

## **TAILGATE SITE AND SERVICES AGREEMENT TERMS AND CONDITIONS**

This Tailgate Site and Services Agreement, including the Terms and Conditions set forth herein (collectively, this “Agreement”), is effective upon the date on which you agree hereto and pay any required amounts referenced in Section 2 herein and applies to your purchase of products and services from Tailgate Guys, LLC (“TAILGATE GUYS”). 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.”

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;

Client has or desires to reserve a tailgate spot and purchase certain products and services from TAILGATE GUYS, pursuant to the terms hereof.

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 PACKAGE.** 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”).
  - a. 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, Pac 12 Network or other Arizona State University 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.
  - b. TAILGATE GUYS shall not be held liable for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, including but not limited to acts of God (including weather), government or university restrictions, decisions and regulations, wars, insurrections and/or any other cause beyond the reasonable control of TAILGATE GUYS; and CLIENT does hereby release TAILGATE GUYS from any claim for damages arising therefrom. However, if a previously cancelled game is rescheduled, TAILGATE GUYS agrees to provide the Tailgate Services on the date of the rescheduled game if that the game is in the same football season, 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 fifty percent (50%) 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, subject to availability. In the event that inclement weather prevents TAILGATE GUYS staff from setting up the tailgate Site or providing any component of the Tailgate Services hereunder, TAILGATE GUYS may suspend or cancel its tailgate operations and credit the CLIENT an amount equal to the amount invoiced and paid for

that specific game. For avoidance of doubt, CLIENT's inability to be present for the Tailgating Services due to travel-related delays (e.g. inclement weather at their home location or en route to the event site) does not entitle CLIENT to a refund.

- c. 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.
  - d. 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. For single game Media Packages, If CLIENT wishes to cancel its Media Package as a result of changes in broadcast scheduling to not include Arizona State University home games, then CLIENT must inform TAILGATE GUYS of this decision in writing no later than 5:00 p.m. on the date which is three calendar days prior to the date on which Tailgate Services for the particular home game are to be provided. If notice of cancellation of the Media Package is received in the manner provided, then CLIENT will not be charged for said component of the Tailgate Services. 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.
  - e. Except as provided herein, the CLIENT will not be entitled to a refund of the cost of a Media Package that is cancelled less than 21 days prior to the date of the game (for a single game media package) or 21 days prior to the start of the season (for a full season media package).
2. PAYMENT. In consideration of the Tailgate Services to be provided by TAILGATE GUYS, CLIENT shall pay the invoiced amount set forth on the invoice made available to CLIENT (the "Package Price").

**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 execution of this Agreement, CLIENT may not be able to reserve the Site. The balance of the Package Price shall be due on the July 15 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 15th, and CLIENT hereby authorizes such charges.

**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.

**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 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

### 3. CANCELLATIONS.

**Full Season Packages.** For all Full Season Packages, if CLIENT cancels this Agreement in writing on or prior to June 30, TAILGATE GUYS agrees to refund one hundred percent (100%) of the portion of the Package Price previously paid by CLIENT. If CLIENT cancels this Agreement in writing between July 1 and July 15, TAILGATE GUYS agrees to refund fifty percent (50%) of the portion of the Package Price previously paid by CLIENT. If CLIENT cancels this Agreement in writing after July 15, CLIENT is not entitled to a refund. Where CLIENT has made payment of the total reservation, or any portion thereof, by credit card, CLIENT shall be prohibited from disputing said charge which CLIENT previously authorized TAILGATE GUYS to make.

**Individual (single game) and Bundled (less than a full season) Game Packages.** If CLIENT cancels this Agreement in writing thirty (30) days prior to the event date (the first event date for Bundled Game Packages), TAILGATE GUYS agrees to refund one hundred percent (100%) of the portion of the Package Price previously paid by CLIENT. If CLIENT cancels this Agreement in writing twenty-nine (29) days or less before the event (the first event for Bundled Game Packages), CLIENT is not entitled to a refund. Bundle Game Packages may not be partially refunded under any circumstance. Where CLIENT has made payment of the total reservation, or any portion thereof, by credit card, CLIENT shall be prohibited from disputing said charge which CLIENT previously authorized TAILGATE GUYS to make.

4. TERM. This Agreement shall be effective for the immediately upcoming or current football season, as applicable, and terminates once all services have been provided and all payments are completed between CLIENT and TAILGATE GUYS. CLIENTs purchasing 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. .
5. 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, Arizona State University, 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, Arizona State University 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 Arizona State 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 Arizona State University facilities. CLIENT may be subject to costs and fees associated with such removal.

Except for damage caused by a TAILGATE GUYS employee performing his or her assigned responsibilities, TAILGATE GUYS is not responsible for damages (e.g. from collision with other vehicles, falling debris, or inclement weather) to any vehicles parked in or moving through parking or tailgate areas where TAILGATE GUYS has sold parking passes or provides any tailgate or parking related services.

- d. Eligibility for any TAILGATE GUYS drop off service is determined by Tailgate Guys in its sole discretion and is based on University 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 Protective Equipment, and expressly acknowledges and agrees that only TAILGATE GUYS staff shall have authority to do so. CLIENT acknowledges and agrees that its right to use the media equipment may be suspended, without refund, at TAILGATE GUYS option, for violation of these provisions. a CLIENT further assumes all responsibility for any damages to any TAILGATE GUYS equipment resulting from

violation of these provisions and shall reimburse TAILGATE GUYS for the cost to repair or replace damaged equipment.

- g. CLIENT shall keep the Site in a neat and orderly manner at all times and may incur fees set forth on Exhibit A, attached hereto and made a part hereof.
  - h. CLIENT acknowledges and agrees that the signage identifying each Site is uniform and provided by TAILGATE GUYS, who reserves the right to omit any vulgar, offensive or discriminatory content requested by CLIENT, in the sole and absolute discretion of TAILGATE GUYS.
  - i. TAILGATE GUYS reserves the right to immediately terminate CLIENT's use of the Site for violation of the conditions of use. In addition, CLIENT shall be responsible for payment of all damages incurred by TAILGATE GUYS as a result of CLIENT's failure to comply with the foregoing conditions of use or as a result of damages by CLIENT of any equipment of TAILGATE GUYS. To insure compliance and payment of damages or fines, CLIENT agrees to keep a credit card on file with TAILGATE GUYS, and hereby authorizes TAILGATE to charge said credit card amounts owing as a result of its breach; provided that TAILGATE GUYS delivers to CLIENT an itemization of said charges and receipt for payment thereof.
6. **DEFAULT.** Should CLIENT fail to pay any sums when due hereunder or fail to comply with or perform any other term, covenant or condition hereof, TAILGATE GUYS may terminate this Agreement and proceed against CLIENT for the recovery of all damages incurred by TAILGATE GUYS as a result of the breach by CLIENT or proceed for specific performance. Without limiting the foregoing, in the event CLIENT fails to timely pay any amounts due hereunder, such overdue balances shall accrue interest in the amount of one and one-half percent (1.5%) per month (or the maximum amount allowed by law, whichever is lower) from the due date until paid. In addition, CLIENT shall reimburse TAILGATE GUYS for all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of TAILGATE GUYS occasioned by or in connection with any default by CLIENT under this Agreement.
7. **RELEASE AND INDEMNIFICATION.** CLIENT hereby releases TAILGATE GUYS and agrees to indemnify and defend TAILGATE GUYS and save TAILGATE GUYS harmless from and against all suits, actions, damages, liability and expenses in connection with loss of life, body or personal injury or property damage (and each and all of them) arising from or out of any occurrence in and around the Site or any part thereof, or occasioned wholly or in part by any act or omission of CLIENT, its invitees, and guests.
8. **FORCE MAJEURE.** In the event compliance with any obligation under this Agreement is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure" means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order, or any other occurrence beyond the reasonable control of the party in question that may affect performance of services under this Agreement. Notwithstanding the foregoing, Tailgate Guys reserves the right in its sole discretion to terminate its Game Day Services due to

inclement weather, ground conditions, or other factors that impact the quality and safety surrounding any Game Day Services.

9. INTEGRATION. 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.
10. GOVERNING LAW AND VENUE. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of Alabama, 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 Lee County, Alabama, and CLIENT hereby irrevocably submits to the jurisdiction of such courts.
11. ASSIGNMENT. This Agreement is personal to CLIENT and may not be sold, assigned or transferred without prior written consent of TAILGATE GUYS.
12. 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  
2111 Marvyn Parkway  
Opelika, Alabama 36804

13. NO WAIVER. In the event there is a breach by CLIENT with respect to any of the provisions of this Agreement, without limitation of any other rights or remedies, TAILGATE GUYS shall have the right to terminate this Agreement. 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.
14. 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.

15. 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.

above. IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written

**TAILGATE GUYS, LLC**

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

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

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

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

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

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

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



## **Exhibit A Rules and Regulations**

- CLIENT shall have access to the Site four hours prior to kick off for all game days (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 one hour 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 end of the game (the “Site Close”). CLIENT has the option to extend the event up to one hour after the game ends or midnight, whichever comes first, for a fee equal to 25% 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 deadline of ten days prior, will be subject to additional service fees.
- 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 35 persons. Space capacity for an All American Package is 50 persons. Space capacity for a Double All American Package is 100 persons. Space capacity for an SEP 100, SEP 200, SEP 300, SEP 400, SEP 500 & are 100, 200, 300, 400 & 500 people, respectively. Please see Section 4 Paragraph E regarding the penalties associated with exceeding occupancy numbers.
- 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.
- 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.
- Tents and media package equipment should only be moved or relocated by a Tailgate Guys staff member.
- 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
- 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.
- 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 aforementioned media package and a fine up to the amount of the generator value.
- Fires of any type are not permitted.

- Live music, disc jockeys and excessive amplified sound are not permitted within the Site.
- Tailgate Guys will not provide alcohol to any client as part of a catering package or otherwise unless specific vendors have been approved by University and are properly permitted by both the State of Arizona and City of Tempe. 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 University that are properly permitted by both the State of Arizona and City of Tempe. The foregoing permissions are subject to the University's alcohol policy, which may be amended from time to time in the sole discretion of the University. Caterers (other than the University 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) belonging to any unauthorized caterer on the Site or surrounding premises will be removed.
- 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 \$200 per All American, or \$400 per Double All American 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.
- Banners and signage recognizing businesses, political candidates or any other form of solicitation on the Site or surrounding areas are prohibited. Signage produced by Tailgate Guys and approved by Arizona State University, identifying each tent will be permitted at the entrance of each tent.
- Use of any university utilities is prohibited.
- Non-university golf carts, all-terrain vehicles, mopeds, scooters, ATVs, go carts and the like are not allowed on campus.
- Arizona State University 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.
- 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.
- 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.
- 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.