

## Rocky Mountain Commissary Agreement

This Commissary Agreement ("**Agreement**") is made the earlier of the date of first use of the commissary or the date written below ("**Effective Date**") between Rocky Mountain Commissary LLC, a Colorado limited liability company ("**RMC**"), and the individual or company customer identified below ("**Client**"):

<b>Client/Company Name</b>	
<b>Authorized Representative</b>	
<b>Address</b>	
<b>Work Phone</b>	
<b>Cell Phone</b>	
<b>E-Mail</b>	

RMC in the business of providing on-site food preparation facilities and related equipment and storage ("**Services**"). This Agreement and the addenda hereto govern Client's use of the Services and constitute your agreement to the foregoing and terms and conditions contained herein.

1. **Services.** RMC will make the Services available to Client in accordance with RMC policies. RMC Services will be made available for advance scheduling on a first come, first served basis and all reserved time will incur charges (even if not used) unless cancelled in writing prior to any applicable cancellation deadline.
2. **Rules and Regulations.** Client agrees to abide by RMC's rules and regulations set forth in **Schedule A ("**Regulations**")** as may be modified from time to time at RMC's reasonable discretion.
3. **Commissary Notes.** Client represents and warrants that it will maintain a valid commissary note applicable to its business and to otherwise comply with all food service and other applicable law, rules and regulations of any authority having jurisdiction over any aspect of Client's business. RMC will provide reasonable assistance in obtaining commissary notes but ultimately they are each Client's responsibility, and RMC will in no event be liable for any expiration, termination, failure to renew or any other problems related to Clients licensing, commissary note or legal requirements for Client's business.
4. **Personnel.** Client will be solely and exclusively responsible for the acts or omissions of Client and its employees, contractors, subcontractors, invitees, licensees, agents and other representatives ("**Personnel**") without reservation. Client shall ensure that it and all its Personnel comply with the terms of this Agreement and with all federal, state and local rules and regulations, including but not limited to those governing food service, worker's compensation, unemployment, disability insurance and social security withholding, and payment of federal and state income taxes.
5. **Insurance.** Client acknowledges and agrees that it will be solely and exclusively responsible for maintaining adequate insurance to protect itself and its employees, contractors and other personnel from any casualty, liability or other risks to Client's business, including without limitation those related to personal injury, theft, fire, outages, business interruptions, etc., none of which are insured or indemnified by RMC. Client assumes the risk of loss, damage, theft or other casualty regarding any storage Services utilized by Client, whether locked, un-locked, shared or otherwise.

Additionally, client agrees to maintain at all times during the term of this Agreement the following insurance coverages as indicated:

- Workers' Compensation and Employers' Liability Insurance, covering all employees who are to provide services under this Agreement as prescribed by the laws of the state in which the services are to be performed and any other applicable jurisdictions;

- Comprehensive General Liability Insurance;
- Professional (Errors and Omissions) Liability Insurance;
- Business Automobile Coverage on at least the latest insurance industry standard policy form with limit of liability at or above statutory requirements.

Client must promptly disclose to RMC all non-standard exclusions on, or amendments to, the indicated policies. Client understands that if it, or any of its employees, agents or representatives, is injured while performing services under this Agreement, Client is not covered by any RMC insurance policy for such injury. **Client shall ensure that RMC will be listed as an ‘additional insured’ on all such policies and be provided 30 days’ notice of any nonpayment, cancellation or change in policy terms.** Client will provide applicable insurance certificates to RMC prior to any use of the Services or at any time upon RMC’s request.

- 6. Termination.** Either party may terminate this Agreement for convenience upon thirty (30) days written notice via certified mail or a confirmed email to scott@rmcommissary.com and/or brooke@rmcommissary.com. RMC may terminate this Agreement upon notice at any time if Client fails to pay applicable charges or otherwise breaches this Agreement. Any outstanding charges shall be immediately deducted from Client’s deposit and any remaining charges shall be paid within ten (10) days. RMC may restrict access to its facilities or to Client’s on-site property until such charges are paid in full; otherwise, Client shall immediately remove its personal property from RMC facilities. Any items not removed shall become the property of RMC which may dispose of them in its sole discretion (e.g., sale, storage, destruction, etc.), and Client will be solely responsible for any costs incurred in disposition of such items. In no event shall any storage Services be deemed a lease, and the parties acknowledge and agree that no other notice, eviction or other termination procedure shall be applicable except as set forth herein.
- 7. Indemnity.** Client shall indemnify, defend and hold RMC harmless from and against all liabilities, penalties, losses or expenses, including reasonable attorneys’ fees, imposed upon, sustained or incurred by RMC by reason of Client’s or its Personnel’s breach of this Agreement, or their failure to comply with applicable laws, rules, regulations, including without limitation those applicable to food labeling, payroll or other tax withholding, unemployment insurance, worker’s compensation or other obligations it may have with respect to its Personnel or otherwise under this Agreement.
- 8. Warranty.** RMC will use reasonable efforts to maintain the facility and equipment in a functional manner in accordance with generally accepted industry standards. Any claim for breach of this warranty must be made in writing (e.g., e-mail) as soon as possible but in no event more than 24 hours of any objection, and RMC will use reasonable efforts to address any problems in a timely fashion. However, RMC cannot control the activities of all users of RMC and therefore makes no warranty with respect to the condition or availability of the facility or equipment at any given time. **THEREFORE, EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ABSENCE OF CERTAIN SUBSTANCES ON EQUIPMENT (E.G., VEGAN, KOSHER, PEANUTS OR OTHER ALLERGENS, ETC.) SECURITY OF STORED ITEMS OR SERVICES AVAILABILITY, ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

9. **Limitation of Liability.** In no event will RMC be liable for utility disruptions (*e.g.*, telecommunications, power, water, etc.), however caused, or the acts or omissions of third parties, whether **THEY ARE CLIENTS OF RMC** facilities or otherwise. **IF CLIENT IS INFORMED OF EQUIPMENT FAILURE THEY ARE RESPONSIBLE TO TAKE ACTION FOR ANY PRODUCT LOSSES, LOSS OF REVENUE GENERATING FROM EQUIPMENT FAILURE. RMC's maximum total liability for ANY EQUIPMENT FAILURE DUE TO THE FAULT OF RMC, WILL BE ONE MONTHS WAIVED RENT. (I am willing to accept some responsibility, however not if the other company does not take any action)** RMC's maximum total liability for all claims under this Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the total amount of all fees paid to RMC in the month prior to the date the claim arose, and in no event will RMC be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this Agreement (including, without limitation, loss of business, revenue, profits, goodwill, use, data, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if RMC had previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if any exclusive remedy provided for in the Agreement fails of its essential purpose.
10. **Assignment.** Client may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of RMC.
11. **Dispute Resolution and Governing Law.** The parties agree to submit any disputes above the jurisdictional limit for small claims court exclusively to binding arbitration by the Judicial Arbitrator Group of Denver, Colorado. This Section shall not operate to limit either party's right to enforce, to the extent necessary, a Judicial Arbitrator Group judgment in a court of law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, excluding its choice of law provisions. With respect to claims not properly subject to the exclusive arbitration clause above, the parties hereby exclusively and irrevocably submit to, and waive any objection against, the personal jurisdiction and venue of the United States District Court for the District of Colorado, and the state courts of the State of Colorado located in the County of Jefferson, State of Colorado. In any successful action by RMC to recover amounts properly owed, RMC shall be entitled to immediate reimbursement of its costs of collection, including without limitation attorneys' fees, filing and court or arbitration costs.
12. **Payment.** Client agrees to pay for Services in accordance with the pricing set forth in **Schedule B or Schedule C for flat rate clients**. Pricing applies to time actually used as well as reserved time that is not utilized. Pricing may change periodically in RMC's sole discretion, but RMC will provide advance written notice before any changes take effect. Late payments will bear interest at RMC's election at the rate which is the lesser of eighteen percent (18%) per annum or the maximum amount allowed at law.
13. **Force Majeure.** RMC is not liable for any non-performance caused by events or conditions beyond that it's reasonable control if it makes reasonable efforts to perform.
14. **Notices.** All written notices, including by electronic mail must be required by this Agreement to be delivered by commercial means evidenced by a delivery receipt or a recipient acknowledgment and will be effective upon receipt. Any notices sent via US Mail must be certified and evidenced by a delivery receipt. E-Mail notices should be sent to brooke@rmcommissary.com and/or Scott@rmcommissary.com.
15. **Relationship of Parties.** This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship, and neither party may act in a manner which expresses or implies a relationship other than that of independent contractor.
16. **Severability.** If any provision of this Agreement is held invalid, in whole or in part, by any law or regulation of any government or by any court or arbitrator, such invalidity will not affect the enforceability of other provisions or portions thereof, and the offending provision shall be modified to the extent necessary to be enforceable.
17. **Survival.** Rights and obligations under this Agreement which by their nature should survive, will remain in effect after termination or expiration of this Agreement.
18. **Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.
19. **Modification.** No modification to this Agreement will be binding upon RMC unless in writing and manually signed by an authorized representative.
20. **Entire Agreement.** This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties

and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter during its term.

**I HAVE READ AND UNDERSTOOD THE ABOVE TERMS AND CONDITIONS AND THE ATTACHED RULES AND REGULATIONS AND BY SIGNING BELOW AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT:**

**COMMISSARY**

**CLIENT**

**BY:**

**NAME:**

**TITLE:**

**DATE:**

**BY:**

**NAME:**

**TITLE:**

**DATE:**

**Schedule A**  
**Rules and Regulations**

- All new clients are required to take RMC's orientation class which will be provided at no charge.
- RMC may move individual clients to different kitchens to reasonably accommodate all clients
- Scheduling use: All scheduling must be done in advance by e-mail at: brooke@rmcommissary.com
- Cancellations not made within two (2) days will incur charges – not including bad weather
- Minimum hourly charge is one (1) hour. Any increments thereafter are charge in quarter-hour (0:15) minimums.
- Clients are solely and exclusively responsible for their equipment and supplies brought into the facility.
- Clients may not bring in extra storage shelving without permission
- Clients must provide their own cooking items, ingredients, utensils, small wares and other special items necessary to their specific production needs
- No equipment or items owned by RMC shall ever leave the premises
- No children under 18 years in kitchen areas
- RMC and its personnel retain the right to enter all areas at any time.
- No locks of any kind shall be added to any common area kitchen spaces unless provided by RMC.
- Locks on exclusive storage areas rented to Client must have a combination lock provided by Client and the combination must be provided to RMC.
- When a contract has been terminated and a client removes items/self from premises, RMC staff must be present to check out user otherwise deposit is forfeited.
- Minimum Deposit is \$300. Client's using sheet rollers and revert ovens must post a \$600 deposit, and Client's found using these items without authorization must post an additional \$600 deposit (i.e., for a \$900 total deposit).
- No smoking of any substance is allowed in the facility.
- No use of intoxicating substances, whether legal or illegal, including alcohol, is allowed in the facility. Intoxicated persons may be immediately asked to leave.

**Fines:**

The fine system is to insure that the facility is kept clean and in working order. The following charges will be applied for not cleaning your area after each use:

- (a) \$20 for each table
- (b) \$30 for floors,
- (c) \$30 for each piece of dirty equipment
- (d) \$80 leaving premises with equipment on
- (e) Cost of actual damages. Late charges are \$25 after 2 weeks or 10% whichever is greater.

RMC Signature: \_\_\_\_\_

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule B

notes:

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