

STATE OF NORTH CAROLINA  
WAKE COUNTY

**NORTH CAROLINA STATE UNIVERSITY  
CONCESSIONAIRE CONTRACT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter referred to as “Contractor”), and the North Carolina State University – University Dining, Campus Box 7307, Raleigh, North Carolina 27695-7307 (hereinafter referred to as “NC STATE”).

**RECITALS**

- A. The Contractor has submitted to the University a proposal for the performance of certain services;
- B. The parties hereto desire to reduce the terms of this agreement to writing;

Therefore, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

- 1. Contractor agrees to provide the following concessions services at selected NC STATE athletic or concert events:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2. Payment shall be made as follows:

For concessions sales, the Contractor shall pay NC STATE \_\_\_\_\_% of the Contractor’s gross sales at NC STATE events within 15 days of the event where concessions were provided.

- 3. The Contractor may not substitute key personnel assigned to the performance of this contract without prior written approval by NC STATE’s Contract Administrator. The Contractor’s individual designated as key personnel for the purposes of this contract is \_\_\_\_\_ . NC STATE’s Contract Administrator is \_\_\_\_\_.

- 4. Work proposed to be performed under this contract by the Contractor shall not be subcontracted without prior written approval of the University Dining Concessions Manager.

5. This agreement begins on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and ends on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
6. The Contractor must provide the University Dining Concessions Manager with an inventory of products available for sale at the beginning of each event, and again at the end of each event. Commissions paid to NC STATE will be based on the items difference between beginning and ending inventory, less any documented spoilage or waste, times the retail price of each unit. NC STATE reserves the right to verify beginning and ending inventories without prior notification, and Contractor must maintain complete and adequate records to enable University to make such verifications.
7. If through any cause, the Contractor fails to fulfill in timely and proper manner the obligations under this agreement, NC STATE may thereupon terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. The Contractor shall not be relieved of liability to NC STATE for damages sustained by NC STATE by virtue of any breach of this agreement. NC STATE may terminate this agreement at any time by notice in writing from NC STATE to the Contractor.
8. NC STATE may terminate this agreement at any time without cause by notice in writing from NC STATE to the Contractor.
9. Contractor shall not assign or transfer any interest in this agreement.
10. It is agreed between the parties hereto that the place of this contract, its situs and forum, shall be Wake County, North Carolina, and in said County and of said State such matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of this agreement, be determined.
11. The Contractor agrees that he shall be responsible for the proper custody and care of any property furnished him for use in connection with the performance of this contract, or purchased for this contract, and will reimburse NC STATE for its loss or damage.
12. The University Dining Concessions Manager, North Carolina State University, is designated the Project Coordinator for NC STATE.
13. The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
14. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

15. The Contractor must comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of his business, including those of Federal, State, and local agencies having jurisdiction and/or authority.
16. NC STATE retains the Contractor only for those purposes and to the extent set forth in this agreement, and Contractor's relation to NC STATE is that of independent contractor.
17. The Contractor and/or individuals retained by the contractor shall not be considered as having an employee status or as being entitled to participate in any plan, arrangements, or distributions by the University pertaining to or in connection with any qualified pension plan or providing any other health or welfare plan with similar benefits for regular University employees.
18. Contractor is responsible for the payment of any taxes on any monies received by the Contractor.
19. This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and suspend all prior oral or written statements or agreement.
20. The Contractor must hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the Contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
21. At all times during the Term of this agreement, Contractor will carry and maintain at its expense, the following insurance in the minimum amounts specified below or such other amounts as the University may reasonably request:

**Liability Insurance**

<b>Commercial General Liability Insurance</b> (occurrence basis)	\$1,000,000 Combined Single Limits
<b>Products Liability/ Completed Operations</b>	\$1,000,000 Combined Single Limits
<b>Personal and Advertising Injury Limit</b>	\$1,000,000

**Workers Compensation and Employers Liability** - Contractor will maintain such insurance as to meet its obligations and liabilities under the workers compensation laws of the State of North Carolina, as same may be amended from time to time.

<b>Automobile Liability</b>	\$1,000,000 Combined Single Limits
<b>Fire Legal Liability</b>	\$100,000 (occurrence basis)
<b>Excess Liability</b>	\$2,000,000 Combined Single Limits (occurrence)

Forms of Policies - NC STATE will be named as an additional insured on all insurance policies required of Contractor under this agreement for subject contracted activities. Certificates of Insurance evidencing such insurance coverage shall be delivered to NC STATE at the time of this agreement and at anytime as may be requested by NC STATE. All policies shall be purchased from insurers licensed to do business in the State of North Carolina and will provide that they may not be terminated or amended except after 30 days prior notice to NC STATE.

- 22. This contract may be amended only by written amendments duly executed by the University and Contractor.
- 23. Any notice under this contract to the University shall be sufficient if mailed to the University as indicated below:

Director of Materials Management  
North Carolina State University  
Campus Box 7212  
Raleigh, NC 27695-7212

Any notice under this contract to the Contractor shall be sufficient if mailed to the Contractor as indicated below:

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- 24. The State or NC STATE auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.
- 25. If NC State provides the Contractor with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-133.20(b) or any other legally confidential information, Contractor hereby certifies that collection of this information from NC State is necessary for the performance of Contractor’s duties and responsibilities on behalf of NC State under this Contract. Contractor further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed

by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Contractor for a period of at least five (5) years from date of violation. If Contractor experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the Contractor's responsibilities under the NC Identity Theft Protection Act, Contractor shall immediately notify NC State with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with NC State. Contractor shall indemnify NC State for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC State data provided to Contractor pursuant to the Contract.

26. NC State has determined that Contractor is a school official with a legitimate educational interest under the Family Educational Rights and Privacy Act ("FERPA"). If NC State provides the Contractor with "personally identifiable information" from a student's education record as defined by FERPA, 34 CFR §99.3, Contractor hereby certifies that collection of this information from NC State is necessary for the performance of Contractor's duties and responsibilities on behalf of NC State under this Contract. Contractor further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Contractor for a period of at least five (5) years from date of violation. If Contractor experiences a security breach relating to this information or if Contractor re-discloses the information, Contractor shall immediately notify NC State. Contractor shall indemnify NC State for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC State data provided to Contractor pursuant to the Contract.
27. If NC State provides any data to Contractor pursuant to this Agreement then Contractor shall preserve and maintain the data to the extent needed to fulfill NC State's obligations under the North Carolina Public Records Act and under the Federal and North Carolina Rules of Civil Procedure, including specifically that Contractor shall immediately preserve and maintain data (and any generated email correspondence) upon NC State's request or upon notice of litigation and further Contractor shall make available all data that NC State may specify within the time limits required.
28. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitations.

**IN WITNESS THEREOF**, the parties have executed this agreement in duplicate originals, one of which is retained by each of the parties, effective the day and year first written above.

**North Carolina State University**

**Contractor**

By: \_\_\_\_\_  
Director of Materials Management

By: \_\_\_\_\_  
(Contractor's Authorized Representative)

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

\_\_\_\_\_ (Title)

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