

## TAILGATE SITE AND SERVICES AGREEMENT

This Tailgate Site and Services Agreement, including the Rules and Regulations set forth in Exhibit A (collectively, the “Agreement”), by and between Tailgate Guys, LLC (“TAILGATE GUYS”) and you is effective upon the date on which you agree hereto and pay any required amounts referenced in Section 2 herein (the “Effective Date”). For simplicity herein, we refer to you (i.e., the person or entity purchasing the products or services from Tailgate Guys) as “CLIENT” and “CLIENT’S” or “you” and “your.”

WHEREAS, Tailgate Guys operates a business, which provides tailgating products and services that are designed to increase the quality of the tailgate experience and ease the burden on fans with regard to game day setup; and

WHEREAS, Client has or desires to reserve a tailgate spot and purchase certain products and services from TAILGATE GUYS for event(s) located at or near The Ohio State University (“Property”), pursuant to the terms hereof.

NOW, THEREFORE, In consideration of the mutual covenants and promises herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, TAILGATE GUYS and CLIENT hereby agree, as follows:

1. TAILGATE SERVICES. In consideration of the payments to be made to TAILGATE GUYS as provided herein and the terms, covenants and conditions set forth in this Agreement to be observed and performed by CLIENT, TAILGATE GUYS will provide for each home game or games reserved reflected on the invoice/reservation a tailgate tent, chairs, tables, and other products and services more particularly described on the invoice/reservation, which includes Site setup and tear-down, operation management and all labor required in connection therewith (collectively, the “Tailgate Services”). TAILGATE GUYS shall determine the exact location of CLIENT’S tailgate Site (the “Site”), which may be relocated from time-to-time in TAILGATE GUYS reasonable discretion to accommodate ESPN Game Day, Big Ten Network or other Property sanctioned events, to adjust for space availability or for other reasons or circumstances. In each case, TAILGATE GUYS will take into consideration CLIENT’S request for a particular location. CLIENT is not entitled to a refund for its tailgate package or related tailgate services (e.g. media packages), excluding catering or beverage service, due to any failure of caterer or beverage service provider.
2. PACKAGES
  - a. CLIENT has purchased one or more of the following packages (the “Package”) as Full Season, Single Game or Bundled Packages from TAILGATE GUYS as reflected in the order placed with TAILGATE GUYS by CLIENT and incorporated herein by reference upon payment therefore:
    - (i) Varsity
    - (ii) Letterman
    - (iii) All-American
    - (iv) Club
  - b. The Tailgating Services provided by TAILGATE GUYS pursuant to this Agreement may, at the option of CLIENT and subject to availability, include a media package comprised of a television, stand, connection to a satellite, connection to a receiver, and power source (a “Media Package”). CLIENT acknowledges and agrees that TAILGATE GUYS has no control over television broadcasts and shall not be held accountable for any channel “blackouts” caused by

contract disputes or any lack of service due to inclement weather or other availability issues. In the event of services issues resulting from setup or technical matters not covered in the aforementioned terms of this paragraph, any refund for services is limited to either the amount separately invoiced or the portion of a tailgate package price related to media package(s) based on TAILGATE GUYS's current, standard rates for similar service as sold separately to the general public.

3. **PAYMENT.** In consideration of the Tailgate Services to be provided by TAILGATE GUYS, CLIENT shall pay the amount for the Packaged purchased by CLIENT (the "Package Price").
  - a. **Full Season Packages.** In order to reserve the Site for the entire season, CLIENT must pay to TAILGATE GUYS fifty percent (50%) of the Package Price immediately. If payment is not made within seven (7) days of the Effective Date, CLIENT may not be able to reserve the Site. The balance of the Package Price shall be due on the July 1 preceding the applicable football season. If the order is on or after June 15, the entire balance of the Package Price shall be immediately due and payable. **If any payment due has not been received within seven (7) days of its due date, TAILGATE GUYS reserves the right to terminate this Agreement.** If any payment is made by credit card, e-check or ACH, TAILGATE GUYS may, but shall not be required to, automatically process the payment for any remainder of the Package Price at any time on or after July 1st, and CLIENT hereby authorizes such charges.
  - b. **Single Game Packages.** In order to reserve the Site for a single game, CLIENT must pay to TAILGATE GUYS one hundred percent (100%) of the Package Price immediately. If payment is not made within seven (7) days of the execution of this Agreement, CLIENT may not be able to reserve the Site. If any payment is made by credit card, e-check or ACH, TAILGATE GUYS may, but shall not be required to, automatically process the payment for any remainder of the Package Price at any time, and CLIENT hereby authorizes such charges.
  - c. **Bundled Game Packages (more than one game, but less than a full season).** In order to reserve the Site for a bundled package offering by Tailgate Guys, CLIENT must pay to TAILGATE GUYS one hundred percent (100%) of the Package Price immediately. If payment is not made within seven (7) days of the Effective Date, CLIENT may not be able to reserve the Site. If any payment is made by credit card, e-check or ACH, TAILGATE GUYS may, but shall not be required to, automatically process the payment for any remainder of the Package Price at any time, and CLIENT hereby authorizes such charges
4. **CLIENT CANCELLATIONS. ALL SALES OF PACKAGES ARE FINAL. IF CLIENT CANCELS THIS AGREEMENT FOR ANY REASON TAILGATE GUYS SHALL NOT BE OBLIGATED TO REFUND ANY PAYMENTS MADE BY CLIENT TO TAILGATE GUYS FOR THE PURCHASE OF ANY PACKAGE. TAILGATE GUYS WILL CONSIDER, AT ITS SOLE DISCRETION, CREDITING A CLIENT'S PACKAGE PRICE TOWARDS PACKAGE(S) FOR FUTURE EVENTS. CLIENT'S INABILITY FOR ANY REASON TO BE PRESENT FOR THE TAILGATING SERVICES DUE TO TRAVEL-RELATED DELAYS (INCLUDING BUT NOT LIMITED TO INCLEMENT WEATHER AT THEIR HOME LOCATION OR EN ROUTE TO THE EVENT) OR ANY OTHER REASON DOES NOT ENTITLE CLIENT TO A REFUND.**
5. **GAME CANCELLATIONS, FORCE MAJEURE EVENTS, SUSPENSION OR CANCELLATION OF TAILGATE SERVICES.**

- a. **Game Cancellations.** If a game for which CLIENT has purchased Tailgate Services is cancelled for any reason other than for the occurrence of an Event of Force Majeure and is rescheduled, TAILGATE GUYS agrees to provide the Tailgate Services to CLIENT on the date of the rescheduled game if that the game is in the same football season or another game within the season if availability exists, subject to applicable conditions, authority and regulations. CLIENT is not entitled to a refund, if the game is not rescheduled; however, TAILGATE GUYS will give CLIENT a credit equal to one hundred percent (100%) of the cost of the Tailgate Services that were to be provided at the cancelled game, which credit may be applied toward any Tailgate Services purchased by CLIENT for a future game in the current or following season, subject to availability.
  - b. **Force Majeure Events.** “Event of Force Majeure” means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, weather, pandemic, epidemic, fire, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order, government or Property restrictions, decisions and regulations, insurrections or any other occurrence beyond the reasonable control of the party in question that may affect performance of services under this Agreement. TAILGATE GUYS shall not be held liable for any delay or default in performing hereunder due the occurrence of an Event of Force Majeure, and CLIENT does hereby release TAILGATE GUYS from any claim for damages arising therefrom. If an Event of Force Majeure occurs and results in (i) cancellation of an event for which CLIENT has purchased Tailgate Services, TAILGATE GUYS will credit CLIENT one hundred percent (100%) of the payment made by CLIENT for that event towards a future event in the same of following season with TAILGATE GUYS or (ii) a postponement of an event for which CLIENT has purchased Tailgate Services occurs, CLIENT will have the option to schedule Tailgate Services for the new scheduled date of the event or choose another event within the same calendar year based on availability. If an Event of Force Majeure and an event is cancelled or postponed, this Section 4(b) shall prevail of Section 4(a).
  - c. **Suspension or Cancellation of Tailgate Services.** Tailgate Guys reserves the right in its sole discretion to suspend or cancel its Tailgate Services due to inclement weather, ground conditions, or other factors that may impact the quality and safety during the provision of Tailgate Services. In the event that inclement weather prevents TAILGATE GUYS staff from setting up the Site or providing any component of the Tailgate Services hereunder in its reasonable but sole discretion, TAILGATE GUYS may suspend or cancel the provision of Tailgate Services and credit the CLIENT an amount equal to the amount paid for that specific event if the entire event is cancelled pursuant to this provision. If an event has begun but is subsequently suspended due to inclement weather, ground conditions, or other factors that may impact the quality and safety during the provision of Tailgate Services, TAILGATE GUYS will provide CLIENT a pro rata credit towards the purchase of Packages for future events. .
6. **TERM.** This Agreement shall be effective on the Effective Date and terminates once all Tailgate Services have been provided and all payments are completed between CLIENT and TAILGATE GUYS. CLIENTS that purchase Full Season Packages may renew this Agreement for subsequent seasons at the applicable pricing rates in place at time of renewal and/or add additional products or services as they become available, subject to the terms hereof and availability of the site. All renewals agreements and terms thereof, including pricing, are subject to change by TAILGATE GUYS in its sole discretion. Renewals and modifications shall not be effective until confirmed in

writing by TAILGATE GUYS. Notwithstanding the foregoing, Sections 8, 9, 11, 12, 13, 14 and 15 shall survive termination of this Agreement.

7. CLIENT OBLIGATIONS AND CONDITIONS OF USE. CLIENT acknowledges that its use of the Site is subject to and conditioned upon the following terms and agrees that TAILGATE GUYS may exercise any of the remedies set forth herein for CLIENTS failure to comply:

- a. CLIENT shall comply with all rules and regulations established by TAILGATE GUYS, Property, and any other applicable authority, including but not limited to parking regulations in effect on campus. A copy of current rules and regulations is attached hereto as Exhibit A, which shall be subject to adjustment at any time by TAILGATE GUYS, Property or other applicable authorities.
- b. CLIENT shall be permitted to access the Site at the respective times set forth in the rules or otherwise determined by TAILGATE GUYS and University.
- c. CLIENT acknowledges all risks related to its attendance and use of the Site, including risk of damage to or loss of property or risk of serious personal injury or death, and accepts sole responsibility for such risks. CLIENT shall secure all personal property in and around the Site and shall take all precautions necessary to prevent theft or destruction thereof. CLIENT expressly acknowledges and agrees that TAILGATE GUYS shall not be responsible for any personal property of or injury to CLIENT at any time. TAILGATE GUYS will not remove or hold for safe-keeping any personal items left on the Site after event closing and same will be subject to removal by Property facilities services. CLIENT may be subject to costs and fees associated with such removal.
- d. Eligibility for any TAILGATE GUYS drop off service is determined by Tailgate Guys in its sole discretion and is based on Property restrictions, staffing availability and other factors. If CLIENT is eligible to participate in any TAILGATE GUYS drop off service, the CLIENT is responsible for properly packaging all items that will be transported and otherwise agrees to comply with procedures established by TAILGATE GUYS for this "drop off service," including but not limited to any limitations with regard to the amount and size of items to be transported. TAILGATE GUYS will not be responsible for any damaged or broken items during unloading or loading and transportation to or from the Site.
- e. CLIENT shall respect the interests of other fans and clients of TAILGATE GUYS and shall not engage in or permit disorderly or offensive conduct in or around the Site. CLIENT further agrees not to exceed the maximum number of guests allowed within the as set forth in the Exhibit A. Should CLIENT violate these provisions, TAILGATE GUYS management will give CLIENT a verbal warning. If CLIENT fails to promptly come into compliance, TAILGATE GUYS may immediately revoke CLIENT's rights to the Site and in its sole and absolute discretion terminate this Agreement. Upon such revocation or termination, all amounts paid to TAILGATE GUYS will be forfeited by CLIENT and retained by TAILGATE GUYS.
- f. CLIENT shall not move, damage, alter, or disrupt operation of any equipment provided by TAILGATE GUYS. In the event of inclement weather, TAILGATE GUYS reserves the exclusive right to cover and protect all equipment associated with the Media Package with such materials and coverings as it deems appropriate, which may include TV covers or hard cases for TV's, plastic bags for receivers and generators or the like (collectively, the "Protective Equipment"). CLIENT shall not remove any Protective Equipment or items contained inside



through parking or tailgate areas where TAILGATE GUYS has sold parking passes or provides any tailgate or parking related services.

10. ASSUMPTION OF RISK. CLIENT hereby agrees that neither TAILGATE GUYS nor Property nor any vendors of TAILGATE GUYS will be liable to CLIENT for any illness or injury (including but not limited to COVID-19 and other known or unknown coronaviruses) befallen on any persons in attendance during the provision of the Tailgating Services by TAILGATE GUYS, and CLIENT expressly assumes all risk of and waives any and all claims it may have against TAILGATE GUYS, Property and TAILGATE GUYS vendors and employee for illness or injury.
11. ENTIRE AGREEMENT. It is agreed and understood that this Agreement, together with the client's reservation and the Rules and Regulations at Exhibit A, sets forth the entire agreement between TAILGATE GUYS and CLIENT regarding the subject matter hereof and supersedes all prior or contemporaneous verbal or oral agreements, promises or understandings regarding the subject matter hereof, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not be deemed to be a waiver of such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.
12. GOVERNING LAW AND VENUE. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of North Carolina, without regard to its conflicts of law principles. The parties further agree that the exclusive venue for any disputes arising out of or in connection with this Agreement shall be the state and federal courts of Forsyth County, North Carolina, and CLIENT hereby irrevocably submits to the jurisdiction of such courts.
13. ASSIGNMENT. This Agreement is personal to CLIENT and may not be sold, assigned or transferred without the prior written consent of TAILGATE GUYS.
14. NOTICES. TAILGATE GUYS may give all notices required hereunder to CLIENT by phone, email, regular mail or courier at the addresses and/or phone number on file for CLIENT. All notices to TAILGATE GUYS must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

Tailgate Guys, LLC  
500 West 5<sup>th</sup> Street  
Suite 1200  
Winston Salem, North Carolina 27101  
ATTN: General Counsel

15. NO WAIVER. TAILGATE GUYS's failure to act upon any default on the part of the CLIENT shall not be construed as a waiver of TAILGATE GUYS' rights hereunder, nor shall any custom or practice that may arise between the parties in the course of dealing be construed to waive or lessen the right of the TAILGATE GUYS to enforce the terms of this Agreement.

16. BINDING EFFECT. The terms and provisions hereof shall extend to, bind and inure to the benefit of, as the case may require, the successors and assigns of TAILGATE GUYS and CLIENT as permitted by Tailgate Guys.
17. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TAILGATE GUYS, LLC**

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

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

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

**CLIENT NAME:** \_\_\_\_\_

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

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

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



**Exhibit A**  
**Rules and Regulations**

1. CLIENT shall have access to the reserved areas no earlier than 7:00 a.m – 9:00 a.m. on game day for Saturday games, which begin between the hours of 12:00 p.m. - 2:00 p.m., or 9:00 a.m. – 11:00 a.m. when kickoff is scheduled for 3:00 p.m. - 4:00 p.m., or 1:00 p.m. - 3:00 p.m. when kickoff is scheduled for 5:00 p.m. or later; and 3:30 p.m. for a Friday night game (the “Site Opening”). TAILGATE GUYS services including catering and drop-off services are available at Site Opening. If a CLIENT wishes to unload items for their tailgate prior to Site Opening, they may do so at their own risk and expense. TAILGATE GUYS will not be responsible for any items left by the Client overnight. For standard packages, CLIENT must vacate the Site no more than three hours after the end of the game or midnight, whichever comes first (the “Event Close”). For SEPs, CLIENT and their guests are required to vacate the event by the beginning of the game (the “Site Close”) unless TAILGATE GUYS is notified in writing 7 days prior to the event date. CLIENT has the option to extend the event to the end of the game for a fee equal to 25% of the package price listed on the invoice or up to two hours after the game ends or midnight, whichever comes first, for a fee equal to 35% of the package price listed on the invoice. This extension must be submitted in writing no later than 10 days prior to the game. Any changes that extend the event past the end of the game, that are made after the deadline of ten days prior, will be subject to additional service fees.
2. The number of persons inhabiting each Site will not exceed the allocated space. Space capacity for a Varsity Package is 15 persons. Space capacity for the Letterman Package is 30 persons. Space capacity for an All American Package is 50 persons. Space capacity for a Club Package is 60 persons. Space capacity for an SEP 100, SEP 200, SEP 300, SEP 400, and SEP 500 are 100, 200, 300, 400 and 500 people, respectively. Please see Section 7 of the Agreement regarding the penalties associated with exceeding occupancy numbers.
3. All supplemental items, media packages, and catering orders must be received by the end of the business day on Tuesday the week of the game (for Saturday games). Orders placed after this time will not be delivered or provided past said date. All supplemental items are subject to availability and are issued on a first come first serve basis.
4. Items otherwise not provided as part of the package (e.g. televisions, satellites, generators, sound equipment, cooking equipment, etc.), will not exceed the allocated space for each Site. Any such items may not be affixed to or placed on a tent. CLIENT may not install or otherwise utilize any tent(s) within the allocated space or any adjoining space that are not ordered through and installed by TAILGATE GUYS.
5. Tents and media package equipment should only be moved or relocated by a TAILGATE GUYS staff member.
6. All generators used within the area of TAILGATE GUYS operation are to be Honda 2000i quiet generators or an approved equal. Please contact TAILGATE GUYS if you plan to use a generator that is not the aforementioned product. TAILGATE GUYS will review all requests and provide approval if the said generator meets the required specifications
7. Power sources reserved with a Media Package may not be for the sole use of one CLIENT. TAILGATE GUYS reserves the right to distribute power from generators to multiple sources.

8. Any items that contain heating elements including but not limited to, crockpots, griddles, coffee makers, electric grills, heaters, hotplates, popcorn machines, cotton candy machines, toasters, and any others not mentioned, will not be powered by any TAILGATE GUYS generator. Failure to comply may result in suspension of the aforementioned media package and a fine up to the amount of the generator value.
9. Fires of any type are not permitted.
10. Live music, disc jockeys and excessive amplified sound are not permitted within the Site.
11. TAILGATE GUYS will not provide alcohol to any CLIENT as part of a catering package or otherwise unless specific vendors have been approved by Property and are properly permitted by both the state and local laws. Common sources of alcohol, including kegs of beer are prohibited within each Site; provided, however, that alcohol services within the Site may be arranged through Contractor, via vendors approved by Property that are properly permitted by both the state and local laws. The foregoing permissions are subject to the University's alcohol policy, which may be amended from time to time at the sole discretion of the University.
12. Caterers (other than the Property approved preferred caterer) will not be given vehicle access to the Site and surrounding premises. Clients wishing to use an outside caterer are responsible for transporting all goods to their Site. Motor vehicles (including, but not limited to, golf carts, all-terrain vehicles, mopeds, scooters and go carts) belongings to any unauthorized caterer on the Site or surrounding premises will be removed.
13. Client shall maintain their Site in an orderly manner throughout the entirety of the event. Should Client violate this provision, TAILGATE GUYS management may give Client a verbal warning. If Client fails to come into compliance within 15 minutes after a verbal warning, TAILGATE GUYS, in its sole discretion, may take one or more of the following actions: 1) assess a fine of up to \$100 per Varsity or Letterman Package, \$200 per All American, or \$400 per Club Package and/or 2) immediately revoke Client's rights to the Site and in its sole discretion terminate this Agreement. Additionally, failure by the Client to return the Site to its initial neat and orderly condition at the end of event may also result in a fine according to the same schedule.
14. Banners and signage recognizing businesses, political candidates or any other form of solicitation on the Site our surrounding areas are prohibited. Signage produced by TAILGATE GUYS and approved by University, identifying each tent will be permitted at the entrance of each tent.
15. Use of any Property utilities is prohibited.
16. Non-Property golf carts, all-terrain vehicles, mopeds, scooters, ATVs, go karts and the like are not allowed on campus.
17. Property reserves the right to implement additional rules and regulation in its sole discretion regarding the use of the Site and surrounding areas as the need arises.
18. In the event a CLIENT orders a parking pass from Tailgate Guys, the client's vehicle must not exceed 2 axles and must fit within one 9x8' parking space. In the event the vehicle cannot fit within the designated parking space or exceeds the parking deck's maximum height of 9'; the CLIENT will be required to find alternative parking in or around campus. TAILGATE GUYS will not be responsible for securing or locating parking for guests who purchased a parking pass and are unable

to park in a designated space. If the CLIENT chooses to park in areas not designated for parking, the vehicle will be towed and will result in a \$500.00 fine in addition to all expenses resulting from towing.

19. CLIENT is responsible for conveying all rules and regulations to all attendees and guests at client's tailgate and assumes responsibility for actions taken by attendees and guests at client's tailgate.
20. TAILGATE GUYS reserves the right to take photographs or video of all customers and their guests during events and to use for various purposes, including, but not limited to Public Relations, Marketing, etc. Customer hereby waives any right to inspect or approve the finished photography/video, advertising copy, printed matter, etc.
21. CLIENT is subject to ONE drop-off pass per game regardless of package. In the case CLIENT has a parking pass the parking pass will also serve as the "drop-off pass"