

## License for Catered Food and Beverage Events

This License Agreement ("License") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Auburn University, a public corporation ("AU"), and \_\_\_\_\_ ("Caterer").

In consideration of the promises set forth below, the parties hereto agree as follows:

1. AU agrees that subject to compliance of Caterer with conditions established herein, Caterer is hereby given a non-exclusive license and permission to provide catered food and beverage services within AU facilities and premises subject to such further conditions as may be established in writing for each catered event under license hereto.

2. Caterer agrees as follows:

(a) Caterer shall **indemnify, hold harmless and defend** AU, its affiliated foundations, and each of their respective trustees, directors, officers, employees, and agents ("Releasees"), from and against any and all loss, damage or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries or illnesses, including death, to persons or for damages to property caused by or arising out of any negligent (including strict liability), wanton, reckless, or intentional act or omission of Caterer, any of its contractors, invitees, guests, employees, participants, or agents, or which otherwise arises out of, relates to, or is attributable to, Caterer's food and beverage catering services and use of AU facilities, equipment, or premises. This indemnity shall apply whether the same is caused by or arises out of the joint, concurrent, or contributory negligence of any person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements, and judgments associated with such demands, claims, suits or actions.

(b) Unless otherwise agreed to in advance by AU, to maintain, at its sole expense, at all times as a condition of the permission herein given and during each event it may cater, insurance issued by an insurance company licensed to do business in the State of Alabama carrying a minimum *A.M. Best's* rating of A-VII or *Standards & Poor's* rating of BBB+ as follows:

(i)	<b>Commercial General Liability ("CGL")</b>	
	Each Occurrence — Premises/Operations	\$1,000,000
	Personal & Advertising Injury	\$1,000,000
	Products-Completed Operations Limit	\$1,000,000
	General Aggregate	\$2,000,000

The CGL must be provided on either ISO form #CG 00 01 (current edition) or a form providing coverage as broad as the aforementioned ISO form. If the caterer is responsible for serving alcoholic beverages, the CGL must include liquor liability coverage. The required CGL limit of liability may be accomplished through a combination of primary and excess/umbrella liability policies written on a follow-form basis or a form providing coverage as broad as the underlying layers.

- (ii) **Commercial/Business Automobile (“BA”) Liability**  
 Combined Single Limit \$1,000,000

The BA policy must be provided on either ISO form #CA 00 01 (current edition) or an industry equivalent and must include hired and non-owned liability.

- (iii) **Workers’ Compensation/Employer’s Liability**  
 Workers Compensation (Coverage Part A) *Statutory*  
 Employer’s Liability (Coverage Part B) - Per Occurrence \$500,000

The University must receive a Certificate of Insurance annually which is signed by an authorized representative of the insurance company. The certificate of insurance must contain the following elements:

- (i) Insured Entity (must match the name/address of the entity in the contract/purchase order);
- (ii) Insurance Carrier(s);
- (iii) Policy Effective/Expiration Dates;
- (iv) Policy Number(s);
- (v) Policy Limits;
- (vi) Cancellation Notice Provision (Mm. 10 days for non-payment - 30 days otherwise); and
- (vii) Additional Insured and Waiver of Subrogation Language as follows:

*The Board of Trustees of Auburn University, its individual trustees, officers, employees, agents and representatives are included as an additional insured as respect to the Commercial General Liability policy. Unless precluded law, all policies waive the right to recovery or subrogation against The Board of Trustees of Auburn University, its individual trustees, officers, employees, agents and representatives.*

(c) To comply with all federal, state and local laws and regulations governing the furnishing of food and beverage catering services, safety, health, sanitation, and the operation of its food and beverage catering business. Upon request, Caterer will furnish to AU copies of Caterer’s current licenses and permits required by state or local governmental authorities for Caterer’s business, including health inspection records for the prior twelve months.

(d) That if Caterer should engage in the sale or distribution of any alcoholic beverage within AU facilities and premises that it shall perform all such activities in compliance with applicable local, state and federal laws and such AU policies as are now applicable or which may be established during the term of this License or any extension hereof. Further, Caterer specifically acknowledges and agrees:

- (i) To obtain and maintain during the term of this License all required governmental licenses and permits for the sale and serving of alcoholic beverages;
- (ii) To comply with Responsible Alcohol Service Training state law requirement;
- (iii) That its employees catering an event may not be members or affiliates of the organization/department sponsoring the event; and
- (iv) That no AU funds may be used for the purchase of alcoholic beverages.

(e) That this License and any rights herein granted are personal to Caterer and shall not be assigned, sublicensed or encumbered without AU's prior written consent.

(f) That the sole purpose of this License is to establish conditions under which Caterer may enter into separate written agreements with AU departments to provide food and beverage catering for events within AU facilities and premises. **This License does not guarantee that Caterer will be hired to cater an event at AU**, nor does it constitute or create, directly or indirectly, any obligation or promise on the part of AU to hire or pay Caterer for any food and beverage catering it may conduct within AU facilities and premises or any costs Caterer may incur in connection therewith. Caterer's engagement for a catered event and the specific details for that event, such as time, location, menu, costs, and billing instructions, must be described in a separate written agreement that is signed by an authorized AU officer.

3. AU and Caterer both agree:

(a) AU reserves the right during normal business hours and at its own expense, for an independent auditor of its choosing or its duly designated representative to examine Caterer's records in such detail as is necessary to determine compliance with the terms and conditions of the License.

(b) Nothing in this License shall be construed to place the parties in the relationship of partners or joint venturers or agents, and Caterer shall have no power to obligate or bind AU in any manner whatsoever. Caterer agrees that it shall neither state nor imply, either directly or indirectly, that the Caterer, or its activities, other than pursuant to exercise of this License, are supported, endorsed or sponsored by AU and, upon the direction of AU shall issue express written disclaimers to that effect. Caterer shall not use AU's name, trademarks, or logos without the prior express written permission of AU. This License does not constitute nor shall it be interpreted as approval for the use of AU's name or any of its trademarks, logos or other indicia without prior specific written approval of AU Office of Trademark Management and Licensing.

(c) That the term of this agreement shall begin on the date first written above and may end upon mutual consent. The AU reserves the right, in its sole discretion, without any liability arising from or related to such termination, to terminate this License in the event that there is a breach of its terms by the Caterer. Without prejudice to any other rights it may have, AU also shall have the right at any time at its sole discretion to terminate this License upon 30 days written notice by First Class Mail, postage prepaid, to Caterer.

(d) This License constitutes the entire agreement and understanding between the parties hereto and cancels, terminates and supersedes any prior agreement or understanding relating to the subject matter hereof between AU and Caterer. There are no representations, promises, agreements, warranties, covenants or undertakings other than those contained herein. None of the provisions of this License may be waived or modified except expressly in a writing signed by both parties. However, failure of either party to require the performance of any term in this License or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach.

(e) This License shall be governed by and construed and enforced in accordance with the laws of the State of Alabama, without regard to conflicts of law principles. Any claims against the University shall be submitted to the Alabama State Board of Adjustment. The University does not waive and specifically reserves all immunities to which it is entitled by the laws of the State of Alabama and the United States, including Article I, Section 14 of the Constitution of Alabama, and the Eleventh Amendment to the United States Constitution. Exclusive jurisdiction and venue of any claims not barred by immunity, nor required to be filed before the Alabama State Board of Adjustment shall be in the Circuit Court of Lee County, Alabama, or the United States District Court for the Middle District of Alabama, Eastern Division.

(f) In situations where actual or anticipated weather, actual acts or threats of war/riot/hostile action and other uncontrolled situations take place, it may become necessary to cancel, alter or reschedule a planned catered event. In these uncontrolled circumstances, the Caterer and AU agree to mutually release all obligations for the delivery and payment of catering services. Whenever it can be agreed, AU and the caterer will seek to reschedule the event, but understand a rescheduled event may result in the need for a different menu and/or change in the number of attendees.

4. The signatory for Caterer represents and warrants that he/she has full authority to agree to the terms and conditions of this License and enter into it. In the event that the Caterer is a corporate entity, signatory further represents that no further corporate or other approvals are necessary for this License. The individual signing will assume personal liability for this License, should the corporate Caterer contest such authority or should the entity otherwise be unable to comply with all of the terms of this License.

5. Caterer acknowledges that its food and beverage catering services are not sponsored, operated, performed, or endorsed in any way by the AU. Caterer will not represent nor imply that Caterer's catering business is sponsored, operated, performed, or endorsed in whole or in part, by the AU.

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate on the date first above written.

Auburn University

Caterer: \_\_\_\_\_  
Business Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Auburn University Contract Officer  
Payment and Procurement Services

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

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