

THE UNIVERSITY OF ALABAMA

PERMISSIVE USE AGREEMENT

– Catered Beverage Services –

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of The University of Alabama (collectively “UA”) agrees to allow for catered beverage services on the UA campus, on the following terms and conditions. This Reference Page defines certain terms and provisions used throughout the Agreement:

Caterer (Legal/Group Name): _____

Address: _____

Caterer Contact Name and Number: _____

Event Name (Please note that the name of the event must be the **exact** event name as it will appear on the ABC application): _____

Facility Name for Event: _____

Facility Address: _____

Number of Participants Allowed or Expected: _____

Date(s) and Time(s): _____

Has the Event(s) been approved for Alcohol Yes _____ No _____

If yes, has the Event been approved for Alcohol by:

House Corporation Board: ____ Yes ____ No

Sponsoring Undergraduate Greek organization: ____ Yes ____ No

ABC Approval: ____ Yes ____ No ____ Pending approval

Check if Caterer will serve Beer _____ Wine _____ Other Alcohol _____

Supplies, Equipment, and Materials to be furnished by UA (if any):

Will Caterer provide staff to check IDs ____ Yes ____ No

Will Caterer provide staff to issue armbands to those 21 years or older: ____ Yes ____ No

Special Provisions: _____

For UA use only:

A copy of the certificate of insurance in compliance with Section 7 herein must be furnished by Caterer. Insurance received from Caterer: ____ Yes ____ No

By signing below, Caterer agrees to the terms of this Agreement, including specifically the “General Terms and Conditions” attached hereto and incorporated herein.

CATERER:

**BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA:**

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

GENERAL TERMS AND CONDITIONS

1. Caterer¹ hereby agrees to provide catered beverage services within the Facility located on the UA campus subject to such further terms, conditions, fees and prices set forth herein or as may be established in writing for each catered event contemplated under this Agreement.
2. Caterer shall indemnify, hold harmless and defend The Board of Trustees of the University of Alabama, its affiliated foundations, and each of their respective trustees, directors, officers, employees, and agents, 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, 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, or which otherwise arises out of, relates to, is connected with or is attributable to this agreement, Caterer's use of the Facility, or the Caterer's conduct associated with the Event. 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. Further, Caterer's indemnification obligations as provided for under this Agreement exists even if coverage for these items and/or the conduct from which they arise is excluded under any of Caterer's policies of insurance or reinsurance or if coverage under these policies has been exhausted. 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.
3. In addition to Caterer's indemnity obligations set forth above, Caterer shall be solely liable for the costs of repair or replacement of any damage to UA or the Facility arising out of Caterer's use of the Facility or the Event. This shall apply to any negligent (including strict liability), wanton, or intentional act or omission of Caterer. UA shall calculate the cost of repairing/replacing said damage, including labor charges, which may include overtime, and present an invoice for said charges to the Caterer. Caterer shall pay said costs within seven (7) calendar days after presentation of the invoice.
4. Caterer shall provide to University a certificate of liability insurance from a carrier acceptable to the University with an A.M. Best rating of A - VII or higher, as evidence of insurance coverage for the use of the Facility and the Event. This insurance shall be primary coverage, and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity.

At a minimum, the insurance must name **The Board of Trustees of the University of Alabama, its agents, officers, and employees, as additional insureds**. Insurance shall be in the following minimum amounts: \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If alcoholic beverages are being sold, the liability insurance must include liquor liability, or, if alcohol is being provided at no charge, host liquor liability must be included. Additional amounts of coverage may be required of Caterer depending on the activities and/or features of the planned event and/or based on the expected attendance or if using an outside caterer based upon the circumstances. The certificate of liability insurance must be received 15 days prior to the Event.

The insurance requirement may be waived or modified. Any request for waiver or modification of the insurance requirements must be made in writing to the University's Office of Risk Management. All insurance requirements set forth herein remain in force until waived or modified in writing by the

¹ "Caterer" refers to the entity identified on the first page of this Agreement and, for purposes of this Agreement, includes that entity and any of its affiliates, subsidiaries, employees, representatives, agents, officers, and directors.

University's Office of Risk Management. The University may allow the Caterer to self-insure all or part of the insurance requirement as determined by the Office of Risk Management and this decision will be primarily determined by a review of the Caterer's audited financial statements that must reflect the ability to absorb self-insured claims without creating a material change in the Caterer's financial condition.

5. Caterer shall comply with all applicable laws, orders, rules, fire codes, and regulations of federal, state, city, county, and municipal authorities. Caterer will also comply with all rules, policies and procedures instituted by UA. Caterer agrees to comply with any applicable laws regarding equal access and nondiscrimination, including the Americans with Disabilities Act and Title IX. Caterer further agrees to ensure Caterer's associates and representatives fully understand and comply with Alabama's child abuse reporting statutes (ALA. CODE § 26-14-1 et seq.) and UA's Child Abuse Reporting Policy and Procedures, including reporting any suspected child abuse to UA and the appropriate authorities, which includes, but is not limited to, UAPD. Caterer shall be responsible for acquiring all licenses, permits, and/or authorizations required to undertake the Event, and shall be responsible for paying any and all taxes or government charges related to the Event. In addition to the other indemnification obligations set forth in this Agreement, Caterer will indemnify UA for any fines, penalties, sanctions, violations, claims, losses, or demands associated with Caterer or Caterer associate's failure to comply with this provision.
6. Caterer shall, as the sole provider for the sale or distribution of any alcoholic beverage on or about the Facility, perform all such activities in compliance with applicable local, state and federal laws and such UA policies as are now applicable or which may be established during the term of this Agreement or any extension hereof. Further, Caterer specifically acknowledges and agrees:
 - a. To obtain and maintain during the term of this Agreement all required governmental licenses and permits for the sale and serving of alcoholic beverages;
 - b. To comply with Responsible Alcohol Service Training state law requirement;
 - c. That its employees catering an event may not be members or affiliates of the organization/department sponsoring the event; and
 - d. That no UA funds may be used for the purchase of alcoholic beverages.
7. Upon request, Caterer will furnish to UA copies of Caterer's current Agreements and permits required by state or local governmental authorities for Caterer's business. Further, UA 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 Agreement.
8. That this Agreement and any rights herein granted are specific to Caterer and shall not be assigned, subcontracted or encumbered without UA's prior written consent.
9. Caterer shall be responsible for all costs of supplies and materials not furnished by UA, required personnel & security, setup, cleanup, costs of insurance, costs of food, beverages, and catering, and any and all costs of damage to University property.
10. Caterer shall furnish all supplies, materials, and equipment required to conduct the Event, except as specifically agreed otherwise by UA on the Reference Page or an attachment made a part hereof.
11. UA may, in its discretion, furnish at least one representative on-site or on-call. Caterer will follow all reasonable instructions and requests of the representative. Caterer acknowledges that the representative owes no duties to protect, supervise, or provide security to Caterer, and neither UA nor its representative

assume duties toward Caterer, by the presence of this representative. UA's representative is present only for the protection of UA's property and the convenience of UA. In addition, UA and its representatives shall have the right to enter upon the Facility at all reasonable times before, during, and after the Event, for any reasonable purpose. UA retains the right, in its sole discretion, to immediately eject and bar Caterer from the Facility for just cause, which includes, but is not limited to, a violation of any term or condition of this Agreement.

12. UA may provide general set-up and take-down services in connection with the Event. Caterer shall be responsible for all specific set-up, take-down, cleaning (outside and inside the Facility), decorations, and conduct of the Event. UA reserves the right to assert charges at any time when the Caterer makes unreasonable demands or leaves the Facility in a condition beyond that reasonably expected at an Event of a similar nature. Caterer agrees to pay for all repairs, replacements, and cleaning that result from the improper use, neglect, vandalism, or abuse of the Facility, or other UA facilities or property, by Caterer.
13. UA makes no warranties or representations regarding the Facility, nor any representations or warranties that the Facility is well suited or fit for a particular purpose or Event. The Facility is provided in an AS IS condition. Caterer has examined the Facility and accepts the same in the physical condition in which it now exists.
14. Caterer acknowledges that the Event is not sponsored, hosted, or conducted in any way by UA and Caterer agrees to assume all responsibility and liability arising or resulting from its organizing, hosting, sponsoring, advertising, and conducting of the Event. Caterer may not use the logos, indicia, registered symbols, or trademarks of UA without the prior written consent of UA's licensing director. Caterer will not represent nor imply that the Event is sponsored, hosted, or conducted, in whole or in part, by UA. Further, Caterer acknowledges that its beverage catering services are not sponsored, operated, performed, or endorsed in any way by the UA. Caterer will not represent nor imply that Caterer's catering business is sponsored, operated, performed, or endorsed in whole or in part, by the UA.
15. That the term of this Agreement shall be for the date(s) and time(s) listed on the first page of this agreement, including all time reasonably necessary for the setup and breakdown of the Event. UA shall have the right to withdraw and terminate the permission hereby given at any time if Caterer breaches or fails to comply with or abide by any of the terms and conditions herein. Upon any such termination, Caterer shall promptly vacate the Facility and cease conduct of the Event. Caterer further acknowledges that the primary function for which the Facility exists is the conduct of recreational, educational, and other events of UA. Accordingly, UA reserves the right, at any time prior to the Event, to cancel this Agreement and refund all amounts paid by the Caterer. Caterer further agrees that in the event of any termination by UA, UA shall have no liability for any direct or consequential damages or loss that Caterer may suffer or incur as a consequence of such termination.
16. Caterer may cancel this Agreement, with a full refund, only if the Agreement is canceled by written notice received by UA no less than thirty (30) days prior to the scheduled Event.
17. UA assumes no responsibility whatsoever, for any property placed in the Facility by Caterer. All charges of UA constitute a first lien against any property of Caterer at the Facility. Further, any property of Caterer that remains at the Facility shall be considered abandoned after ten (10) calendar days and shall become, and remain, the property of UA.
18. Caterer shall be solely responsible for establishing, billing, and collecting all fees and charges payable by participants in the Event.

19. Neither Caterer nor the Event will accept sponsorship from any vendor, business entity, or commercial enterprise that competes in any manner with UA approved marketing. In further explanation, but not limitation thereof, Caterer will not accept services, products, or benefits from vendors, business entities, or commercial enterprises which provide substantially the same type of service, product, or benefit, as vendors, business entities, or commercial enterprises, with which UA, its supporting foundations, or an approved marketing contractor has a current or existing contract, or with which one of the same is actively negotiating such an agreement.
20. All of the terms, provisions, and conditions of this Agreement shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable to any extent, then, to the extent that such provisions are valid and enforceable, a court of competent jurisdiction shall construe and interpret this Agreement to provide for maximum validity and enforceability of this Agreement. Further, this Agreement may not be construed against the drafting party.
21. Nothing in this Agreement 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 UA 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 Agreement, are supported, endorsed or sponsored by UA and, upon the direction of UA shall issue express written disclaimers to that effect. Caterer shall not use UA's name, trademarks, or logos without the prior express written permission of UA. This Agreement does not constitute nor shall it be interpreted as approval for the use of UA's name or any of its trademarks, logos or other indicia without prior specific written approval of UA Marketing, Promotions, and Trademark Licensing Department.
22. This Agreement, and any and all written sub-agreements signed by both parties hereto and relating to future catered events on or about the Facility, constitute 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 UA and Caterer. There are no representations, promises, agreements, warranties, covenants or undertakings other than those contained herein. None of the provisions of this Agreement 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 Agreement 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. This Agreement may be amended only by a writing duly executed by both parties.
23. This Agreement 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 Tuscaloosa County, Alabama, or the United States District Court for the Northern District of Alabama, Western Division.
24. 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 and a planned catered event. In these uncontrolled circumstances, the Caterer and UA agree to mutually release all obligations for the delivery and payment of catering services. Whenever it can be agreed, UA and the caterer will seek to reschedule the event, but understand a rescheduled event may result in a change in the

number of attendees.

25. The signatory for Caterer represents and warrants that they have full authority to agree to the terms and conditions of this Agreement 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 Agreement. The individual signing will assume personal liability for this Agreement, should the corporate Caterer contest such authority or should the entity otherwise be unable to comply with all of the terms of this Agreement.
26. This Agreement may be executed in multiple counterparts and by facsimile (no one of which need contain the signatures of more than one party hereto so long as each party hereto executes at least one such counterpart), each of which shall be deemed an original and all of which, when taken together, shall constitute and be one and the same instrument.