 48 hours for inspection of product and any request for exchange or refund and must handle all such arrangements directly without assistance from the Facility or its management. The delivery acceptance service will only be available during regular working hours (between 8 am and 5pm) of the facility personnel. Facility bears no responsibility for deliveries made outside of regular working hours of the facility personnel. **Delivery personnel is NOT ALLOWED entry to the shared kitchen space.** All deliveries must be accepted outside the shared kitchen space. No Delivery

personnel shall be allowed anywhere on the facility premises without a face mask, with no exceptions. All Members and their personnel MUST wear face coverings during the delivery.

6. **Business Services.**

Facility may provide Member an opportunity to participate in business development activities and programs as announced by e.terra Harlem. Facility makes no representations, warranties, or guarantees that any services provided will result in additional business opportunities for the Member. Member is solely and completely in control of its company and economic success or failure and Facility, its staff or other agents are not liable for any outcome resulting from the use of or reliance upon the business services or other programming, activities, trainings, and/or seminars provided by Facility.

7. **Covered expenses.**

Facility shall pay required landlord fees, insurance, shared facility & equipment scheduled deep cleaning, repairs and maintenance of equipment, pest control, preventative maintenance, and regular required facility inspections. Member relinquishes claim to any rebates from items Facility disposes of on their behalf or any claims it may or could have as a result of it against Facility as a result of disposal of any items. Member is solely responsible for the safekeeping and storage of any items Member wishes to keep or preserve, including proper notification thereof.

## II. OPERATION AND EQUIPMENT USE

1. **Standard Operating Procedures.** All Members must read and accept the Standard Operating Procedure ("SOPs") receipt of which is acknowledged. Member is responsible for educating their staff and for enforcement of the rules. Repeated violations of SOPs may result in fines and/or termination as further outlined in the Breach/Default section, Paragraph VI(2) herein and **Exhibit E (Penalties)** to this agreement.
2. **Policy & Procedure Manuals.** Member agrees to comply with the Rental and Use Policies, attached to this Agreement as Exhibit B. Facility, in its sole discretion, reserves the right to amend any or all Policies at any time, and shall provide any amendments to Member to Member. If Member or Member employees violate these Policies, Facility may impose a fine upon Member and upon repeated violation, Facility may, in its sole discretion, terminate this Agreement.
3. **Worker Safety.** Member agrees to ensure that Member, its employees observe proper safety procedures while using the Facility. All Member employees must be registered with the Facility Manager and provide contact details and other information as requested by Facility

before being authorized to operate in Facility. No guests are allowed on in the kitchen facility at any time.

**4. Interference with Use by Others/Strictly Prohibited**

Member and Member's personnel shall follow all provisions of the Statement relating to cooperation, courtesy and lack of disruptions in the use of the Facilities. Member and the Member personnel shall not make any use of the Facilities that, in Facility's sole discretion, disrupts the orderly operation of the facilities by e.terra Harlem and/or use of the facilities by other Members who are authorized to do so. Behavior deemed disruptive by Facility, may, without limitation, include: arguing; discourteous behavior; loud music; fighting or menacing; violence; theft; conversion; harassment or unauthorized use of another's property; the repeated use of profanities; consumption of illegal drugs or alcohol; use of the facilities under the influence of illegal drugs or alcohol; any behavior in violation of one or more of the provisions of this Statement; or any other behavior that might be disruptive of the orderly operation of the facilities by **e.terra** or by or its Member small businesses. Member and the Member personnel shall diligently report to Facility any violations of the statement and/or disruptive behavior by other Members, or any of their personnel. Violation by Member of any of the provisions of this paragraph shall be a default under the provisions of Paragraph VI(2) of this Agreement. Violations shall be documented, investigated and if confirmed, member or member employee who was the cause of said behavior will be subject to disciplinary action, including penalty payment, expulsion from facility and/or termination of membership, in the sole discretion of the Facility depending on circumstances and the severity of the conduct, as well as other factors.

**5. Scheduling of Kitchen Use.**

Facility shall have the right to control the times and manner of Member's access to and use of the facility including but not limited to: the rescheduling or reaccommodating of Member to a different station with comparable equipment for their booked hours if deemed necessary in Member's sole discretion. Member must schedule use of the kitchen facility in advance using the on-line scheduling system, *The Food Corridor*. Member does not guarantee the availability of particular times and facilities. Member will not be entitled to an abatement of membership fees or other amounts due to unavailability of desired times or kitchen facilities.

**6. Kitchen Equipment use outside of scheduled shift hours.**

Members shall abide by the SOP's as they relate to all shared equipment, including but not limited to sheet racks, metro shelving, refrigeration, tables, small wares, pots, pans, small electronic equipment such as but not limited to Robot Coupes, mixers and cooking

equipment (collectively “shared equipment”). Unless they have made prior arrangements and have rented shared equipment on a weekly or monthly basis, Member is required to clean shared equipment and leave it free of their business supplies or food production for the use of other members of the kitchen. Facility management reserves the right to remove any items left on unreserved / unrented shared equipment and either place said items in a location of their choosing or dispose of it as needed in their judgment. Facility may, but is not obligated to, attempt to contact Member regarding their equipment that is left unreserved or unrented.

### III. MEMBER DUTIES

Member agrees to the following in its use of the Facility under this Agreement:

- 1. Member Prerequisites.** Prior to utilizing the Facility, Member must have completed the Documentation Checklist, attached to this Agreement as **EXHIBIT A** and provided appropriate documentation to Facility Management, attended a Facility Orientation session, passed all appropriate regulatory inspections, and paid all necessary amounts as further indicated in this agreement and its exhibits. Member shall also be responsible for ensuring that each of their employees and managers for the duration of their membership will be required to attend either an in person training or alternatively, an online video training session on 1) the use of the Facility and 2) sexual harassment in the workplace, which will be arranged promptly with Facility management and no later than 7 days after each employee’s first day of work in the Facility. Member and employee will certify employee attendance at all training session in writing to the Facility Manager and shall also maintain their own record of each employee’s training(s).
- 2. Equipment Downtime.** Facility agrees to maintain equipment in working order and conduct necessary cleaning and repairs in a timely manner. Facility will make every effort possible to inform Members of equipment failures that may result in product loss. However, Facility is not liable and will not reimburse Members for product loss due to unexpected repairs, breakage or contractor delays in making repairs. Members shall promptly notify Facility in writing in the event Member experiences issues or disruptions which require Facility’s repair.
- 3. Equipment Use.** Facility makes no guarantee or representation that any particular equipment located in the Facilities will be available for Member’s use at any particular time. Member must book all small electronic wares and mixers in Food Corridor prior to using and arrange for access to and return of said equipment with e.terra staff for the booked time. Member shall seek

instruction for each person using the facilities for or on behalf of Member in the safe use and proper cleaning of all such equipment. Failure to do so shall be a default under the provisions of Paragraph VI(B) of this Agreement. Member and the Member personnel will refrain from operating any equipment located in the Facilities without having first obtained such instruction. Member shall be responsible for any damage, injury, or loss, including personal injury and property damage, resulting from the improper use or cleaning of any equipment in the Facilities by Member and/or the Member personnel.

#### **IV. Inspections and Removal of Items.**

##### **1. Right of Inspection.**

User hereby grants to Facility, its authorized agents, including third-party consultants, and to all agencies of local, State or Federal government with jurisdiction over **e.terra** and its operations, the right, at any time and without notice to Member except as might be required by applicable law, to inspect all of the property belonging to User and/or the Associated Personnel present or stored at the Facilities, including any equipment, utensils, products, and supplies. The right to inspect described above shall extend to any private or semi-private storage area or unit, whether or not independently secured by Member or the Associated Personnel, the use of which has been granted to Member by **e.terra**. Users shall fully cooperate with the conduct of such inspections, including, if needed, prompt removal of any locks to provide additional access. If, after notification from Facility, Member does not remove the requested locks, Facility may do so at Member's expense.

##### **2. Removal of items.**

Facility shall have the right to remove any items of personal property stored at the facilities by Member, including any items stored in any private or semi-private storage areas or units, if doing so, in Facility sole discretion is necessary for purposes of maintaining the health and safety of personnel present at the Facilities. Member hereby authorizes Facility to take such actions as might be necessary, in its sole discretion, to correct any unsatisfactory conditions discovered by such inspections and to remove and dispose of, at Member's sole cost and expense, any items of Member posing a risk to the health and safety of the users of, or visitors to, the facilities. Member hereby waives any right to seek reimbursement for the value of any items of Member so removed and/or disposed of by Facility. Failure by Member to comply with the provisions of this paragraph, shall be a default under the provision of Paragraph VI(B) of this Agreement and will be subject to penalties.

#### **V. General Terms**

##### **1. Marketing/Image Release.**

Member agrees to allow and grants permission to Facility to utilize photo, film, recordings or otherwise of the Member, their partners and/or employees in connection with all media and marketing in perpetuity for purposes of publicity, advertising and sales promotion; and to use Member name, business name, logo, likeness, or other information concerning them in connection with the filming, merchandising and for any other purpose deemed necessary by Facility. Member further acknowledges that Facility owns all rights to any resulting, created marketing. Member agrees material may be edited at Facility sole discretion. Member releases Facility, its employees, agents and assignees from any and all claims Member has or may have for invasion of privacy, defamation, royalties, use of likeness and image, and/or any other cause of action arising out of production, distribution, broadcast or exhibition of any filming or photography Facility undertakes.

2. **Authorized Products.**

If Member is producing packaged products must have approval from the appropriate regulating authority for their process prior to operating in the Facility or otherwise be in full compliance with local regulations regarding production of packaged goods. Member must provide a copy of such written approval to Facility for its records.

3. **Payment Terms.**

Member shall have access to and utilize the Facility and services according to the payment schedule attached to this agreement as Kitchen Pricing **Exhibit D**. Member shall be invoiced by facility on or before the first (1<sup>st</sup>) day of each month for Member's monthly kitchen and storage plan ("Monthly Plan"), as well as for any additional shifts or hours from the preceding month, as well as for any items purchased from Facility's commissary, and any individual services, fees, fines, short-term or specialized equipment requests from the preceding month (collectively "Additional Monthly Fees"). Member shall pay the Monthly Plan and the Additional Monthly Fees in full on or before the tenth (10<sup>th</sup>) day of the month. Member will incur a late fee of \$100.00 on Member's account if any amounts of the Monthly Plan or Additional Monthly Fees remain unpaid after the tenth (10<sup>th</sup>) day of the month.

4. **Contact Information.**

Member affirms that the identification, address and contact information stated at the end of this document is current and correct. Member must notify Facility in writing of any changes in Member's legal identity, address, licensing, or other contact information.

5. **Security.**

Member agrees that Facility assumes no responsibility for the loss or theft of any product, personal equipment, supplies or property the Member brings for their use in the facility.

Member further agrees they shall store all dry and cold items in locked bins or cages, as mandated by the Health Department.

6. **Product Labeling.**

For purposes of publicity, advertising and sales promotion Member agrees to place a "Made at **e.terra kitchen**" image or wording (provided by Facility for quality control of logo, images on all CPG products made in the Facility). This cooperative marketing does not imply or grant Member shareholder status in Facility, nor does it imply the Member Company is a partner or a subsidiary of Facility or any future parent or subsidiary entity, nor does it imply or grant to Member any interest in the Facility, its parents, subsidiaries, successors, and/or assigns. Additionally, use of images does not confer to Facility any part in the Member's business ownership or rights to its trademarks and logos, beyond the use of such by Facility for marketing and advertisement during the Member's term at Facility.

7. **Insurance.**

Each Member will maintain the required and type of insurance coverage as set forth in the Documentation Checklist, attached to this agreement as **EXHIBIT A for the duration of their membership with e.terra Facility. E.terra** corporate entities and Landlord will be listed as additional insured on all policies held by Member. **Member will ensure that e.terra is also listed as an additional party for all notices of renewal, default and changes in policy coverage with their insurance company for each policy they hold.** Any violation of any of the terms set out in this paragraph shall be considered a breach of this agreement and may be grounds for immediate termination. Members shall provide a copy of all insurance policies to Facility at the start of this agreement, and within ten (10) days of the renewal of any policies.

8. **Tax** – The responsibility to report and pay Federal, State and local Taxes, including but not limited to Sales and Use Tax for goods sold and services provided by each Member remains the sole responsibility of each individual Member's operation. **E.terra** is a separate entity and shall not be held liable for said tax payments or reporting. Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, shall be paid by Member. In the event Facility is required to pay any such tax, fee or charge, Member shall reimburse **e.terra** immediately upon request by **e.terra** or in lieu of such payment, Member shall provide **e.terra** an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge, to satisfy the levy of said tax, fee or charge. Any such charges incurred by Facility shall be considered Additional Monthly Fees under this Agreement, of which failure to pay shall constitute default.

9. **Limitation of Liability.**

Member agrees that any and all claims involving Facility are strictly subject to the following limitations related to any breach of this agreement:

- i. Facility (including its affiliated entities) shall not be liable for any damage to either person or property sustained by the Member or by any third party arising in any way out of the Member's use, operation, occupancy of any Facility premises, or sale or distribution of any product manufactured on the premises, or employment or invitation of any individuals in the Premises.
- ii. Facility shall not be liable for any damage, theft, injuries, or death caused by Member's or Member's employees' or agents' negligence or willful wrongdoing, or for the wrongdoing or negligence of other Members or their employees. Member shall, at its sole expense, promptly observe and comply with all statutes, laws, ordinances, rules, regulations, orders and requirements of all governmental, quasi-governmental or regulatory authorities applicable to the Premises and the conduct of its business.
- iii. Member hereby agrees to defend, indemnify, and hold Facility and the Property Owner harmless from and against any and all costs, damages, expenses, and liabilities (including reasonable attorney's fees) arising out of or related to any breach of this agreement.
- iv. The Member covenants and agrees to indemnify, defend, and hold harmless Facility, and their Members, partners and 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 Facility premises, or any portions thereof, or resulting from the sale, distribution, and use of any product manufactured by the Member on the Facility premises.
- v. Facility shall only be liable to Member for intentional wrongdoing of Facility or its employees.

#### **10. Confidentiality and confidential information.**

- i. Member and Facility agree and acknowledge that the Facility is a shared-use facility. The Parties further acknowledge and agree that the Member's operation may involve the use of proprietary information that is owned and used exclusively by the Member and shall remain confidential for the protection of Member's business ("Confidential Information"). Member acknowledges and agrees that other members may also have Confidential Information that applies to their own business. Member shall respect other Members and make reasonable efforts not to share or make easily available any information learned from other members that can be considered Confidential. Any spying, recording, photographing, or



deliberate intrusion into others' Confidential Information is grounds for terminating this Agreement. Member and Facility acknowledge and agree that Member's Confidential Information may be disclosed to Facility for the sole purpose of providing product authorization, training, marketing/advertising or business services to Member. Member shall take care to inform Facility in writing whenever Member is disclosing Confidential Information to Facility. Facility shall make all reasonable efforts to prevent disclosure of Member's Confidential Information to any third party.

- ii. Confidential Information does *not include* information that is already known to Facility, to the public, or to any third party beyond Member's control, or obtained by Member from an independent source or otherwise developed independently from the Member. This agreement does not cover any disclosure required by applicable law or regulation.
- iii. The obligations of this Section 10 shall survive this Agreement.

## 11. **Modification of Terms.**

- i. Facility may, in its discretion, modify the terms of this Agreement upon renewal, or upon a 30-day notice to Member, requiring Member to execute a new version of this Agreement as a condition of renewal, except as it specifically relates to any changes in the laws, regulations or policies of any government regulatory agency, in which case, Facility may modify the terms on 48 hour written notice. If, after receipt of the notice outlined in this provision, Member declines or fails to execute a new version of this Agreement, then this Agreement shall be deemed automatically terminated as of the date stated in the notice.
- ii. Notwithstanding the foregoing paragraph, the Facility may modify its Documentation Checklist (**Exhibit A**), Rental and Use Policies (**Exhibit B**), Standard Operating Procedures (**Exhibit C**), Price List (**Exhibit D**), and/or Penalties (**Exhibit E**) in its sole discretion and without the need for execution of a new Agreement or consent of Member. Any amendments to the exhibits shall be distributed to Member electronically and shall be deemed to substitute for any existing exhibits annexed hereto as of the date of the transmission of the amended exhibits.

## VI. **Termination and Breach**

1. **Automatic Renewal.** This Agreement shall automatically renew, without further notice on the expiration of the initial six (6) month period outlined in Article I, Section 3, for an additional six (6) months, unless terminated pursuant to Section 2, herein. This Agreement shall continue to renew automatically unless terminated by either party as outlined in Section 2 of this article.
2. **Termination.** Either Member or Facility, upon written notice given at least thirty (30) days prior to the expiration of the initial six-month period, or the expiration of any subsequent renewal periods, may terminate this Agreement for any reason. Member's obligations pursuant to Section II (Confidentiality) of this Agreement and any financial obligation and limitation of liability to Facility shall survive the termination of this Agreement.
3. **Breach or Default.** The following shall constitute an event of default under this Agreement:
  1. Failure by Member to meet its payment obligations under this Agreement, including the timely payment of Monthly Plan(s), Additional Monthly Fees, late fees, and any other amounts due and owing to Facility.
  2. Failure by Member to perform a duty or obligation arising under this Agreement the occurrence of which is expressly designated as a default under the provisions of any Paragraph or Section of this Agreement; and/or
  3. Failure by Member to perform any material duty or obligation arising under the provisions of this Agreement that is not otherwise listed in any Paragraph of this agreement.
4. **Cure.**

Member must cure any violation, breach, or failure to keep or perform any conditions of this Agreement, or its Exhibits, including financial obligations, within five (5) days after receiving written notice of such from Facility Management. If more than five (5) days pass without any corrective action taken by the Member, Facility may, in its sole discretion, immediately terminate this Agreement, and shall provide written notice to Member indicating the termination of this Agreement effective as of the date of the written notice.
5. **Member Property.**

Upon termination, Member shall remove all of Member's property from the Facility within three (3) business days of written notice of termination. Member has to arrange with Management for removal of their property during regular business hours, Monday through Friday of 9:00 a.m. to 5:00 p.m., in the presence of e.terra Facility management. Member's key card access to the facility shall be de-activated. If Member's property is not promptly removed, it shall be deemed abandoned and Facility may take possession of and remove Member's property, disposing of it as it sees fit without further notice to Member. Should

Facility elect to store such property, Member shall be liable to Facility for a reasonable storage cost for any property Facility stores on behalf of Member and shall make such at least one months' storage payment prior to Facility's undertaking of any storage efforts.

6. **Notice of Updated Address.**

Member acknowledges that upon termination of their Membership, Facility will contact any and all regulatory agencies and notify them of the termination of Membership. Member must take all steps to remove Facility as its address and properly re-direct any deliveries.

7. **Effective Termination Date.**

Termination will be effective immediately upon written notice of termination, as of the date of the notice, from Facility to Member if any default arising under the provisions of this Agreement has occurred and has not been cured by Member to the complete satisfaction of **e.terra** within such time as is set forth in the notice of default.

8. **Discretionary Termination** – Facility reserves the right to terminate this Agreement and Member's membership at any time and for any reason at the discretion of Facility management upon thirty (30) days written notice

9. **Termination of Rights** – Member's rights to the use of the facility shall cease immediately upon termination of this Agreement. You will have three (3) business days from termination notice to remove all of your business supplies and equipment from the premises. Should you need additional time to remove your possessions, Member shall request same in writing from Facility and make arrangements with Facility Management, who may charge additional storage fees at Facility's discretion.

## VII. Miscellaneous Provisions.

1. **Jurisdiction and Venue.**

Any disputes regarding this Agreement shall be resolved in the courts of New York County and according to the laws of New York State.

2. **Relationship of Parties.**

This Agreement shall not be construed to form a partnership or any other business association between the Parties other than as independent parties to a contract. Member, its officers, agents and employees are not employees or agents of the Facility. This Agreement shall not be construed in any way to create an interest of Member in the Facility's leasehold interest in the Premises, and Member in no way is considered a subtenant or assignee of the Premises.

3. **No Oral Modification.**

This Agreement may only be modified in writing signed by the parties.

4. **Notice**

Any notice required under this Agreement may be transmitted to either party, at the addresses listed in this Agreement by: 1) electronic mail to e.terra, 2191 Third Avenue, 3<sup>rd</sup> Floor, NY, NY 10035 for Facility and \_\_\_\_\_ for Member; or 2) overnight delivery by FedEx, UPS, or USPS; 3) In-Hand Delivery to Facility personnel during business hours, Monday-Friday 9:00am-5:00pm at the Premises, provided that Facility personnel is present. Either party shall notify the other in writing of any changes to electronic mail address or mailing address. If no such written notification is made informing the other party of a change of electronic mail address or mailing address, then notice shall be deemed effective if transmitted to the electronic mail or mailing address(es) stated in this Agreement.

This Agreement is executed this date \_\_\_\_\_, by the duly authorized representative of each party.

\_\_\_\_\_  
Legal Name of Member's Business

**e.terra** Kitchen

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title