

**Agreement Between  
Berkshire Food Inc. and  
Western Connecticut State University  
For Snack Vending Services**

This Agreement is made by and between Berkshire Food Inc., with offices at 11 Old Newtown Road, Danbury, CT 06810 (hereinafter the "Contractor") and Western Connecticut State University, a constituent unit of the State of Connecticut System of Higher Education with campuses located at 181 White Street, Danbury, Connecticut, 06810 and Lake Avenue Extension, Danbury, Connecticut 06810 (hereinafter the "University" or "Institution") for snack vending services.

**1. Scope of Services**

- 1.1 The Contractor shall operate a snack vending program on the Midtown and Westside Campuses of Western Connecticut State University. In support of this program, the Contractor shall install and maintain a magnitude of seventeen (17) snack vending machines on the University's Campuses, located generally as listed below. Locations of the machines shall be subject to modification based on but not limited to campus facilities renovations and sales performance.

<b><u>Building</u></b>	<b><u>Building Description</u></b>
Berkshire Hall	Classroom Building
Fairfield Hall	Residence Hall
Haas Library	Library
Higgins Hall	Office/Classroom Building
Litchfield Hall	Residence Hall
Newbury Hall	Residence Hall
Police Station	Office Building
Science Building	Office/Classroom Building
Warner Hall	Office/Classroom Building
White Hall	Office/Classroom Building
*University Hall	Administrative Building
Old Main	Administrative Building
Centennial Hall	Residence Hall
Westside Classroom Building	Office/Classroom Building
Grasso Hall	Residence Hall
O'Neill Center	Athletic and Convocation Arena
Pinney Hall	Residence Hall

\*Note that the machine in University Hall shall be a combination canned soda/snack machine.

- 1.2 The Contractor shall furnish to University all food, supplies, equipment, Management, and labor necessary for the efficient, nutritional, sanitary and ecologically sound operation of snack vending services. These vending services shall be provided to the University twelve (12) months per year, with reduced selections arrived at by mutual agreement during inter-session periods.
- 1.3 Contractor shall be required to maintain and provide over the term of the Agreement the following information and shall make such information available to University upon request.
  - (a) Building location of machines and product sold at that location.
  - (b) Selling prices of products offered.
  - (c) Proposed new locations for machines and product to be sold at those locations.
  - (d) Machine number.
  - (e) Week and year machine installed on campus.
  - (f) Week and year machine removed from campus service.
- 1.4 Installation of additional machines, removal, or relocation of current machines shall be determined through mutual agreement between both parties.
- 1.5 All vending equipment owned by the Contractor shall remain as such.
- 1.6 All required permits, licenses and bonding in compliance with municipal, county, state, city and federal laws shall be obtained by the Contractor at its expense. The Contractor shall be liable for all applicable taxes including, but not limited to, sales and personal property taxes.
- 1.7 The Contractor shall be responsible for control of keys and/or access cards obtained from the University and the security of those areas for which and when they are used by its representatives. The Contractor shall be responsible for replacement of lost keys and the cost of re-keying and replacement of locking cylinders required as a result of their negligence and/or loss of keys. Contractor shall be required to return all keys or access cards at the expiration or termination of the Agreement. Contractor shall be prohibited from making copies of the keys or access cards.
- 1.8 Vending and auxiliary vending equipment shall be removed within ten (10) days of the expiration or termination of this Agreement. Vending and auxiliary vending equipment not removed from the University locations upon cancellation or expiration of this Agreement may be removed and placed in storage by the University. All costs of removal, storage and product and revenue loss shall be the responsibility of the Contractor.

2. Term of the Agreement

The Initial Term of this Agreement shall commence on July 1, 2019 or upon the signature of the Office of the Attorney General, whichever is later, and continue through June 30, 2024. The Agreement may with mutual consent, may be extended for two (2) separate twenty-four (24) month renewal extensions.

3. Equipment and Facilities Maintenance, Replacement, and Sanitation

3.1 The equipment and supplies provided by the Contractor in support of a snack vending program at the University shall be maintained throughout the life of the resulting Contract in condition satisfactory to the University and in compliance with all University, State and Local related health and sanitation codes. Contractor shall adhere to the highest standards of cleanliness and sanitary practices. Contractor shall ensure that:

3.1.1 The surfaces of all vending machines and equipment including selector buttons, knobs, and handles and cup dispensing platforms shall be cleaned with germicidal solution. Visible product residue shall be removed with warm water and detergent before application of the germicide.

3.1.2 The external cabinet of all vending machines, including cabinet tops, shall be kept free from dust and other contaminants. Screens, compressor zones and condensers shall be inspected regularly for dust, seepage and other residue and shall be kept clean.

3.1.3 Such maintenance and cleaning be conducted at least once per month per a mutually agreed to schedule. Reports that maintenance and cleaning have been done shall be forwarded to the University's Director of Campus Centers and Auxiliary Services.

3.2 Structural, utility and non-vending equipment changes necessary in order to support compliance with such requirements shall be made by the University at its expense.

3.3 A program of preventive maintenance and regular replacement of worn, damaged or malfunctioning equipment shall be instituted and carried out by the Contractor. This program shall include access to equipment and supplies to meet emergencies, routine maintenance, and repair. The University shall not perform maintenance or repair on any equipment owned and installed by the Contractor. The Contractor shall maintain a continual program of equipment replacement in high volume locations where obsolescence becomes a factor resulting in potential service or sales reduction.

- 3.4 The Contractor shall provide on call, as needed, vending and auxiliary equipment maintenance and repair service so as to minimize vending equipment down time. The Contractor shall respond to equipment service and repair calls/reports within a maximum of eight (8) hours between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Equipment breakdowns occurring on Saturdays and Sundays unless deemed emergencies shall be addressed by 4:00PM the following Monday. Equipment which cannot be returned to full service within 72 hours notification of needed repair shall be replaced with comparable equipment of like quality until the original equipment is returned to service.
- 3.5 Contractor agrees to provide new or like new equipment for dispensing snack products. Contractor shall maintain its Equipment in good operating condition throughout the term of this Agreement. Contractor shall incorporate all industry improvement on vending equipment occurring during the term of the Agreement on the originally installed equipment and subsequent installations where it is deemed feasible by the University and mutually agreed upon with the Contractor. All vending and related auxiliary equipment must comply with Americans with Disabilities Act (ADA) regulations.
- 3.6 Where necessary and mutually agreed upon utilities shall be brought to equipment by the University.
- 3.7 In addition to the necessary operating instructions Contractor shall provide each vending location with information to the user where product quality comments, malfunction reports, and refund requests may be made. Product comments shall be made directly to the Contractor. Malfunction reports shall be made to the Contractor and to the Director of Campus & Student Centers and Auxiliary Services. All information such as permits, licenses, and price regulations required to be posted shall be displayed in an appropriate manner agreed by the University without defacing of the facilities of the University.
- 3.8 In the event of equipment damage and losses due to vandalism or break-in's, the Contractor shall be responsible for reporting within twenty four (24) hours of Contractor's knowledge to the University all the known facts relating to the losses incurred and equipment damages, or break in's to Contractor's equipment and areas of the University. Contractor shall be financially responsible for repairs due to vandalism.
- 3.9 The University shall provide the Contractor with routine campus protection currently available to vending service such as night patrol, door checks, security consulting, call response, and related services. The Contractor shall be responsible for the purchase of padlocks and other security devices which may be required by the Contractor to further protect revenue, product, and property.
- 3.10 Vending equipment shall be maintained by Contractor throughout the life of this contract in condition satisfactory to the University and in compliance with all

University, State, and Local health and sanitation codes. Contractor shall adhere to the highest standards of cleanliness and sanitary practices. Structural, utility and non-vending equipment changes necessary in order to comply with such requirements shall be made by the University at its expense.

- 3.11 Contractor shall remove all waste packaging, master carton, and boxes from the vending service areas and properly dispose of at the Contractor's place of business.
- 3.12 Existing facilities damaged during installation and/or service by the Contractor or Contractor's agents or employees shall be repaired and left in good condition as found. Contractor shall notify the University of such repairs and shall commence repairs upon the permission of the University. Repairs shall be accomplished at no cost to the University.
- 3.13 Contractor shall be responsible for moving the vending machines in order for University personnel to perform periodic floor cleaning in vending areas. Advance notice shall be provided whenever possible. Contractor shall clean floor spillage which may occur in the process of filling or sanitizing vending equipment.
- 3.14 The Contractor shall be responsible for moving the vending machines in order for University to perform insect and pest control in the vending areas. Advance notice shall be given whenever possible. Contractor shall maintain maximum insect and pest control for their products and equipment.
- 3.15 All materials, equipment and supplies provided by the Contractor shall comply with all safety requirements as set forth by the Connecticut Administrative Code, rules of the Industrial Commission on Safety and all applicable OSHA Standards.
- 3.16 University, State, and Local health specialists shall have complete access to all vending service, production and storage areas on inspection which they may conduct. These inspections may be at the request of the University or at said agency's own discretion.

#### 4.0 Product Supply

- 4.1 The Contractor shall supply products to the vending equipment as necessary Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. during the regular academic semesters and semester break periods. Contractor shall be alert to specific equipment which requires product inventory stocking more frequently to maintain adequate product variety and inventory. Product supply may be reduced with prior University authorization during the semester break periods. Contractor shall remove product for sale at least five (5) days prior to its "sell by date" to insure no out of date product is sold.
- 4.2 Warning labels and other informational materials shall be posted by the Contractor wherever appropriate and in a manner approved by the University.

5.0 Vending Readers and Campus Debit Card System

- 5.1 Contractor is required to ensure that all campus vending machines are integrated with a single card reader that will accept various payment methods including but not limited to cash and coin, credit and debit cards, University debit card, and Smartphone wallets. The card readers must transmit through a cellular network and should be separate from University's network. In order for the University to remain PCI compliant all credit card sales must be maintained on a network separate from the University's.
- 5.2 All sales through the University's debit card system (aka Westconnect card) shall be determined through the University's current debit card system provider. All card readers must be compatible with this system. Any costs associated with compatibility shall be the sole responsibility of the Contractor. Debit card sales will be reported by the University Card Office to the Contractor and paid to the Contractor on a monthly basis according to the negotiated rate.

6. Vending Prices and Product Specifications

6.1 Pricing shall be guaranteed for Agreement Year 1. After Agreement Year 1, prices may be adjusted upward upon mutual agreement of the parties and approval of the Office of the Attorney General. Upon request by the University, Contractor shall submit documentation in support of any price increases. Should the University and Contractor fail to agree on any proposed price increases, the University may terminate this Agreement with no further financial obligations.

6.2 Vend pricing for Year 1 shall be as follows:

<u>Commodity</u>	<u>Price</u>
Sun Chips	\$1.50
Vend Chips	\$1.25
Pastry	\$1.50
Large Cookies	\$1.50
Candy	\$1.50
Gum/Mints	\$1.00
Large Bag Snacks	\$1.50
Can Soda	\$1.25

6.3 The Contractor shall work with its suppliers to pass on promotions to the Customers and to introduce new items and product lines. However, the

Contractor shall consider University requests concerning brand preference, design and material specifications of supply items, use of state products and product boycotts where the resulting costs do not significantly affect the commissions in the contract agreement. All candy and snacks should be limited to those enjoying national and local acceptance. Packaging must conform to manufacturer's standards in terms of weight and size.

- 6.4 Portions shall be periodically reviewed by the University and the Contractor.
- 6.5 All products furnished by the Contractor shall comply with all state and federal regulations pertaining to, but not limited to, labeling, nutritional information, open dating, compliance with F.D.A., USDA and S.D.A. regulations.
- 6.6 For dual beverage/snack vending machines placed at the direction of the University by the Contractor, beverage products stocked and sold through these machines shall be limited to those products offered by the University's exclusive pouring rights provider.

#### 7. Commission Structure, Consideration, Accounting, and Payments

- 7.1 In each Agreement Year (defined as the annual period of July 1 through June 30 inclusive), the Contractor agrees to pay the University a commission rate of 34% for net sales for all products sold, with an annual minimum guaranteed dollars payable to the University of \$12,000.00. Should the monthly commission payments (specifically, those payments made for the months of July – June inclusive of each Agreement Year) fall below \$12,000.00, the Contractor shall pay the difference to the University within thirty (30) days of the close of each Agreement Year (June 30<sup>th</sup>). Should the noted monthly commission payments total more than \$12,000.00 in an Agreement Year, University shall retain any monies received above the \$12,000.00 minimum guarantee.
- 7.2 Monthly commission payments shall be made to the University no later than thirty (30) days of the close of the previous month. Contractor shall provide University a comprehensive summary of sales by machine by month. The summary shall include but not be limited to gross sales, debit and credit card sales, cash sales, and commission calculations by machine.
- 7.3 In each Agreement year, the Contractor agrees to establish a scholarship in the amount of \$500.00 for a student of the University's choosing. Not later than July 31st of each Agreement Year, Contractor shall forward the scholarship fund, with checks payable to the University's Foundation.
- 7.4 All prices shall include state and local sales tax. Contractor shall be responsible for payment of taxes.

- 7.5 The Contractor shall maintain complete and accurate records of transactions for each machine in accordance with accepted industry accounting practices, and shall keep in a safe place all such financial records and statements pertaining to the operations at the University for a period of three (3) years from the conclusion of the agreement. University's representative or selected auditors may at their discretion examine all financial and operational aspects of Contractor's services. Contractor shall fully cooperate with any examination initiated by the University.
- 7.6 All debit sales resulting from the University's debit card program ("ConnectCash") shall be recorded on the University campus debit card system. University shall net commission against "ConnectCash" sales and shall settle payment to the Contractor by the 30<sup>th</sup> day of the next month's billing cycle.
- 7.7 Contractor shall report any and all occurrences of vandalism and theft of money or product from vending equipment to the University's Police Department and the Director of Campus & Student Centers and Auxiliary Services. Such reported occurrence shall not incur a commission owed to the University. The Contractor assumes all risks of loss or damage due to vandalism or theft.
- 7.8 Upon authorized and mutually agreed early termination of this contract, partial year guarantee commissions due, if any, shall be determined by dividing the prior year commissions earned through the date of termination by the prior contract year total commission or guarantee received, whichever is greater, and multiply the resulting percentage prorated commission received the prior year by the annual guarantee required. If the resulting prorated guarantee is greater than the commissions received to date of termination, any balance due shall be paid to University by the thirtieth (30<sup>th</sup>) day of the following accounting period.
- 7.9 Upon expiration or termination of this Agreement, commission due University shall be paid on sales until all equipment has been removed, and the removal date shall be indicated on the period statement when each piece of equipment was reviewed, including equipment reviewed at any time during the contract period prior to expiration.
- 7.10 The estimated value of this Agreement is \$175,000.00.

## 8. Administration of Contract

- 8.1 Contractor's finance and accounting system shall provide for, but not be limited to, the following:
- 8.1.1 Accommodating patron's use of their University debit card or own debit and credit cards.
- 8.1.2 A cash collection method which will preclude co-mingling with changer

funds.

8.1.3 Operating on a fiscal year basis, defined for this contract as being from July 1 through June 30.

- 8.2 All period financial statements and payments pertaining to the operation of the vending services shall be sent to University's Director for Campus & Student Center and Auxiliary Services.
- 8.3 Upon the request of University, Contractor shall meet with University officials and review period statements, explain deviations, discuss problems, and mutually agree on courses of action to improve the results of the required services included in this Agreement. Period statement adjustments required as a result of review and/or audit shall be identified and reflected on the next period.
- 8.4 All records pertaining to the operations of the vending machines shall be open for inspection and/or audit by the University.
- 8.5 Vending equipment shall be equipped by the Contractor with non-reset item sale counters which are maintained in continual operative condition.

## 9. General Terms and Conditions

9.1 Professional Standards: In rendering services under this contract, the Contractor shall conform to high professional standards of work and business ethic. The Contractor warrants that the services shall be performed: 1) in a professional and workmanlike manner; and 2) in accordance with generally and currently accepted principles and practices. During the term of this contract, the Contractor agrees to provide to University in a good and faithful manner, using its best efforts and in a manner that shall promote the interests of University, such services as University requests, provided in the contract.

### 9.2 Contractor's Standards of Conduct:

(a) In order to ensure the orderly and efficient performance of duties and services at University and to protect the health, safety and welfare of all members of University community the Contractor agrees that the following items are strictly prohibited while performing services under this Agreement:

- i. Use or possession of drugs or alcohol;
- ii. Possession of firearms or illegal weapons anywhere on campus property including vehicles;
- iii. Smoking in buildings;
- iv. Harassment (sexual, racial or otherwise) or intimidation of anyone on the premises of the campus;

- v. Violation of applicable traffic or public safety regulations or of University rules and procedures;
- vi. Unauthorized use of University vehicles, equipment or property;
- vii. Use of University telephones for personal business;
- viii. Removal or theft of University property;
- ix. Unauthorized duplication or possession of University keys;
- x. Transfer of personal identification card or of parking pass to unauthorized personnel;
- xi. Conduct or behavior that endangers the health, safety and welfare of any member of the public or of the University community;
- xii. Interference with the work of other employees;
- xiii. Work attire other than the specified uniform; and
- xiv. Loud, vulgar behavior or the use of profanity.

(b) Violation of Standards: Contractor will require its employees to comply with the standards listed in Professional Standards in section 9.1 and Contractor's Standards of Conduct in section 9.2 above. The University may, at its discretion, recommend discharge of any employee of the Contractor found to be in violation of the standards listed in sections 9.1 or 9.2 above, or in violation of any law or standards adopted by the University from time to time, as required, to protect the health, safety and welfare of the University community. Upon request of the University, Contractor shall remove any of its employees that violate said standards from assignments to be performed under this Agreement.

### 9.3 Termination:

a. Notwithstanding any provisions in this contract, the University, through a duly authorized employee, may terminate the contract whenever the University makes a written determination that such termination is in the best interests of the State. The University shall notify the Contractor in writing of termination pursuant to this section, which notice shall specify the effective date of termination and the extent to which the Contractor must complete its performance under the contract prior to such date.

b. Notwithstanding any provisions in this contract, the University, through a duly authorized employee, may, after making a written determination that the Contractor has breached the contract, terminate the contract in accordance with the following breach provision.

(i) Breach. If either party breaches the contract in any respect, the non-breaching party shall provide written notice of the breach to the breaching party and afford the breaching party an opportunity to cure within ten (10) days from the date that the breaching party receives the notice. In the case of a Contractor breach, any other time period which the University sets forth in the notice shall trump the ten (10) days. The right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right

to cure period. The notice may include an effective contract termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the termination date, no further action shall be required of any party to effect the termination as of the stated date. If the notice does not set forth an effective contract termination date, then the non-breaching party may terminate the contract by giving the breaching party no less than twenty four (24) hours' prior written notice. If the [BOR/College/University] believes that the Contractor has not performed according to the contract, the University may withhold payment in whole or in part pending resolution of the performance issue, provided that the University notifies the Contractor in writing prior to the date that the payment would have been due.

c. The University shall send the notice of termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the University for purposes of correspondence, or by hand delivery. Upon receiving the notice from the University, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all University all records. The records are deemed to be the property of the University and the Contractor shall deliver them to the University no later than thirty (30) days after the termination of the contract or fifteen (15) days after the Contractor receives a written request from the University for the records. The Contractor shall deliver those records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

d. Upon receipt of a written notice of termination from the University, the Contractor shall cease operations as the University directs in the notice, and take all actions that are necessary or appropriate, or that the University may reasonably direct, for the protection, and preservation of the goods and any other property. Except for any work which the University directs the Contractor to perform in the notice prior to the effective date of termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.

e. The University shall, within forty-five (45) days of the effective date of termination, reimburse the Contractor for its performance rendered and accepted by the University in accordance with the terms of this contract, in addition to all actual and reasonable costs incurred after termination in completing those portions of the performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the University is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the University, the Contractor shall assign to the University, or any replacement Contractor which the University designates, all subcontracts, purchase orders and other commitments, deliver to the University all records and other information pertaining to its performance, and remove from State premises, whether leased or owned, all of Contractor's property,

equipment, waste material and rubbish related to its performance, all as the University may request.

f. For breach or violation of any of the provisions in the section concerning representations and warranties, the University may terminate the contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor parties or any third party.

g. Upon termination of the contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive termination. All representations, warranties, agreements and rights of the parties under the contract shall survive such termination to the extent not otherwise limited in the contract and without each one of them having to be specifically mentioned in the contract.

h. Termination of the contract pursuant to this section shall not be deemed to be a breach of contract by the University.

#### 9.4 Indemnification:

a. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or contractor parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with claims, Acts or the contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against claims includes claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.

b. The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

c. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any contractor parties. The State shall give the Contractor reasonable notice of any such claims.

d. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the claims.

e. The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the University prior to the effective date of the Contract. The Contractor shall not begin performance until the delivery of the policy to the University. The University shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the University or the State is contributorily negligent.

f. This section shall survive the termination of the contract and shall not be limited by reason of any insurance coverage.

9.5 Sovereign Immunity: The parties acknowledge and agree that nothing in this Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this section conflicts with any other section, this section shall govern.

9.6 Forum and Choice of Law: The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action

9.7 Claims Against the State: The Contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State)

and the Contractor further agrees not to initiate legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.

- 9.8 Whistleblower Provision: This contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place that is readily available for viewing by the employees of the contractor.
- 9.9 Confidentiality: The parties shall maintain the confidentiality of the terms and conditions of this Agreement to the extent permitted by law and the Connecticut Freedom of Information Act. The Contractor shall be permitted to identify the University as a client to third parties and to disclose the sales volume and related information.
- 9.10 Statutory Authority: Connecticut General Statutes 10a-6, 10a-1b, 4a-52a, and/or 10a-151b provide the University with the authority to enter into contracts in the pursuit of its mission.
- 9.11 Payment Card Industry Data Security Standard: University requires that Contractor shall at all times maintain compliance with the most current Payment Card Industry Security Standards (PCI DSS). Contractor shall be required to provide written confirmation of compliance. Contractor acknowledges responsibility for the security of cardholder data as defined within the PCI DSS. Contractor acknowledges and agrees that cardholder data may only be used for completing the contracted services as described in the full text of this document or as required by the PCI DSS or as required by applicable law. Similarly, Contractor should be prepared to demonstrate the compliance of any third party it has subcontracted as part of the service offering. As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).

9.12 Miscellaneous:

Any notice or other communication hereunder shall be in writing, shall be sent via registered or certified mail, overnight courier, or confirmed facsimile transmission and shall be deemed given when deposited, postage prepaid, in the United States mail, addressed as set forth below, or to such other address as either of the parties shall advise the others in writing:

If to Contractor:

James S. Pulizzi  
President  
Berkshire Food Inc.  
11 Old Newtown Road  
Danbury, CT 06810

If to the University:

Paul M Simon  
Director – Campus & Student Centers and Auxiliary Services  
Western Connecticut State University  
181 White St.  
Danbury, Connecticut 06810

9.13 Assignment: This Agreement or any part hereof shall not be assigned or otherwise transferred by any party without the prior written consent of the other parties.

9.14 Independent Parties: The parties are acting herein as independent contractors and independent employers. Nothing herein contained shall create or be construed as creating a partnership, joint venture or agency relationship between the parties and no party shall have the authority to bind the other in any respect.

9.15 Trademarks: No party shall obtain, by this Agreement, any right, title, or interest in the trademarks of the parties, nor, except as provided herein, shall this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of the other parties.

9.16 Executive Orders: This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P.

Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Institution or DAS shall provide a copy of these orders to the Contractor.

9.17 Non-Discrimination:

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- (6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- (7) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
- (8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- (9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of C.G.S. § 32-9n; and
- (10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and C.G.S. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to C.G.S. §§ 46a-56, 46a-68e, 46a-68f and 46a-86; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and C.G.S. § 46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56, as amended; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to C.G.S. § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and C.G.S. § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56 as amended; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State

contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- 9.18 Campaign Contribution Restrictions: For all state contracts as defined in Connecticut General Statutes § 9-612(g)(2), as amended by Public Act 10-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more; the authorized signatory to this Agreement expressly acknowledges receipt of the State Election Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the Notice, referenced herein as Exhibit A.
- 9.19 Summary of State Ethics Laws: Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethic laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the contract as if the summary had been fully set forth in the contract.
- 9.20 Entire Agreement: This written contract shall constitute the entire agreement between the parties and no other terms and conditions in any document, acceptance or acknowledgment shall be effective or binding unless expressly agreed to in writing by the Institution. This contract may not be changed other than by a formal written contract amendment signed by the parties hereto and approved by the Connecticut Attorney General.

**ACCEPTANCE OF AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

**Western Connecticut State University**

**Berkshire Food Inc.**

By: Sean Loughran

By: [Signature]

Print Name: Sean Loughran  
Title: VP of Finance & Admin  
Date: 3/28/19

Print Name: Michael Cicarelli  
Title: VP  
Date: 3/27/19

**For the Office of the Attorney General (Approval as to Form)**

Signature: [Signature]

Printed Name: Joseph Rubin

Title: ASST. DEPUTY ATTY. GENERAL

Date: 4/5/19

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**NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS**

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words are defined below*):

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**CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS**

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

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**DUTY TO INFORM**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

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**PENALTIES FOR VIOLATIONS**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil penalties** - Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties** - Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

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**CONTRACT CONSEQUENCES**

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

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The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."

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## DEFINITIONS

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"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

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"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.