

STATE OF NORTH CAROLINA
WAKE COUNTY

NCSU Contract Control #13924
8/98
Rev: 9/10

NORTH CAROLINA STATE UNIVERSITY

CONTRACT

THIS AGREEMENT ("Agreement"), made and entered into this 1st day of December 2010, by and between Provider Select, LLC, 13034 Ballantyne Corporate Place, Charlotte, North Carolina 28277 ("Contractor"), and the North Carolina State University, c/o University Dining, Campus Box 7307, Raleigh, North Carolina 27695-7307 ("University").

WITNESSETH

THAT WHEREAS, the Contractor has submitted to the University a proposal for the performance of certain services; and,

WHEREAS, the University desires to enter into a contract with Contractor for the performance of these services; and,

WHEREAS, the parties hereto desire to reduce the terms of this agreement to writing;

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

1. Contractor agrees to provide the University with access to its group purchasing program for food service and to provide related services as outlined in the following documents:

NCSU RFP #63-JGD99906 dated August 12, 2010
NCSU RFP #63-JGD99906 Amendment #1 dated August 27, 2010
Premier response dated September 23, 2010
Premier response to Clarification Request #1 dated October 19, 2010
Premier Essentials Modified Letter of Participation signed by University

Referenced documents are incorporated by reference as if verbatim, and the University agrees to utilize the Contractor for such purposes.

2. In cases of conflict between specific provisions of the Contractor's proposal and this Agreement, this Agreement shall control.

3. Intentionally Omitted. Payment provisions are addressed in the documents referenced in Section 1 above.

4. The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the University's Contract Administrator. The

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Contractor's individual(s) designated as key personnel for the purposes of this contract is Joan Ralph V.P. Continuum of Care Services. Randy Lait, Director of Dining Services, North Carolina State University, is designated the Project Coordinator for the University.

5. Contractor shall not subcontract this Agreement without prior written approval of the University's Contract Administrator; provided, however, that University acknowledges and agrees that as a group purchasing organization any products or services purchased by University will be purchased directly from Contractors vendors who participate in Contractors food service program as further referenced in the documents listed in Section 1 of this Agreement.

6. University's participation in the Contractor's group purchasing program for food service and related services by Contractor shall commence on the 1st day of December, 2010, and shall be completed by the 30th day of June, 2015. In addition, the University reserves the right to renew for three (3) additional one-year periods, not to exceed the 30th day of June 2018.

7. (a) The University may terminate this agreement at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement for any reason, including the voluntary or involuntary declaration of bankruptcy, the University shall have the right to terminate this contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

(b) In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to University. Notwithstanding the foregoing, in no event will the total amount due to Contractor exceed the total amount due Contractor under this Agreement. The Contractor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this agreement, and the University may withhold any payment due to the Contractor for the purpose of setoff until such time as the University can determine the exact amount of damages due the University because of the breach.

8. Any information, data, instruments, documents, studies, reports or deliverables given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential proprietary information of the University and not divulged or made available to any individual or organization without the prior written approval of the University. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the University and not the Contractor.

9. Intentionally Omitted.

10. Except as otherwise permitted in this Agreement, Contractor shall not assign or transfer any interest in this Agreement. However, upon written request approved by the University, the University may:

- a. Forward the Contractor's payment check directly to any person or entity designated by the Contractor; or,
- b. Include any person or entity designated by Contractor as joint payee on the Contractor's payment.

In no event shall such approval and action obligate the University to anyone other than the Contractor.

11. The place of this Agreement, its situs and forum, shall be Wake County, North Carolina, and in said County and State such matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of this Agreement, shall be determined in accordance with the laws of the State of North Carolina, without regard to the State's conflicts of laws provisions.

12. The Contractor shall be responsible for the proper custody and care of any property furnished him for use in connection with the performance of this Agreement, or purchased for this Agreement, and will reimburse the University for its loss or damage.

13. The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

14. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

15. The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

16. The Contractor shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with the University.

17. The Contractor shall hold and save the University, its Trustees, officers, agents, and employees, harmless from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Agreement. Contractor, its affiliates and their respective directors, officers, employees and agents shall not be liable to University or to any other entity or person for the acts or omissions solely of the suppliers or distributors ("Vendors") who provide goods and services to University as part of Contractor's food service program. As part of Contractor's food service program, Vendors agree to indemnification provisions that extend to participants in Contractor's food service program. Copies of such indemnification provisions are available for review upon request. This representation and warranty shall survive the termination or expiration of this contract.

18. This Agreement and any documents incorporated specifically by reference represent the entire agreement between the parties and suspend all prior oral or written statements or agreement.

19. This Agreement may be amended only by written agreement of the parties executed by their authorized representatives.

20. The State or University auditor shall have access to persons and records as a result of all Agreements entered into by the University in accordance with General Statute 147-64.7.

21. All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to the University: Director of Materials Management
 North Carolina State University
 Campus Box 7212
 Raleigh, NC 27695-7212

If to the Contractor: Joan Ralph, V.P. Continuum of Care Services
Premier, Inc.
13034 Ballantyne Corporate Place
Charlotte, NC 28277

With a Copy to: Premier Legal Department
Attn: Vice President, Legal Services
13034 Ballantyne Corporate Place
Charlotte, NC 28277

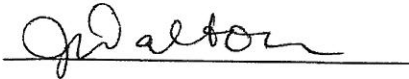
22. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitations.

23. PERSONAL IDENTIFIERS: If the University provides the Contractor with personal identifiers as listed in North Carolina General Statute 132-1.10 or any other legally confidential information, Contractor hereby certifies that, pursuant to NCGS 132-1.10, collection of social security number information or other legally confidential information from University is necessary for the performance of Contractor duties and responsibilities on behalf of the University. Contractor further certifies that it shall maintain the confidential and exempt status of any such social security number information, as required by subsection (c)(1) of the statute.

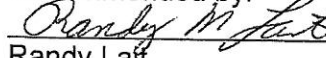
IN WITNESS THEREOF, the parties have executed this Agreement in duplicate originals, one of which is retained by each of the parties, effective the day and year first written above.

WITNESS:

NORTH CAROLINA STATE UNIVERSITY
c/o: University Dining



Recommended by:


Randy Laft Date: 1-18-11

Project Coordinator

Authorized by:

BY: 
Charles D. Leffler Date: 1/18/11
Vice Chancellor, Finance and Business



WITNESS:

CONTRACTOR

BY: 
Joan Ralph Date: 1/13/11
V.P. Continuum of Care Services