This Contract is between Oregon State University on behalf of department of Intercollegiate Athletics (“OSU”), and [to be determined] ("Contractor").

WHEREAS, OSU competitively solicited for the services outlined in this Contract under Request for Proposal number TG168647 entitled Athletic Facilities Concession and Catering Services and Contractor was selected as the Proposer best able to provide this service; and

WHEREAS, Contractor represents that it understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services;

NOW, THEREFORE, OSU and Contractor agree as follows:

# CONTRACT TERM AND TERMINATION:

## CONTRACT TERM.

This Contract is effective as of [to be determined] and expires on [to be determined]. OSU has the option to extend the term of this Contract for nine (9) additional one (1) year terms based on the current terms and conditions. OSU may exercise this option to extend by providing written notice to Contractor prior to the expiration of the Contract.

## TERMINATION.

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' written notice. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by OSU’s budget and OSU determines, in its assessment and ranking of the policy objectives explicit or implicit in OSU’s budget, that it is necessary to terminate the Contract, or (d) if the OSU program for which this Contract was executed is abolished.

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other Section is without prejudice to OSU’s other rights and remedies.

## REMEDIES FOR CONTRACTOR'S DEFAULT.

In the event Contractor is in default (which includes without limitation, incomplete services), OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

# SERVICES AND OPERATIONS:

## SERVICES.

Contractor shall provide the following services (collectively the “Services”) at the locations (“Locations”) identified within the OSU athletic facilities shown in **Attachment A**, as they presently exist (“Athletic Facilities”):

1. Concession Services: sale of food and beverages through the operation of fixed concession stands, mobile concession stands, roving vendors or hawkers to individual customers.
2. Alcoholic Beverage Service: sale of alcoholic drinks, beers and wines as specified within this Contract.
3. Catering Services: preparation and serving of food and beverages at a per-plate, per-person or per-item charge to special functions, meetings, events and groups, where payment for the entire function rests with one individual or company.
4. Athlete Training Table: preparation and serving of food and beverages to meet the OSU designated nutrition guidelines for athletes in training as specified in **Attachment B**.

## EXCLUSIVE RIGHTS, EXCEPTIONS AND RESTRICTIONS.

* 1. Exclusive Rights:

Except where stated in this Contract, Contractor shall have exclusive right to provide the Services within the Athletic Facilities. Contractor shall coordinate its activities hereunder as they relate to this Contract with the OSU Departmental Administrator identified in Section 9.H.b.

* 1. Exclusive Rights Exceptions:

The following are exceptions to Contractor’s exclusive rights;

1. Reser Stadium suites and skyboxes when suite and skybox holders bring in their own food and beverages for consumption within the suite or skybox. Contractor will have exclusive rights to provide catering in the suites or skyboxes, if suite or skybox holders elect to have catering services.
2. Services in the offices and locker rooms of the Athletic Facilities.
3. Services for the Corvallis Knights games at Goss Stadium.
4. Free distribution of food and beverages, or any other items of any nature whatsoever, where such distribution has been authorized by the OSU Departmental Administrator, and provided that if Alcoholic Beverages are being sampled, such sampling shall be coordinated with and conducted by Contractor.
5. Services for major political conventions, National Collegiate Athletic Association (“NCAA”) tournaments or other similar national or international events.
6. Events with which Contractor’s operation may be incompatible, in the opinion of the OSU Departmental Administrator, such exclusion to be judged prudent and responsible.
	1. Restrictions on Sales:

No illegal products, tobacco or chewing gum may be sold in the Athletic Facilities by Contractor or any subcontractors. OSU may stipulate additional restrictions on the sale of food, beverages and concession items where necessary because of the nature or location of the function. For example, without limiting the generality of the foregoing, the sale of alcoholic beverages at specific performance/event times may not be permitted, as determined by the OSU Departmental Administrator.

* 1. Sponsorships, Advertising and Pouring Rights:

OSU retains and reserves all rights, including the exclusive right to negotiate and sell sponsorships, advertising and pouring rights. OSU currently has sponsorships with certain food and beverage providers and exclusive pouring rights contracts for certain beverages. Contractor will adhere to the requirements and restrictions set forth in **Attachment C** for OSU’s Pouring and Promotion Rights.

## OPERATIONS.

1. Fulfillment of the Services:

Except as where otherwise indicated in this Contract, Contractor shall provide all the requirements necessary to fulfill the Services. Such requirements include, but are not limited to: employees, supervision, vehicles, furniture, fixtures, equipment, uniforms, currency, point of sale systems, credit card machines, cash registers and any other material supplies that are appropriate for the services and consistent with industry standards. Contractor will fulfill the Services in the Contractor’s name, with no implication of OSU directly or by inference in any transactions.

1. Subcontracts:

No portion of the work shall be subcontracted without prior written consent of OSU. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish OSU with the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by the subcontractor(s). All subcontractors or other parties partnering with the Contractor must comply with the terms of this Contract.

1. Permits and licenses:

Contractor shall procure any permits and licenses required and pay all charges and fees necessary for the Services to be conducted by it hereunder. Contractor shall deliver copies of all such permits or licenses to the OSU Departmental Administrator.

1. Days and hours of operation:

Contractor shall open and operate Services at a reasonable time before, during, and after all events or operating days. Contractor’s days and hours of operation at each location must be approved by the OSU Departmental Administrator.

1. Food Quality:

Contractor shall offer for sale only high-quality foods and beverages that are fresh, properly and safely prepared, sanitary, accurately labeled where appropriate and as described on menus. Contractor shall not use or serve products that are past their expiration date or otherwise spoiled for any reason. Contractor shall use high quality ingredients in the production of all products. Contractor shall sell only foods that comply with all applicable federal, state, and local laws, acts, orders, or regulations. All food and supplies purchased shall conform with minimum standards of federal and state specifications. All meat cuts shall be in accordance with United States Department of Agriculture Institutional Meat Purchase Specifications. The indicated grades are intended as minimum standards only, and Contractor is encouraged to exceed these minimums whenever possible. All other food shall be of comparable quality.

1. Food Handling:

Contractor agrees to provide the Services and operate the Locations in a professional and resourceful manner, complying with all public health regulations including a Grade “A” sanitation rating to the satisfaction of all authorized local Health Department officers and OSU. Contractor is solely responsible for complying with all industry standard food safety procedures, including hazard analysis and critical control points, and for any health issues arising from the service of food by Contractor or any of its employees or agents.

1. Alcoholic Beverage Service:

Contractor’s Alcoholic Beverage Service shall be subject to all applicable laws, regulations, policies and procedures of the State of Oregon, City of Corvallis and OSU. Alcoholic Beverage Service shall be confined to Locations designated by OSU and approved by the licenses and permits held by Contractor for the sale of Alcoholic Beverages. OSU may also confine sales of certain types of Alcoholic Beverages within certain Locations or confine all sales of Alcoholic Beverages based on the type of event. The final decision as to when, where, if and which types of Alcoholic Beverages may be sold rests within the sole discretion of OSU, to the extent permitted by applicable law. The decision to provide or refuse Alcoholic Beverage Service to any individual shall be the sole responsibility of Contractor.

1. Marketing:

Contractor will coordinate the marketing of Services with OSU Departmental Administrator. Contractor shall not advertise in any manner other than as approved by the OSU Departmental Administrator.

1. Miscellaneous Promotional Efforts:

From time to time, in the best interests of OSU, OSU may work with Contractor to develop promotional efforts to increase sales of food, beverage or other services. When these promotional efforts occur, Contractor and OSU shall mutually agree on the terms and document the effort, in writing, with the details including a description of the effort and pricing.

1. Business Reviews:

Contractor will participate in business reviews as requested by OSU Procurement, Contracts, and Materials Management. Business reviews will be scheduled by the Contract Administrator in OSU Procurement, Contracts, and Materials Management. The reviews may include discussion of Contract terms and conditions, work performed under the Contract, financial data, proposal of Contract improvements for increased service or lower costs, and any potential changes to the Contract.

## MENUS AND PRICING.

1. Concession and Alcoholic Beverage Services Menu and Pricing:

Prior to providing the Concession and Alcoholic Beverage Services under this Contract, menus setting forth the products and prices must be submitted to the OSU Departmental Administrator for his or her review and approval. After approval, any changes to the Concession and Alcoholic Beverage Services menus and pricing must be reviewed and approved by the OSU Departmental Administrator. Periodically throughout the duration of the Contract, Contractor will conduct a product and pricing survey of similar local and national concession venues. The results thereof shall be provided, along with any resulting proposed menu and pricing changes, for the OSU Departmental Administrator to review and approve.

1. Catering Services Menu and Pricing:

At least thirty (30) days prior to providing any Catering Services, Contractor shall provide for OSU’s final review and approval a final Catering Services menu and price list, confirming the menu of items to be offered and the prices to be charged for each item and clearly indicating changes, if any, from Contractor’s originally proposed menu. Any such changes to this menu and pricing when compared to Contractor’s proposal shall be subject to approval by OSU Contract Administrator and OSU Departmental Administrator. The final approved Catering Services menu and price list will be attached to this Contract as **Attachment D**. Contractor may not make changes to the final approved Catering Services menu and price list without the OSU Contract Administrator and OSU Departmental Administrator’s approval. Any changes to the Catering Services menu and price list will only become binding after a fully executed amendment modifying **Attachment D** has been completed. Any increase in prices shall be reasonable and in no event shall exceed the preceding calendar year’s published Annual Average CPIU for Portland-Salem OR-WA.

Contractor will not charge OSU any additional service, personnel, administrative, environmental, or other miscellaneous fees for Catering Services. Any third-party contractor’s rental fees for additional items necessary to provide the Catering Services to OSU will be passed through at the actual cost charged by the third-party contractor. Contractor’s invoice for the Catering Services shall separately itemize any rental fees from third-party contractors and a copy of the third-party contractor’s invoice must be attached to Contractor’s invoice.

OSU will order Catering Services on an as needed basis. Contractor shall create Catering Services event orders for Catering Services provided to OSU under this Contract. Event orders will be used to record at least the following information: OSU employee placing the order, head counts, selected menu items, pricing, location, set-up, and must include the OSU employee’s acknowledgment of the event order as written. Event orders will be used as documentation supporting approved Catering Services ordered by the OSU department and should be easily reconciled with Contractor’s invoices.

## PERSONNEL.

1. Provision of Employees:

Contractor shall provide the personnel necessary to fully and adequately perform the Services under this Contract efficiently and in a manner satisfactory to OSU. Contractor shall also provide adequately-trained relief personnel in the event of absences by primary staff. Contractor shall adjust staffing levels if, in the opinion of the OSU Departmental Administrator, the staffing levels do not adequately provide the Services under this Contract. OSU reserves the right of approval for all staffing levels. Upon request from OSU, Contractor shall supply OSU with a copy of Contractor’s operating procedures and manual, which will include detailed staffing plans for a variety of events or activities within the Athletic Facilities.

Contractor may use service organizations from the OSU campus and local area to supplement its permanent staffing for the Concession Services. However, Contractor shall provide adequate periodic training and supervision for such service organizations and permanent staff to assure that food is handled in a safe and sanitary manner, that all monies are accounted for, and that customers receive fast and courteous service.

1. On-Site Manager(s):

Contractor agrees to assign the supervision to a highly competent, full-time on-site manager who shall have no duties other than direction of these Services. Contractor shall secure OSU Departmental Administrator’s approval of the potential on-site manager in advance of placing, whether temporarily or permanently, the on-site manager for this assignment. Once assigned to this operation, such on-site manager will be considered a Key Person and shall not be replaced without approval of OSU. The on-site manager shall be on location days and times needed to fulfill the Services under this Contract and shall have no other duties other than those specifically dedicated to providing the Services under this Contract. The on-site manager shall be on location during times of providing Services under the Contract and during normal business hours specified by OSU Departmental Administrator.

1. Catering Sales Representative:

Contractor shall have available, upon reasonable notice, a qualified representative who shall, upon request of OSU, meet with Athletic Facilities users or prospective users to assist in explaining and planning Contractor’s Catering Services.

1. Contractor’s Responsible Person:

Contractor shall designate one or more person(s) responsible for Contractor’s work under the Contract. Contractor shall provide to OSU Departmental Administrator with the names, addresses and telephone numbers of such person(s) and shall keep this information current at all times.

1. Contractor’s Personnel and Agents:

Contractor shall be responsible for the acts of its employees and agents while performing Services pursuant to the Contract. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons or property. Contractor shall be responsible for all damages to persons or property on and off campus caused solely or partially by Contractor or any of its agents or employees. Contractor’s employees shall conduct themselves in a professional manner and shall not use OSU’s facilities for any activity or operation other than the operation of the Services as herein contained. OSU reserves the right to deny access to any individual. The following conduct is unacceptable for Contractor’s employees and agents: foul language, offensive or distasteful comments related to age, race, ethnic background or sex, evidence of alcohol influence or influence of drugs, refusal to provide services requested, refusal to make arrangements for additional services needed and general rudeness.

Contractor shall be responsible for the conduct of their employees, staff, vendors, volunteer workers, and other representatives including, without limitation, training and informing them that profanity, boisterous or rude conduct, intoxication, mishandling funds, and offensive or disrespectful behavior toward spectators and customers is impermissible and will not be tolerated. Should OSU receive complaints about any behavior or conduct that reflects poorly upon OSU, it shall promptly notify the Contractor, and the Contractor shall agree to promptly resolve any such complaints, including, without limitation, removing or replacing any individual whose work or performance is the basis of the complaint if the problem is not promptly cured.

OSU Departmental Administrator reserves the right to request and have Contractor comply with personnel changes, to the extent permitted by applicable law. If at any time, any personnel are unsatisfactory to OSU Departmental Administrator, Contractor shall make a change in such personnel within ten (10) days of written notice from OSU Departmental Administrator. OSU Departmental Administrator must give appropriate reasons for requesting the personnel change that do not discriminate against any individuals based on race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. If the OSU Departmental Administrator or designee notifies Contractor in writing that any person employed on this Contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall not again be employed in the execution of this Contract without the written consent of the OSU Contract Administrator.

OSU reserves the right to require the immediate removal of any selected Contractor employee or subcontractor employee who OSU feels is inappropriately conducting himself/herself while performing the Services associated with the Contract.

1. Employees of Contractor:

Personnel supplied by Contractor will be deemed employees of Contractor and will not for any purpose be considered employees or agents of OSU. Contractor assumes full responsibility for the actions of such personnel while performing the Services pursuant to the Contract, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding and income taxes, unemployment insurance, workers’ compensation, and Social Security) and the like, as required by applicable federal, state, and local laws.

1. Key Persons:

Contractor and OSU agree that each individual specified below is an individual whose special qualifications and involvement in Contractor’s performance of Services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to OSU the expertise, experience, judgment, and personal attention required to perform services (“Key Person”). Each of the following is a Key Person under this Contract:

***[Key Persons and services performed will be added after award and negotiation of the Contract.]***

Neither Contractor nor any Key Person of Contractor shall delegate performance of services any Key Person is required to perform under this Contract to others without first obtaining OSU Contract Administrator’s written consent. Further, Contractor shall not, without first obtaining OSU's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide OSU with that Key Person’s expertise, experience, judgment, and personal attention. If Contractor requests OSU to approve a re-assignment or transfer of a Key Person, OSU shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual OSU approves as a replacement for a Key Person is deemed a Key Person under this Contract once Contract is amended.

1. Uniforms and Appearance:

Contractor shall ensure that employees maintain a professional appearance while performing the Services associated with this Contract. All employees providing any of the Services are to be uniformed personnel with name badges or other identification prominently displayed. Contractor will provide and maintain uniforms for employees (except management personnel) and require employees to be attired in uniforms at all times while performing the Services. Selection type, color, and style of uniforms, including specialty uniforms designated to fit the exact nature of the various operations, shall be at the approval of OSU Departmental Administrator. Additionally, the condition of the hygiene and appearance of employees is Contractor’s sole responsibility notwithstanding the fact that the OSU Departmental Administrator shall have the right to comment on and where necessary, cause Contractor to ensure that all employees meet minimum hygiene and appearance standards.

1. Employee Compliance with Requirements:

Contractor’s full time employees engaged in the preparing, handling, serving, and storing food, are required to meet State and Local Health Department requirements. Contractor shall comply with the minimum health requirements provided by law for food and beverage service employees and such other requirements as shall be determined jointly by Contractor and OSU. Contractor shall maintain all records regarding State and Local Health Department requirements and such other requirements agreed upon by OSU and Contractor. Upon request, Contractor shall provide evidence of compliance with requirements to OSU, subject to compliance with applicable laws (including employee privacy laws).

1. Training and Operations.

Contractor must provide its employees and agents with proper instructions and training in customer relations as well as the functional job requirements. All selected Contractor employees and agents are to fully understand that their primary responsibility is to provide service to OSU and its patrons. Contractor shall conduct regularly scheduled training classes for all employees and agents which at a minimum shall include customer service training, and applicable positional skills training such as: banquet service, food merchandising, bartending, food service and food handling. Contractor’s employees who will be providing Alcoholic Beverage Service or monitoring areas where Alcoholic Beverage Service is happening must have a current permit or license as required by the Oregon Liquor Control Commission. Upon request, a detailed record showing which trainings are required and which trainings have been completed by employees and agents shall be provided to OSU.

# PAYMENTS AND REPORTS:

## COMMISSIONS.

1. Fixed Commission:

As part of the consideration for the rights and obligations set forth herein, Contractor will pay OSU a fixed commission of [XXXX] at the beginning of the contract year, which will be July 1 through June 30 (“Contract Year”). Payment of the fixed commission shall be made in full no later than thirty (30) days following the first day of the Contract Year.

1. Percent Commission:

In addition to the fixed commission, Contractor shall pay to OSU a percent commission as follows:

[XXXX] percent [XX%] of Gross Sales.

The percent commission is in addition to and separate from the fixed commission.

1. Gross Sales Defined:

The term “Gross Sales” is defined as the grand total of all sales transactions by the Contractor, their agent, employee or subcontractors, made as a result of providing the Services under this Contract.

1. Minimum Annual Guarantee:

The minimum annual guarantee for the percent commission is [XXXX] dollars per Contract Year. If the minimum annual guarantee for the percent commission is not met by June 30th of each Contract Year, Contractor shall pay the difference between the actual percent commission payments received by OSU and the minimum annual guarantee for the percent commission will be due to OSU by August 15th of the subsequent Contract Year. If the Contract has not been in effect a full Contract Year, the minimum annual guarantee due will be pro-rated accordingly. The fixed commission is not included and will not be considered part of the minimum annual guarantee for the percent commission.

1. Commission Payments.

Percent commission payments shall be due and payable by the fifteenth (15th) day of each calendar month based on the Gross Sales received in the previous month. The fixed commission payment, percent commission payments and Report on Gross Sales shall be addressed to:

OSU Intercollegiate Athletics

Attention: Business Operations

Gill Coliseum

Corvallis, Oregon 97333

## ACCEPTANCE OF PAYMENT.

The acceptance by OSU of any statement by Contractor or of any payment shall not be deemed a waiver of the right of OSU to claim any additional payment after a review and inspection of Contractor’s books and records.

## TAXES.

Contractor is responsible for the collection and payment of any applicable State, City, County, and local sales taxes, license fees, ad valorem or other levies or assessments imposed by said governmental entities as a result of the Contractor’s operations hereunder.

## ADMINISTRATIVE FEE.

Contractor shall pay OSU Procurement, Contracts, and Materials Management an administrative fee of 2% of the Gross Sales under this Contract. This administrative fee includes all sales derived as a result of any business generated from OSU or any other public agencies using this under a permissive cooperative procurement. Administrative fee payments shall be made quarterly in arrears no later than 45 days after the end of each quarter, made payable to “OSU PCMM” and mailed to 644 SW 13th Street, Corvallis OR 97333. Payment shall include a report indicating Contractor’s calculation of the total gross contract volume and the administrative fee.

## REPORTS.

1. Event Report:

Contractor shall deliver an event report detailing Gross Sales at the event, within seventy-two (72) hours following the event to the OSU Department of Athletics Business Operations in a format approved by OSU Departmental Administrator.

1. Report on Gross Sales:

With the payment of the percent commissions, Contractor shall deliver a report showing the amount of Gross Sales during the prior calendar month. The Report on Gross Sales shall include, among other things specified by OSU, all Gross Sales by date, category, location and event.

1. Annual Report:

Not later than forty-five (45) calendar days of the close of each Contract Year during the term of this Contract, Contractor shall furnish to OSU a true and accurate audited financial statement of Gross Sales. The audited financial statement shall include a statement of receipts and shall contain and include (without limitation) a breakdown of Gross Sales. Such statement shall be furnished for every Contract Year in which business was transacted under this Contract during the whole or any part of the year.

## CASH CONTROL AND PCI COMPLIANCE.

1. Cash Control, Inventory Systems and Point-of-Sale:

Contractor, except upon prior written approval, shall use in all areas where sales of Services are made an industry standard cash control system, computerized sales control, and/or point-of-sale systems. Contractor shall provide the number of points-of-sales systems that is adequate for each event and consistent with industry standards. Contractor will provide credit card payment solutions approved by OSU at all retail outlets. Upon request, Contractor shall provide OSU with transaction reports from these systems following an event.

1. OSU’s PCI Compliance Requirements.

Contractor agrees to establish security procedures to protect cardholder data and comply with the Payment Card Industry Data Security Standard. Contractor can find details of the Payment Card Industry Data Security Standard at <https://www.pcisecuritystandards.org/index.php>. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law, Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend OSU and its trustees, officers, and employees from and against any claims, damages, or other harm related to such a breach.

# FURNISHINGS, FIXTURES AND EQUIPMENT:

## CONTRACTOR TO SUPPLY FURNISHINGS, FIXTURES AND EQUIPMENT.

All furnishings, fixtures and equipment required to provide the Services under this Contract shall be supplied by Contractor at its sole expense. Furnishings, fixtures and equipment provided by Contractor that are not affixed to the Athletic Facilities, shall be considered Contractor-Owned Equipment. Furnishings, fixtures and equipment affixed to the Athletic Facilities shall be considered a facility improvement and will become property of OSU upon installation. If, upon termination of the Contract, OSU does not renew said Contract, Contractor shall have the right to remove Contractor-Owned Equipment, less any facility improvements, and shall be allowed a period of fifteen (15) calendar days to complete such removal. If not removed within that period, Contractor-Owned Equipment shall become the property of OSU.

## OSU-OWNED FURNISHINGS.

OSU owns the furnishings and fixtures affixed in the Locations (collectively referred to herein as the “OSU-Owned Furnishings”.) OSU will provide the OSU-Owned Furnishings for Contractor’s use without charge; provided, however, that OSU-Owned Furnishings shall remain the property of OSU. Contractor may not remove, relocate or discard OSU-Owned Furnishings. Contractor acknowledges and agrees that it has inspected OSU-Owned Furnishings and agrees to accept OSU-Owned Furnishings, in the condition in which they are found by Contractor, at the initial execution of the Contract. All OSU-Owned Furnishings are provided without warranty of any kind, and Contractor expressly assumes all liability for use of OSU-Owned Furnishings.

## MAINTENANCE FOR OSU-OWNED EQUIPMENT.

Contractor shall keep OSU-Owned Furnishings in first-class, operable and presentable condition (except ordinary wear and tear). Contractor shall provide for the maintenance, repair and replacement of OSU-Owned Furnishings as required for Contractor’s provision of the Services. OSU is not responsible for any costs
associated with the maintenance, repair or replacement of OSU-Owned Furnishings.

## GOSS STADIUM FURNISHINGS, FIXTURES AND EQUIPMENT.

Nothwithstanding the foregoing, Contractor is not responsible for providing or maintaining furnishings and fixtures within Goss Stadium. Contractor is only required to provide and maintain their own equipment necessary to provide concessions for OSU Baseball regular season, March through May. Contractor is expected to remove their equipment and leave the facility clean and broom swept at the end of the OSU baseball season. Contractor will work with OSU Departmental Administrator to have the facility inspected at the end of the OSU baseball season to verify condition. Damage or repair to furnishings and fixtures in Goss Stadium due to Contractor’s use, excepting normal wear and tear, will be Contractor’s sole responsibility.

## RISK OF LOSS:

Contractor shall bear the full and complete responsibility for all risk of damage or loss of any of the furnishings, fixtures, equipment or products used by Contractor to provide the Services resulting from any cause whatsoever and shall not penalize OSU or its affiliates for any losses incurred in association with this Contract. OSU shall not be responsible for any damage to any of the furnishings, fixtures, equipment or products in cases of theft, vandalism, power failure or other acts beyond the control of OSU.

# LOCATIONS, USES AND PRIVILEGES

## LOCATIONS, PURPOSE AND ACCESS.

1. LOCATIONS:

OSU agrees that it will make the Locations shown in **Attachment A** reasonably available, as is, where is, to Contractor for the purposes of the Contract. Contractor may inspect said Locations, and accepts same. Contractor shall use and occupy only those Locations identified in the Athletic Facilities shown in **Attachment A** and only for the purpose of providing the Services described in this Contract. It is further agreed and understood that Contractor shall be permitted a nonexclusive license to use, but not occupy, other common areas such as, but not limited to: existing concourses, aisles, doorways, hallways, driveways and access to the Athletic Facilities in connection with the operation of the Services identified hereunder. OSU will also furnish to Contractor, space permitting, an office space for on-site management of the Contract.

Nothing herein shall be construed to prevent OSU from temporarily or permanently altering, closing, removing, or reducing the size or capacity of any Location or Athletic Facility, or from moving events. Nothing herein shall be construed to prevent OSU from discontinuing, temporarily or permanently, any teams or sports. Contractor and its subcontractors shall take good care and maintain Locations, excepting reasonable wear and tear. If OSU deems a Location to be in disrepair due to damage, neglect, or negligence by Contractor or its subcontractors, OSU reserves the right to make repairs to such Location at Contractor’s expense.

1. Purpose:

Contractor shall use and occupy the Locations described in **Attachment A** solely for the business and purpose described in this Contract and for no other business or purpose. Use of these Locations or office spaces for purposes other than performance of the Services under this Contract, shall result in grounds for termination of the Contract in addition to all other remedies available to OSU.

1. Portable Concession Sites and Storage:

Areas for any and all portable concession sites and storage spaces not identified in **Attachment A**, and required by Contractor, shall be approved by the OSU Departmental Administrator; provided, however, that Contractor shall acquire no rights to the area, it being understood by the parties that OSU reserves the right to require Contractor to relocate from areas or remove equipment from storage spaces to accommodate event requirements.

1. Contractor Access to Athletic Facilities:

The right of access for personnel shall be limited to the Locations and those parts of OSU’s Athletic Facilities available for common use, but shall not include a right of access to other parts of the Athletic Facilities. Contractor and its employees shall be entitled to enter upon and remain in the Locations for work purposes only during event or functions at the Athletic Facilities; and for a reasonable time prior to and subsequent to events; and non-event days for administrative and preparation purposes; and only for the purpose of exercising the rights and privileges required to fulfill the duties of the Contract. This paragraph shall not exclude Contractor reasonable access to office areas for the conduct of normal business activities associated with the Contract. Contractor will be responsible for requiring employees to abide by all instructions, regulations, and codes as specified by OSU.

1. Right to Refuse Access:

OSU shall have the right to refuse access at any time to Contractor, its employees, agents, subcontractors, or suppliers. The exercise of this right by OSU shall not diminish Contractor’s obligation of performance arising under this Contract, provided that OSU shall allow Contractor to have access at times sufficient to fulfill said obligation.

1. Access:

OSU shall provide access to the OSU Athletic Facility for Contractor’s use in the performance of work under the Contract. If keys are issued, Contractor shall maintain a record of the keys issued to Contractor’s employees or agents. Contractor shall not have additional keys cut. Upon request, Contractor shall provide an accounting of all keys issued. Contractor shall return all keys immediately to OSU upon termination or cancellation of the Contract. Contractor shall be responsible for the cost of re-keying if any assigned keys are lost or not accounted for.

1. Right of Entry Reserved:

OSU, through its agents and/or employees, representatives, and contractors, shall have the continual right to enter all portions of the Locations to inspect the same, to observe the performance of Contractor of its obligations under this Contract, to conduct inspections and/or audits, and to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the Locations, or to do any act or thing which OSU may be obligated or has the right to do under this Contract or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of OSU under this Contract.

No abatement of any payments by Contractor shall be claimed by or allowed to Contractor by reason of the exercise of any of the rights set forth in this Section; provided, however, that in the exercise of the foregoing rights, OSU shall not interfere in Contractor’s business activities nor shall OSU assert any nonperformance by Contractor of its responsibilities hereunder as a result of the exercise by OSU of such rights. Nothing in this Section shall impose or shall be construed to impose upon OSU any obligations to construct or maintain or make repairs, replacements, alterations, additions, or improvements or shall create any liability for any failure to do so.

OSU agrees that it will make ordinary inspections and undertake other non-emergency activities only at reasonable times, provided, however, that nothing in this Section shall be construed to limit or diminish OSU’s right of entry at any time in an emergency, as determined by the OSU Departmental Administrator.

1. Operations Observations:

OSU shall have the right to observe any transaction(s) between Contractor and the public involving any Services authorized hereunder for the purposes of determining the quality of Services offered to the public, the prices charged therefor and the accountability of the Gross Sales received therefrom. OSU shall also have the right to make any and all examinations, tests, measurements, weighings, etc. as it may desire of all materials, food and supplies in Contractor’s possession and to be sold by Contractor, in order to determine their quality and quantity.

## UTILITIES.

1. OSU Supplied Utilities:

OSU shall furnish, at no expense to Contractor, all electricity, gas, garbage, recycling, water, and drainage utilities necessary to fulfill the Services under the Contract. Contractor shall make best efforts to practice prudent energy management and water conservation satisfactory to the OSU Departmental Administrator.

1. Contractor Supplied Utilities:

All telephone and internet service necessary to provide Services under the Contract will be the responsibility, and at the sole cost, of the Contractor. Telephone and internet services may be available for purchase from OSU Information Services. If Contractor obtains services from OSU Information Services, Contractor shall arrange for and pay OSU Information Services directly for those services.

1. OSU Limited Liability:

Anything herein to the contrary notwithstanding, OSU shall not be liable or responsible for any failure to furnish utility services, whether occasioned by strike or other work stoppage; federal, state or local government action; breakdown or failure of apparatus, equipment or machinery employed in supplying the said services; any temporary stoppage for the repairs, improvements or enlargement thereof or any act or condition beyond its reasonable control. OSU shall not be responsible for any products or equipment stored within the Athletic Facilities, nor will OSU be responsible for damage resulting from a power failure, flood, fire, explosion or other causes.

## WASTE, RECYCLING AND CLEANLINESS.

1. Garbage:

Contractor shall transport all garbage, waste materials (including grease) and recycling from Locations to OSU Athletic Facility’s dumpster, compactor or recycling area in a manner and by a route designated by the OSU Departmental Administrator. The cost of any repair of damage to floors, walls, windows, or other property by reason of Contractor’s negligence in transporting garbage or waste materials, or due to Contractor’s willful misconduct, will be the responsibility of Contractor. OSU is responsible for removal of trash and recycling materials from the OSU Athletic Facility’s dumpster, compactor or recycling areas.

1. Grease:

Contractor must keep grease in containers for disposal by Contractor and must not discharge any grease into floor drains. If Contractor fails to comply with this provision, any cost, charge, or expense involved in opening, cleaning, or repairing of drains shall be paid by Contractor. Contractor expressly agrees to comply with all codes, ordinances, regulations, and laws regarding environmental health and safety matters, including the use and disposal of chemical or caustic cleaning agents.

1. Recycling of Waste Materials:

Contractor will comply with applicable laws, ordinances, rules, regulations, or policies concerning recycling and waste materials that are in effect during the term of this Contract. Contractor shall collect, sort, and separate into such categories as may be required, all solid waste products, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by OSU, which receptacles shall be dumped or removed from the OSU Athletic Facility’s dumpster, compactor or recycling areas, at such minimum frequency as is specified by OSU.

OSU reserves the right to refuse to collect or accept from Contractor any waste product that is not sorted and separated as required by law, ordinance, rule, regulation or policy, and to require Contractor to arrange for the collection of the same. Contractor shall pay all costs, fines, penalties, and damages that may be imposed on OSU or Contractor as a consequence of Contractor’s failure to comply with the provisions of this subsection.

1. Zero Waste Goal:

OSU has identified a goal of achieving zero waste (less than 10% of waste to landfills) at the OSU Athletic Facilities.  In due course, Contractor and any subcontractors may be required to exclusively use reusable, recyclable, or Biodegradable Products Institute certified compostable food service ware, containers, and packaging within the Athletic Facilities. OSU’s Contract Administrator will provide Contractor with at least nine months’ written notice prior to implementing this provision to allow for existing stock depletion, new stock selection, menu changes, price adjustments and any other modifications required as a result of implementing this provision.

1. Cleaning, Inspection and Sanitation.

Contractor will maintain all Locations and all equipment, fixtures, paraphernalia, material, utensils, and other items therein, in a clean and sanitary condition and comply with all applicable health and sanitation laws and regulations in effect. Contractor will be responsible for cleaning the areas in and around the vicinity of all concessions stands. Total clean-up should be completed no later than 5:00 p.m. on the day following any event. Contractor will be responsible for effective cleaning and vermin control measures in Contractor identified service and storage areas. OSU reserves the right to enforce specific garbage removal, cleaning and vermin control requirements. Should Contractor not clean these areas or maintain effective vermin control measures to the satisfaction of OSU, OSU may have the areas cleaned and controlled at the expense of the Contractor. Contractor shall at all times permit and facilitate inspection of the foodservice operation by OSU and its representatives and by authorized public authorities. Contractor will promptly cure any violations or deficiencies noted by such health officials during such inspections.

## FACILITY IMPROVEMENTS, ALTERATIONS AND REPAIRS.

Contractor is responsible, at its sole expense, for any improvements, alterations and repair of the Locations occupied by Contractor for performance of the Services hereunder, excepting Goss Stadium. Contractor shall not make improvements, alterations or repairs, without obtaining the written consent of OSU first. Improvements, alterations and repair may be subject to Oregon Bureau of Labor and Industries Prevailing Wage Rates.

OSU reserves the right to review and approve any plans for improvements, alterations and repairs, including the design, color and suitability. Any improvements, alterations and repairs shall be performed by a contractor licensed and registered by the Oregon Construction Contractor’s Board and will be made in conformity with the laws and rules and regulations prescribed by any Federal, State or municipal authority having jurisdiction over the location of the work. Contractor shall not authorize or cause to be filed any liens on the Athletic Facilities.

All work done by Contractor, or on its account, shall be of first class quality in both materials and workmanship in accordance with the plans and specifications approved for the same by OSU. Contractor shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by OSU which is not done in accordance with such plans and specifications as approved by OSU.

# INSURANCE, LIABILITY AND BONDS:

## GENERAL LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of $2,000,000 per occurrence and $4,000,000 aggregate.  Such insurance policy is to be issued by an insurance company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU.  OSU and its officers, board members, employees, and agents shall be included as additional insured in said insurance policy.

## AUTOMOBILE LIABILITY INSURANCE.

Contractor shall obtain, at Contractor’s expense, and keep in effect during the term of this contract, Automobile Liability Insurance.  This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance.  Coverage limits shall not be less than $2,000,000 combined single limit per occurrence.

## PROPERTY INSURANCE.

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for providing the Services and all property that is stored at OSU.

## LIQUOR LIABILITY.

Contractor shall maintain limits of $3,000,000 per claim and $3,000,000 policy aggregate limit, which coverage may be provided pursuant to the Commercial General Liability insurance policy described above provided that a limit of $3,000,000 specific to liquor liability is included in said policy.

## EMPLOYEE DISHONESTY AND, WHEN APPLICABLE, MONEY AND SECURITIES.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the contract, Employee Dishonesty and, when applicable, Inside/Outside Money and Securities coverages for OSU-owned property in the care, custody, and control of Contractor. Coverage limits shall not be less than $10,000. The policy shall include as loss payee or additional insured Oregon State University.

## PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and OSU’s insurance is excess and solely for damages or losses for which OSU is responsible.

## WORKERS’ COMPENSATION.

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

## CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the OSU Contract Administrator, upon request. The Certificate(s) will specify all of the parties who are Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from acceptable insurance companies or entities. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

## NOTICE OF CANCELLATION OR CHANGE.

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to OSU, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.  Such notice shall be sent directly to OSU. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify OSU of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers’ notification to that effect.

# INDEMNIFICATION:

## INDEMNITY.

1. Contractor shall indemnify and hold harmless OSU and its officers, board members, employees, agents and other representatives against claims, expenses, or losses: (i) that result from Contractor’s negligence, wrongful acts or willful misconduct, or (ii) alleging Contractor’s services, information or materials supplied by Contactor to OSU under this Contract, or OSU’s use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party.
2. OSU’s right to receive indemnification under this Section is conditioned upon OSU giving reasonably prompt notice and assistance of any claim; provided however, that OSU’s failure to provide notice and assistance does not limit OSU’s right to indemnification except to the extent such failure or assistance materially affects Contractor’s ability to defend the claim.
3. Contractor’s indemnification obligation under this Section includes but is not limited to all of OSU’s expenses of litigation, court costs and reasonable attorney fees.

## DEFENSE.

1. Contractor shall have control of the defense with counsel reasonably acceptable to OSU, except that: (i) OSU may join the defense with its own counsel and at its own expense if OSU determines there is a conflict of interest or there is an important government principle at issue, and (ii) OSU’S consent is required for any settlement that requires OSU to pay any money, does not release OSU from all liability from the claim, or adversely affects OSU’s interest.

# LAWS AND POLICIES:

## APPLICABLE LAW; JURISDICTION AND VENUE.

1. The laws of the State of Oregon (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Oregon for Benton County. The parties consent to in personam jurisdiction in the above court and waive any objection to venue and any objection that the forum is inconvenient.

## COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.

1. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable standards and policies of OSU, including without limitation any such laws or regulations regarding employment discrimination.  If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.
2. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

## FEDERALLY REQUIRED PROVISIONS.

1. Equal Employment Opportunity – Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. Rights to Inventions Made Under a Contract or Agreement – If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
3. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – If this Contract provides for payments in excess of $100,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
4. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an contract of more than $100,000 shall file a certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall require any subcontractor who applies or bids for subcontract in excess of $100,000 to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier shall also disclose any lobbying with non-Federal funds in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
5. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If this Contract is in excess of the small purchase threshold, Contractor hereby certifies they are not listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs.

## PUBLIC RECORDS LAW NOTICE.

OSU advises Contractor that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.410-192.505).

## SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers’ Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR ch. 437, for the products subject to this provision.

## FIREARMS POLICY.

OSU has a policy that prohibits Contractor and Contractor’s employees, agents, and subcontractors from possessing firearms on OSU property.

## PARKING.

Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU’s Office of Transit & Parking Services.

## SEXUAL HARASSMENT POLICY.

OSU has policies that prohibit sexual harassment of members of the OSU community and in keeping with those policies Contractor and Contractor’s employees, agents, and subcontractors are prohibited from engaging in sexual harassment of members of the OSU community.

## SMOKING POLICY.

OSU has a policy that prohibits Contractor and Contractor’s employees, agents, subcontractors from smoking on the OSU campus or other OSU owned property. The smoking prohibition includes all indoor and outdoor spaces.

## WEBSITE ACCESSIBILITY.

If Contractor is designing or developing web page(s) for OSU under this Contract, Contractor shall design and develop (as applicable) the web page(s) in conformance with OSU’s Policy on Information Technology Accessibility available at <http://oregonstate.edu/accessibility/ITpolicy>.

# GENERAL TERMS AND CONDITIONS:

## ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

## NO THIRD PARTY BENEFICIARY.

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties

## ASSIGNMENT/SUBCONTRACT/DELEGATION.

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties is prohibited under this Section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU’s consent to delegation does not relieve Contractor of any of its performance obligations.

## WAIVER.

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy or condition.

## ACCESS TO RECORDS AND AUDIT.

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, “Records”) following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU and the federal government and their respective duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU’s review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

OSU shall have the right to an independent third-party audit of the Contractor’s records associated with or related to the goods or services provided for under this Contract. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

## GOVERNMENT EMPLOYMENT STATUS.

Contractor certifies that either (a) it is not currently employed by OSU or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to OSU in writing such employment status, is in full compliance with any statutes, regulation, and OSU or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless OSU for any failure by Contractor to comply with such statutes, regulations, or policies.

## INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265. Contractor has no authority to act on behalf of OSU and shall not purport to make any representation, contract, or commitment on behalf of OSU.

## NOTICE.

1. A party giving or making any notice, request, demand or other communication (each a “Notice”) pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party’s address as listed on the signature page of this Contract. Notice to OSU is to be delivered to the Contract Administrator and Departmental Administrator except where this Contract expressly directs or permits delivery of Notice to a different Department.
2. Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this Section.

OSU Contract Administrator and: OSU Departmental Administrator

OSU PCMM [Name]

ATTN: TG168647 Contract Administrator [Title]

644 SW 13th Street [Address]

Corvallis, OR 97333 [City, State, Zip]

Telephone: (541) 737-4261 Telephone: [Phone Number]

Fax: (541) 737-2170 Fax: [Fax Number]

E-mail: pacs@oregonstate.edu E-mail: [E-Mail Address]

CONTRACTOR Contract Administrator

[To be determined]

## OSU NAME AND TRADEMARK.

Contractor shall not identify this Contract, nor use OSU’s names, trademarks, service marks, or other proprietary marks in any of Contractor’s marketing material, advertising, press releases, publicity matters or other promotional materials without the prior written consent of OSU, which consent may be withheld in OSU’s sole discretion.

## SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor’s sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor’s income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non‑payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

## FORCE MAJEURE.

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party’s reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

## MWESB REPORTING.

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

**Disabled Veteran Enterprise** means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

**Disadvantaged Business Enterprise (DBE)** is a small business with average annual gross receipts less than $17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

**Emerging Small Business**, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed $3,266,219 for construction and $1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

**Minority Business Enterprise**, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

**Women Business Enterprise,** (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract.  This report will be provided on an annual basis to OSU.  This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

## *(OPTIONAL CLAUSE: Include the following only if Contractor agrees in Exhibit B - Certifications, Section IV. Permissive Cooperative Procurements.) PERMISSIVE COOPERATIVE PROCUREMENTS.*

Contractor agrees to make prices offered under this Contract available to other public agencies upon the same terms and conditions set forth in this Contract. The prices offered to other public agencies shall be at the same rate as offered to OSU. OSU does not guarantee purchases from any other public agencies. Any such purchases by a public agency other than OSU are directly between the Contractor and the other public agency. The other public agency enjoys the same obligations and rights as OSU under this Contract, except for the Administrative Fee which shall be paid to OSU and not to the other public agency. Contractor shall provide written notification to OSU when a new public agency begins utilizing this Contract. The total expenditures of other public entities shall be included in the volumes reported to OSU and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU and other public entities collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU.

## EXECUTION AND COUNTERPARTS.

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

## SURVIVAL.

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

## SEVERABILITY.

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

## MERGER.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

# CERTIFICATIONS AND SIGNATURES:

This Contract must be signed in ink by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

1. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
2. Contractor is not a contributing member of the Public Employees’ Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers’ compensation or the Public Employees’ Retirement System, except as a self-employed individual.
3. Pursuant to OSU Standard 580-061-0030 Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

**CONTRACTOR:**

Signature: Date:

By:

Title:

**OSU:**

Signature: Date:

By:

Title:

**ATTACHMENT A**

**OSU ATHLETIC FACILITY INFORMATION**

The Athletic Facilities covered by this Contract, and noted on the map below, include:

1. Reser Stadium
2. Valley Football Center
3. Merrit Truax Indoor Practice Facility
4. Gill Coliseum
5. Goss Stadium
6. Whyte Track and Field Center
7. Softball Complex
8. Paul Lorenz Field



**1**

**2**

**4**

**5**

**6**

**7**

**8**

**3**

The Locations within the Athletic Facilities where the Contractor may provide Services are enclosed in boxes within the following drawings.

***[See separate document titled “Attachment A - Athletic Facility Locations”]***

**ATTACHMENT B**

**ATHLETE TRAINING TABLES**

1. ATHLETE TRAINING TABLE SERVICE.

Contractor will provide service of an Athlete Training Table at the Valley Football Center on days and times as coordinated between Contractor and the OSU Intercollegiate Athletics Department (“Department”). Contractor will work with Department to develop delicious, healthy and balanced meals for the Athlete Training Table to meet the unique nutritional demands of NCAA athletes. The Athlete Training Table is to be open and available to both athletes and the public and Contractor will display sufficient signage to advertise the Athlete Training Table’s days and hours of operation.

Department will provide Contractor with a list of athlete’s names and will inform Contractor of the number of daily meals authorized as billable to the Department. Athlete’s that exceed the number of daily meals authorized as billable to the Department, are responsible for paying Contractor directly at the advertised rate.

Contractor is responsible for recording on the list which athletes have eaten at the Athlete Training Table and what meal(s) were eaten. Contractor will also keep track of the total number of meals served from the Athlete Training Table, including both the meals authorized as billable to the Department and meals served to the public. Contractor will return the list to Department as supporting documentation for Athlete Training Table invoices along with the total number of all customers (athletes and public) served for each meal service.

If the total number of meals served from the Athlete Training Table exceeds the minimum guarantee indicated below, Contractor will only bill Department for the meals authorized as billable to the Department and recorded on the list. If the total number of meals served from the Athlete Training Table does not exceed the minimum guarantee indicated below, Contractor will bill Department for the minimum guarantee.

Meals authorized as billable to the Department will be billed at the per-person flat rates listed below.

|  |  |  |
| --- | --- | --- |
| **Meal** | **Flat Rate****Per-Person** | **Minimum** **Guarantee** |
| Breakfast | TBD | TBD |
| Lunch | TBD | TBD |
| Dinner | TBD | TBD |

There will be no increase in the per-person Flat Rate or the minimum guarantee listed above during the initial term of the Contract. For subsequent annual renewal terms, Contractor may request an increase of the Flat Rate in direct correlation with the percentage increase of the preceding calendar year’s published Annual Average CPIU for Portland-Salem OR-WA (hereinafter “CPIU Annual Average”). Requests for an increase must be sent to OSU Contract Administrator by April 1st of each calendar year including documentation showing the CPIU Annual Average and calculations for the new Flat Rate. Flat Rate increases will be effective July 1st for the subsequent annual renewal term and must be made through written amendment to the contract signed by both parties.

**ATTACHMENT C**

**POURING AND PROMOTION RIGHTS**

1. PEPSI POURING RIGHTS.

OSU currently has a pouring rights contract for Beverages with Pepsi Cola of Corvallis (“Pepsi”) through June 30, 2020 and no other brand of competing Beverages may be served by Contractor or any subcontractors. “Beverage” means all canned, bottled or syrup-based non-alcoholic and non-fresh-brewed coffee beverages which Pepsi sells. “Beverage”, under the terms of this Contract, does not include dairy, fresh squeezed juice, brewed coffee or tea, or any barista prepared drinks or isotonic beverages. Conflict in the determination of what constitutes a Beverage will be resolved by OSU.

All equipment required by Contractor to be able to sell Pepsi’s product will be supplied, installed, serviced and maintained by Pepsi, at no cost to Contractor. Contractor shall contact Pepsi directly for service and maintenance requests. Contractor is required to purchase fountain cups from Pepsi at national pricing level, except for Contractor’s own plastic souvenir cups that shall have no beverage advertising displayed on them that competes with Pepsi. Contractor will work directly with Pepsi to determine the levels of Pepsi service personnel needed at events held within Athletic Facilities to which Contractor is providing Services.

1. GATORADE PLAYER’S AREA RIGHTS.

OSU has a pre-existing agreement that contractually binds OSU to exclusively place and utilize Gatorade identified cups, coolers, ice chests, squeeze bottles, sideline carts, towels and other innovated equipment or product later developed by Gatorade for purposes of storing, distribution, and using product (“Gatorade Merchandise”) within the courtside area, players’ bench area, locker rooms, pre- and post-game interview areas/rooms and sidelines (“Players Area”) at all OSU intercollegiate home and away athletic events, including all pre-season games, regular-season games, post-season games and exhibitions (the “Games”), and subject to NCAA guidelines and regulations regarding individual player endorsements.

The agreement with Gatorade also restricts OSU from granting any third party rights to sell or advertise Competitive Products at games and as such Contractor will not sell or advertise Competitive Products. “Competitive Products” shall include all beverage, smoothie, powder, bar, confectionary, gel, tablet, strip, concentrate and/or syrup (the “Forms”) products that are marketed and/or promoted as enhancing athletic performance, muscle development and/or aiding the recovery process within each of the need states outlined below:

* 1. Fluid and Electrolyte Replacement (Hydration) – all Forms, whether carbonated or non-carbonated sports drinks, sports beverages, isotonics, electrolyte and fluid replacement beverages and/or supplements that compete with Gatorade Thirst Quencher, G2, Gatorade Endurance Formula, or GatorLytes Electrolyte Supplement, including, but not limited to Powerade, All-Sport, FRS, coconut waters, Accelerade, PowerBar Endurance, Enlyten Sports Strips, Rehydralyte, Sustain, Herbalife24 Hyrdate, and Herbalife H30 Fitness Drink;
	2. Energy – all Forms that deliver energy to the body through ingredients like carbohydrates that compete with Gatorade Prime products including, but not limited to, Carbo Pro, Five Hour Energy, EAS Endurathon, Clif Shot Bloks, SK Energy Shots, PowerBar Gel, Herbalife 24 Prolong, AdvoCare Spark, AdvoCare Rehydrate Gel, and Xenergy Performance Energy Drink;
	3. Nourishment – all Forms that provide nutrition to the body through ingredients like carbohydrates, vitamins, or protein that compete with Gatorade Nutrition Shake, or Gatorade Nutrition Bar, including, but not limited to, Boost, GO!, EAS Myoplex Sport, Clif, Nature Valley, PowerBar Performance, and Snickers Marathon;
	4. Health – all Forms that aid in maintaining or improving healthy muscles, joints, and bones through ingredients like carbohydrates, protein, vitamins, antioxidants, glutamine and glucosamine; and
	5. Enhanced Hydration (Waters) – all packaged hypertonic, hypotonic or isotonic products, regardless of Form that are enhanced (other than with trace amounts) with oxygen, flavor, caffeine, vitamins, minerals, protein and/or carbohydrates and are marketed and/or promoted as a sports performance beverage that compete with Propel® Water Beverage, including, but not limited to, Pentahydrate, Powerade Option, Mio, Aquafina Flavorsplash, Fruit2O, Glaceau VitaminWater and Glaceau SmartWater, but excluding plain or pure water such as Dasani, Evian, and Aquafina as they are currently formulated.

The following are Non-Competitive Products

1. OSU and Gatorade both acknowledge that Protein Recovery products (i.e. Muscle Milk) are not covered in the above categories; and
2. OSU and Gatorade both acknowledge Energy drinks that deliver energy to the body through caffeine (i.e. AMP, 5-hour ENERGY®) are not covered in the above categories.
3. PROMOTION, ENDORSEMENT, ADVERTISING AND SPONSORSHIP RIGHTS.

OSU retains and controls all promotion, endorsement, advertising and sponsorship rights. OSU has contracted with Beaver Sports Properties (“BSP”) to seek, negotiate and manage agreements for these rights, including exclusive agreements. BSP’s right to create such exclusive agreements is solely for the promotional, endorsement, advertising or sponsorship agreements and does not include the right to create exclusive food and beverage service agreements or bind Contractor to exclusive food and beverage providers. Contractor is not required to serve, purchase product or subcontract with those companies that have agreements with BSP.

While Contractor is not required to, OSU would like for the Contractor to work with OSU and Beaver Sports Properties, to determine ways in which OSU and Beaver Sports Properties may enhance the relationship with existing Sponsors through the Services provided by Contractor in this Contract and to identify any possible new sponsorships for corporate partnerships. At the time of contract execution, Beaver Sports Properties has food or beverage athletics sponsorships with the following companies:

|  |  |
| --- | --- |
| * Buffalo Wild Wings
 | * Miller/Coors
 |
| * Carl’s Jr.
 | * Pop Chips
 |
| * Cosmos
 | * Qdoba
 |
| * Dutch Bros Coffee
 | * Reser’s Fine Foods
 |
| * Jack in the Box
 | * St. Michelle Wines
 |
| * McDonald’s
 | * Umpqua Dairy
 |

**ATTACHMENT D**

**CATERING SERVICES MENU AND PRICE LIST**

[To be added after contract award and upon final approval by OSU.]