

## **Beverage Sponsorship Program Contract**

This Beverage Sponsorship Contract (“this Contract”), entered into by and between New Albany-Floyd County School Corporation (“School”) and \_\_\_\_\_ (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- 1. Duties of Contractor.** The Contractor shall provide the following services relative to this Contract:
- 2. Consideration.** The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \$ \_\_\_\_\_.
- 3. Term.** This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.
- 4. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the School or its authorized designees. Copies shall be furnished at no cost to the School if requested.
- 5. Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the School’s prior written consent.
- 6. Assignment of Insurance Claims.** As part of the consideration for the award of this Contract, the Contractor assigns to the School all right, title and interest in and to any insurance claims the Contractor now has, or may acquire, relating to the products or services which are the subject of this Contract.
- 7. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with Indiana law, and audit guidelines specified by the State Board of Accounts and School.
- 8. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the School.
- 9. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the School. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.
- 10. Compliance with Laws.**
  - A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the School and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all publish school policies located at <https://www.nafcs.k12.in.us/policy/>

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees, reports, or other statutory, regulatory or judicially required payments to any governmental entity.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by any governmental entity, and agrees that it will immediately notify the School of any such actions.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by a governmental entity, and the School decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the School. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the School.

G. The Contractor affirms that it is properly registered and owes no outstanding reports to any Indiana agency.

H. The Contractor and any principals of the Contractor certify that they have and will comply with Ind. Code § 5-22-3-7.

**11. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the School's reasonable satisfaction, as determined at the discretion of the School and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The School shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the School.

**13. Continuity of Services.** The Contractor recognizes that the service(s) to be performed under this Contract are vital to the School and must be continued without interruption and that, upon Contract expiration, a successor, either the School or another contractor, may continue them. The Contractor agrees to: Furnish phase-in training; and Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

**14. Debarment and Suspension.** The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana.

**15. Default by School.** If the School, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**16. Disputes.** Should any disputes arise with respect to this Contract, the Contractor and the School agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the School or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the School for such costs.

**17. Background Checks/Drug-Free Workplace Certification.** The Contractor hereby covenants and agrees to conduct adequate background checks on any personnel who will be present on School's property and make a good faith effort to provide and maintain a drug-free workplace. The Contractor will not allow any employee of the Contractor who has been convicted of a criminal violation other than minor traffic infractions to enter School's property without first notifying School of the nature of the criminal violation.

**18. Employment Eligibility Verification.** The Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien and will comply with Ind. Code § 22-5-1.7-3.

**19. Vendor/Supplier Option.** If the School determines it would be in the School's best interest to hire an vendor or supplier of the Contractor, the Contractor may be asked to release the selected vendor or supplier from any non-competition agreements that may be in effect.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.** When School makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled.

**22. Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Hendricks County, Indiana.

**23. Privacy Compliance.** If this Contract involves services, activities or products subject to the privacy and confidentiality laws, the Contractor covenants that it will appropriately safeguard nonpublic personal information and personally identifiable information, and agrees that it is subject to, and shall comply with, the provisions of laws and regulation regarding use and disclosure of nonpublic information.

**24. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the School, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees,

and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract.

**25. Independent Contractor; Workers' Compensation Insurance.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership, affiliation, association, or joint venture agreement between the parties. School will not assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the Contractor. The Contractor shall provide all necessary benefit plans, unemployment, and workers' compensation insurance for the Contractor's employees.

**26. Insurance.**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract adequate insurance coverages covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract including:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the School.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the School shall continue for a period of two (2) years after the date of service provided under this Contract.

**27. Licensing Standards.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The School will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the School immediately and the School, at its option, may immediately terminate this Contract.

**28. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**29. Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, federal Civil Rights Act of 1964, ADEA, and ADA, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics").

The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**30. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the School shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

B. Notices to the Contractor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

**31. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the School, (3) the RFP, (4) Contractor’s response to the RFP, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**32. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the “Materials”) not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered “work for hire” and the Contractor hereby transfers and assigns any ownership claims to the School so that all Materials will be the property of the School. If ownership interest in the Materials cannot be assigned to the School, the Contractor grants the School a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

**33. Payments.** All payments shall be made thirty (30) days in arrears in conformance with School fiscal policies and procedures.

**34. Penalties/Interest/Attorney’s Fees.** The School will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as permitted by Indiana law.

**35. Renewal Option.** This Contract may be renewed under the same terms and conditions, subject to the approval the School’s board. The term of the renewed contract may not be longer than the term of the original Contract.

**36. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**37. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**38. Taxes.** The School is exempt from most state and local taxes and many federal taxes. The School will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**39. Termination for Default.**

A. With the provision of thirty (30) days' notice to the Contractor, the School may terminate this Contract in whole or in part if the Contractor fails to: 1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the School determines progress is being made and the extension is agreed to by the parties; 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension; 3. Make progress so as to endanger performance of this Contract; or 4. Perform any of the other provisions of this Contract.

B. If the School terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the School considers appropriate, supplies or services similar to those terminated.

**40. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the School's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the School in accordance with applicable law for all damages to the School caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**41. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional, industry, governmental, and technical guidelines and standards. If the School becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the School may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**42. Non-Collusion and Acceptance.** To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.