

# FOOD SERVICE AGREEMENT

This Food Service Agreement is made and entered into by and between Holyoke Community Charter School, ("Client"), and TRIO Community Meals, LLC ("Company") (collectively "the Parties").

## 1. TERM AND INTENT

- 1.1 Client grants Company the exclusive right to provide Food Service and supply of all packaged frozen food product, consumables and supplies to the Client's program participants.
- 1.2 This Agreement shall commence on July 1, 2024 (the "Commencement Date") or sooner if mutually agreed upon in writing by both Parties. The Agreement will remain in effect through June 30, 2025. The Agreement shall renew by mutual agreement for two (2) additional one-year periods, unless either party provides written notice of termination to the other party at least sixty (60) days prior to the expiration date or unless this Agreement is otherwise terminated as set forth herein. The Agreement is renewable on terms and prices mutually agreed upon by the parties and as allowed by the USDA.

## 2. DEFINITIONS

- 2.1. Accounting Period. Company's accounting calendar is based on an accounting cycle consisting of three (3) rotational periods of four (4) weeks, four (4) weeks, five (5) weeks.
- 2.2. Agreement. In order of precedence: (i) this Food Service Agreement, Exhibits and Schedules, as amended and, where specifically included by reference, (ii) the Company's Proposal and (iii) the Solicitation.
- 2.3. Governmental Rule. Any statute, law, rule, regulation, ordinance, or code of any governmental entity (whether federal, state, local or otherwise).
- 2.4. Premises. The Company's food service facility located at 39 Olympia Avenue, Unit 1, Woburn, MA, 01801.
- 2.5. Products. Food, beverages, goods, merchandise, supplies.
- 2.6. Proprietary, Confidential and Trade Secret Information. Items used in Company Food Services (owned by or licensed to Company) including, without limitation, menus, signage, surveys, Software (i.e. menu systems, food production systems, accounting systems), recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, provided, however that the following items are specifically excluded: (i) information generally available to and known by the public or (ii) information independently developed or previously known by the Client.

## 3. FOOD SERVICES

- 3.1 Food Service. Company will prepare and deliver meals to Client's facility located at 2200 Northampton Street, Holyoke, MA 01040-3430.
- 3.2 Program Specifications.
  - A. Meals.
    1. Meal types:
      - i. Congregate Bulk: Breakfast

i. Congregate Bulk: Breakfast

ii. Congregate Bulk: Lunch

B. Meal Shortages: In the event Company fails to deliver meals or portions of meals, or Company delivers food that is unwholesome, fails to meet specifications, or has been substituted without prior approval, the Client's representative shall note all discrepancies on the meal delivery ticket and the following procedures shall apply:

1. Alternate Vendor Procedures: The Client's representative shall procure the necessary items from an alternate vendor. Company will be responsible for establishing appropriate alternate vendors in the local area.
2. Company will be responsible for alternate vendor bills. Supporting documentation must be submitted to Company for all such payments. The Client will submit to Company all requests for alternate vendor payments within thirty (30) days of occurrence.

C. Meal Credits: When meals or portions of meals cannot be replaced using an alternate vendor, Company will issue a credit to the Client for the meal based on the following allocation:

<u>Food Grouping</u>	<u>Percentage of Meal Cost</u>
Meat or Meat Alternative	41%
Fruit/Salad	15%
Milk	15%
Vegetable or Soup	10%
Dessert (other than fruit)	10%
Bread or Bread Alternative	5%
Margarine	2%
Condiments	2%

The allocation as stated above shall be adjusted with meal rates. Credits will be deducted from the Client's invoice. The Client will submit to Company all requests for credits within thirty (30) days of occurrence.

D. Closings: In the event the Client and/or the State or local government permanently closes a Serving Site/Delivery Point, the Client shall notify Company of the closing five (5) working days in advance. If five (5) working days' notice is not provided, the Client shall pay for the normal number of meals served at such closed Serving Site/Delivery Point or accept menu substitutions which will allow Company to utilize food products which were purchased for the closed day.

In the event the Client and/or the State or local government temporarily closes a Serving Site/Delivery Point, the Client shall notify Company of the closing two (2) working days in advance. If two (2) working days' notice is not provided, the Client shall pay for the normal number of meals ordered for such closed Serving Site/Delivery Point or accept menu substitutions which will allow Company to utilize food products which were purchased for the closed day.

In the event a Serving Site/Delivery Point is closed due to inclement weather, acts of God, and/or other unforeseen emergencies, the Client shall not be responsible for payment for food to be delivered on said day if notice has been given to Company by 4:00 a.m. of the serving day.

If necessary, under these circumstances, Company may make menu substitutions on the following serving day, which shall be reported to the Client as soon as possible.

In the event inclement weather or any other act of God is predicted, Company may consult with the Client to determine if shelf-stable meals should be sent the day or days before such event is predicted to occur.

- 3.3 Purchasing. Company shall purchase those Products and supplies necessary to comply with Company's obligations as set forth in this Agreement from Company's approved vendors that meet Company's guidelines and requirements.
- 3.4 Buy American Provision. The Company shall comply with the "Buy American" provision Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998. The Company will notify the Client in writing a minimum of eight (8) days in advance of delivery of any alternative or exemptions. The request must include the:
  - i. Alternative substitute (s) that are domestic and meet the required specifications:
    - a. Price of the domestic food alternative substitute (s); and
    - b. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
  - ii. Reason for exception: limited/lack of availability or price (include price):
    - a. Price of the domestic food product, and
    - b. Price of the non-domestic product that meets the required specification of the domestic product.

#### 4. EMPLOYEES

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- 4.1. Employees. Company shall hire employees necessary for its performance of this Agreement. Persons employed by Company will be the employees of Company and not of Client.
- 4.2. Wages and Hours. Company shall comply with all applicable federal, state, and local laws and regulations pertaining to the wages and hours of employment for Company's employees.
- 4.3. Payroll Taxes. Company shall be responsible for all withholding and payroll taxes relative to Company's employees.
- 4.4. Background Checks. Company shall conduct necessary background checks as required by law.
- 4.5. Equal Opportunity and Affirmative Action Employer. Company abides by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their age, race, color, religion, sex, sexual orientation, or national origin. Company employs and promotes individuals without regard to age, race, color, religion, sex, national origin, protected veteran status or disability.
- 4.6. Non-Hire. Client acknowledges that Company has invested considerable amounts of time and money in training its Supervisory Employees. Therefore, the Client agrees that during the Supervisory Employee's employment with Company and for a period of twelve (12) months thereafter no Supervisory Employees of Company will be hired by Client, nor any facility affiliated with Client, nor will Client permit employment of Company Supervisory Employees on Client's Premises or the Premises of any facility affiliated with Client. Client agrees that if it violates this provision, Client shall pay to Company and Company shall accept as liquidated damages and not as a penalty, an amount equal to one time the annual salary of the Supervisory Employee(s) hired by

or allowed to work with Client in violation of the terms of this Agreement. Company shall be entitled to pursue all other remedies available under federal, state, or local law. This provision shall survive the termination of this Agreement.

**5. PREMISES, FACILITIES, UTILITIES AND EQUIPMENT**

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5.1 Equipment. Company has provided Client with refrigerators on the Client’s premises. The refrigerators shall be maintained, repaired, and replaced by Client to permit the performance of the Food Service and to ensure compliance with applicable Governmental Rules. Company shall retain title to equipment hereunder. Any additional equipment to be provided will be as mutually agreed upon by the Parties.

**6. LICENSES, PERMITS AND TAXES**

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- 6.1 Licenses and Permits. Company shall procure, maintain, and post the food licenses and permits as required by law. Client represents and warrants that it has and will maintain all other licenses and permits necessary to operate the Premises and the Food Services. The Client agrees to notify Company immediately upon receiving notice of loss of any such permit or license.
- 6.2 Taxes. Company shall be responsible for collecting and remitting sales tax on applicable sales collected by Company. Unless Client provides documentation of Client’s federal and state tax-exempt status to the Company’s sole satisfaction, Client shall reimburse Company for state and local sales tax on the full amount of charges and fees billed to the Client. Client shall secure and pay all federal, state, and local property, excise and income and other taxes and fees required for the Premises and resulting from the Food Services provided for hereunder. Client shall immediately pay for any tax assessments including interest, penalties, costs, and expenses, which are assessed against the Food Service operation and were not in effect as of the Commencement Date or were owed but unpaid as of the Commencement Date. Client shall notify Company promptly should its sales tax status be changed.

**7. FINANCIAL ARRANGEMENTS**

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- 7.1 Payment Arrangement. In consideration for services provided to the Client, Company will charge the Client as follows:
- | <u>Meal</u>                | <u>Rate Per Meal, Plus Applicable Sales Tax</u> |
|----------------------------|---|
| Congregate Bulk: Breakfast | \$2.49  |
| Congregate Bulk: Lunch     | \$4.19  |
- 7.2 Advance Payment. Prior to the commencement of operation hereunder, Company shall submit to the Client a proposed budget for the year. After the budget is approved and agreed to by the Client, it shall advance to Company one-twelfth (1/12) of the budget within seven (7) days of the date of Company's invoice. The amount of this advance will be retained by Company as a deposit and will be used to off-set the amounts due by Client upon termination of the Agreement. The advance will be adjusted at the beginning of each fiscal year based upon the agreed budget.
- 7.3 Payments Due and Late Payment Penalty. On or before the fifth (5th) day of each week, Company will bill the Client for the preceding week's charges. Company shall issue an invoice at the end of

each week (which shall run Saturday through Friday) showing the amounts due. Client shall pay the full invoice amount within thirty (30) days from the issuance of the invoice. Payment Method shall be electronic via AFT/ACH transfer, or another acceptable electronic method agreed upon between the parties. In the event payment is not made within thirty (30) days of the due date, the invoice will be subject to a finance charge of eighteen percent (18%) per annum or, if less, the maximum amount permitted under applicable law. The right of Company to charge the finance charge shall not be construed as a waiver of Company's normal entitlement to receive timely payment as set forth herein. Any change of banking information or change in the method of monies being transmitted or received shall be documented in hard copy (printed on paper) and delivered by hand, via certified or registered mail return receipt requested, or by overnight delivery service with a receipt of delivery, provided that such delivery is to the parties per Notice. In the alternative, the Company, at its discretion, may request verification by phone of any change of banking information or change in the method of monies being transmitted or received.

- 7.4 Right to Offset. In the event that Client is more than thirty (30) days past due on any obligations to Company, Company shall have the right to offset, from any other sums owed by Company to Client, all or any portion of such outstanding receivables. Additionally, Company shall have the right, at Company's option, at any time that Client is over thirty (30) days past due on any obligations require that Client pay, on a prebilling basis, at least one week in advance of each Accounting Period, the estimated amount due Company for that Accounting Period. The estimated amount shall be adjusted and reconciled to the actual amount in the next prebilling invoice, or if Client is no longer past due on its obligations to Company, with the next invoice due hereunder. Further, Company shall have the right to immediately adjust hours, prices, labor, and menu offerings to further off-set any losses.
- 7.5 Change in Conditions. The financial terms set forth in this Agreement, and all other obligations assumed by Company hereunder, are based on conditions in existence on the date Company commences operations including, without limitation, population; labor costs; applicable Governmental Rules; food and supply costs; provision of equipment and utilities; state of the Premises; and federal, state, and local sales, use and excise taxes (the "Conditions"). Further, Client acknowledges that in connection with the negotiation and execution of this Agreement, Company has relied upon Client's representations regarding existing and future conditions (the "Representations"). In the event of change in the Conditions, inaccuracy of the Representations, or if Client requests any significant change in the Food Services as provided under this Agreement, the financial terms and other obligations assumed by Company shall be renegotiated to reflect a proportionate increase in Company's charges to the Client. Company will provide a thirty (30) day notice of such increased charges.
- 7.6 Future Pricing. Pricing adjustments shall be made automatically on an annual basis at a rate no less than the greater of three percent (3%) or the most recently released U.S. Department of Labor Consumer Price Index, All Urban Consumers, National Average Unadjusted, Food Away from Home. On the anniversary of the Commencement Date, Company's proposed adjustments shall go into effect.
- 7.7 Attorney's Fees and Costs. Client shall pay all costs of collecting any amount due Company, including attorney's fees and all costs and other expenses incurred by Company in collecting an indebtedness of Client. This provision shall survive the termination of the Agreement.

## 8. TERMINATION OF THE AGREEMENT.

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- 8.1 Termination for Non-Performance. If either party refuses, fails or is unable to perform or observe any of the terms or conditions of this Agreement for any reason other than for Excused Performance as set forth in this Agreement, the party claiming such deficiency shall provide the breaching party written notice of any such breach. If the breaching party remedies such breach within (i) three (3) days in the case of failure to make payment when due, (ii) fifteen (15) days in the case of any other breach, or (iii) a reasonable time where cure is not possible within fifteen (15) days (collectively the "Notice Period"), the notice shall be null and void. If the breaching party fails to remedy the breach within the Notice Period, the party giving notice may cancel the Agreement after the end of the Notice Period.
- 8.2 Termination for Financial Insecurity. If either Party makes an unauthorized assignment for the benefit of creditors, files a petition under the bankruptcy or insolvency laws of any jurisdiction, has or suffers a receiver or trustee to be appointed for its business or property, or is adjudicated a bankrupt or an insolvent, the other party may terminate the Agreement with three (3) days' notice. Provided, however, that Client agrees to provide Company thirty (30) days' notice before filing a petition for bankruptcy.
- 8.3 Voluntary Termination. Either Party may terminate this Agreement with or without cause by written notice to the other party given not less than thirty (30) days prior to the effective date of termination.
- 8.4 Continuing Obligations. The termination of this Agreement shall not affect the rights, privileges, or liabilities of the Parties as they exist as of the effective date of termination. All outstanding amounts owed to Company shall become due and payable immediately upon termination. If, at Client's request, Company enters into agreements with one or more third parties in connection with its management of Client's Food Service operations (collectively, "Third Party Agreements"), Client agrees, at Client's sole cost and expense, to: (i) assume and undertake (or cause to be assumed and undertaken by the Food Service provider succeeding Company) all responsibilities of Company under all Third Party Agreements from and after the date this Agreement expires or is earlier terminated; (ii) release Company from all liability associated with such Third Party Agreements from and after the date this Agreement expires or is earlier terminated; and (iii) bear all liability and responsibility with respect to any costs, fees and other charges associated with termination of such Third Party Agreements. This Paragraph shall survive the termination or expiration of this Agreement.

## 9. INDEMNIFICATION; INSURANCE

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- 9.1 Insurance. Company shall procure and maintain the following insurance:
1. Worker's Compensation Insurance as prescribed by the laws of the state where the Premises are located; and
  2. Comprehensive General Liability Insurance, with limits of two million dollars (\$2,000,000.00) per occurrence and two million dollars (\$2,000,000.00) annual aggregate to cover any and all claims that arise during the course of this Agreement.
- A. Subrogation. Client and Company waive any and all right of recovery from each other for property damage or loss of use thereof, however occurring, which loss is insured under a valid

and collectible insurance policy to the extent of any recovery collectible under such insurance. This waiver shall include, but not be limited to, losses covered by policies of fire, extended coverage, boiler explosion and sprinkler leakage. This waiver shall not apply to claims for personal death or injury. Company shall not be liable to the Client, in any way for damage to the Facilities or Premises caused by reason of fire, or other hazard, however caused, or by the reason of an act of God. In any event, Company shall not be held liable for any cause to an extent which would exceed effective coverage and dollar limits prevailing under the policies of insurance described in this Agreement.

9.2 Indemnification. To the fullest extent allowable under applicable law, each Party agrees to provide the following indemnification:

- A. Each party agrees that it will defend, indemnify and hold harmless the other party, its officers, directors, parent corporation, affiliates, employees and agents ("Indemnified Parties") against any and all liabilities, losses, damages, injuries, deaths, reasonable litigation expenses (including, without limitation, reasonable attorneys' fees), costs and costs of court (collectively, "Damages") which Indemnified Parties may hereafter sustain, incur or be required to pay arising out of the other party's negligent acts, omissions or failure to perform obligations pursuant to this Agreement. Provided, however, neither party shall be required to defend, indemnify, and hold harmless the other party for any intentional or criminal actions of the other party or its employees, visitors, or invitees. Client agrees to defend, indemnify, and hold harmless Company Indemnified Parties from all Damages which may arise due to any act or omission of a Company Party made in compliance with a Client's rules or requirements.
- B. Notice of Indemnification. A party shall only be required to indemnify pursuant to the Agreement, where that party receives a written request to indemnify within twenty (20) days after the initial receipt of notice of any such lawsuit or claim by the party requesting indemnification. Failure to notify a party of such claim or lawsuit within the stated period of time shall relieve that party of any and all responsibility and liability under this Agreement to defend, indemnify and hold harmless for that claim or lawsuit.

## **10. GENERAL AGREEMENT TERMS**

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10.1 Confidentiality. Neither Client, nor Client's employees or agents, shall disclose, photocopy, duplicate or use, either during or after the term of this Agreement, any Proprietary, Confidential and Trade Secret Information, without Company's prior written permission. All Proprietary, Confidential and Trade Secret Information shall remain Company exclusive property. Client's access or use of Company Proprietary, Confidential and Trade Secret Information or Software shall not create any right, title, interest or copyright in such Information or Software. If Client is requested to disclose any of the Confidential Information to any third party for any reason, Client shall provide Company with prompt notice of such request(s). Upon termination of this Agreement, Client shall return all Company Proprietary, Confidential and Trade Secret Information in Client's possession relating to Company's services pursuant to this Agreement. Client agrees that upon breaching this provision, Company shall be entitled to equitable relief, including injunction or specific performance, in addition to all other available remedies. This provision shall survive the termination of the Agreement.

- 10.2 Intellectual Property. Nothing in this Agreement is intended to grant any rights to Client under any patent, copyright, trademark, trade name, trade secret or other proprietary right of Company (whether now owned or hereafter developed or acquired), all of which are reserved to Company.
- 10.3 Independent Contractor Relationship. It is mutually understood and agreed, and it is the intent of the Parties, that an independent contractor relationship is hereby established under the terms and conditions of this Agreement. Employees of Company are not, nor shall they be deemed to be, employees of Client. Employees of Client are not, nor shall they be deemed to be, employees of Company.
- 10.4 Notice. Any notices or changes required under this Agreement shall be considered sufficient when: delivered by hand, or when received by certified or registered mail, return receipt requested, or, by overnight delivery service with a receipt of delivery, provided that such delivery is to the parties at the following addresses:

**Client**

Holyoke Community Charter School  
2200 Northampton Street  
Holyoke, MA 01040-3430

**Company**

TRIO Community Meals, LLC  
100 Valley Drive  
Pearl, MS 39208

- 10.5 Excused Performance. If performance of any terms or provisions hereof (other than the payment of monies) shall be delayed or prevented because of compliance with any law, regulation, decree or order by any federal, state, or local court, governmental agency or governmental authority, or because of riot, war, public disturbance, strike, lockout, differences with workmen, fire, flood, Act of God, pandemic, epidemic, or any other reason whatsoever, which is not within the control of the party whose performance is interfered with, and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option, suspend, without liability, the performance of its obligations hereunder (other than the payment of monies) during the period such cause continues.
- 10.6 Assignment or Transfer. Neither party may assign or transfer this Agreement, or any part thereof, without written consent of the other party. Such consent shall not be unreasonably withheld. Provided, however, that this shall not apply to Company's transfer to a parent, sister or successor company where Company provides Client at least thirty (30) days written notice.
- 10.7 Entire Agreement; Waiver. This Agreement, including any Exhibits hereto, constitutes the entire Agreement between the Parties with respect to the provisions of Company's services, and there are no other or further written or oral understandings or agreements with respect thereto except as otherwise set forth herein. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of Company and Client. This Agreement supersedes all other agreements between the Parties or their predecessors for the provision of Company Food Services.
- 10.8 Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Agreement may be transmitted by fax or by electronic mail in portable document format ("PDF") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures.
- 10.9 State Guidelines. Client hereby agrees that the validity and construction of this Agreement shall be governed by Massachusetts law. Should a lawsuit be necessary to enforce this Agreement, Client



hereby waives any objection to venue or personal jurisdiction and agrees to be subject to the jurisdiction of the courts located in Massachusetts. A facsimile copy or photocopy of this Agreement shall be valid as an original thereof. EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF AND BROUGHT BY ANY OTHER PARTY

- 10.10 Limitation of Liability. Company's entire liability and Client's exclusive remedy for damages arising out of or related to this Agreement or the Food Services shall not exceed the total amount paid by Client to Company for the current term of this Agreement (not to exceed three (3) years). COMPANY SHALL NOT BE LIABLE FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF REVENUE OR PROFIT IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY.
- 10.11 Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.
- 10.12 Authority: Company and Client represent that the individual executing this Agreement has been duly and validly authorized to execute this Agreement on each party's respective behalf with the full power and authority under all applicable laws and respective articles of incorporation, bylaws, or other governing instrument to enter into this Agreement and to perform their obligations hereunder.

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**IN WITNESS WHEREOF**, the Parties, intending to be legally bound, have caused their appointed and duly assigned officers to execute this Agreement.

**CLIENT: Holyoke Community Charter School**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

*[Handwritten Signature]*  
\_\_\_\_\_  
*Dr. Sonia C. Pope*  
\_\_\_\_\_  
*School Principal*  
\_\_\_\_\_  
*September 26, 2024*  
\_\_\_\_\_

**COMPANY: TRIO Community Meals, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

DocuSigned by:  
*John Kirk*  
\_\_\_\_\_  
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**John Kirk**  
\_\_\_\_\_  
**President**  
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**9/27/2024**  
\_\_\_\_\_