



CATERING SERVICES AGREEMENT & GUIDE

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1. Overview

Individuals and companies of all sizes hire caterers to supply their events with food and other services. These events range in size from small luncheons to large-scale wedding receptions. Whether they're hired to build a business image and increase sales, or to take the pressure off of a hostess at a personal affair, caterers are an increasingly common presence in our day-to-day lives.

The enclosed document can provide a good starting point for your catering arrangement. The parties must continue to discuss the terms of their agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on contract terms and have signed the attached form, each party can focus on its area of expertise: the company or individual on the event details and the caterer on the food and beverages to be provided.

2. Dos & Don'ts Checklist

- If you are selecting a caterer, consider their membership in certain service-specific groups (e.g., National Association of Catering Executives, the International Special Events Society, etc.). This may provide you with more assurance about their dedication to the industry and standing in their own community. If you are a caterer, investigate these types of associations and their qualifications for membership. They may have information about running a catering business and contacts that could be essential for your continued growth.

- The city or state you live in may require a caterer to obtain a number of licenses and permits before it is legally permitted to operate its business. These often include (but are not limited to) catering licenses, general business licenses, seller's permits, health permits, and alcoholic beverage licenses (if serving alcohol). If you are starting out in the profession, consider the following: being caught doing business without a license may subject you to hefty fines. If you are hiring a caterer, check at a minimum to see if it has a business or food-related license in your area. This may seem like overkill if you're hiring for a simple job, but it's a good way to check the stability and reliability of the company or person you'll be using.

- Payment for catering services will vary from company to company, and event to event. Consider that the company hiring the caterer may (or may not) be charged for:
 - o Delivery
 - o Chafers/chafing fuel
 - o Gratuity (if personnel are provided by the caterer)
 - o Sterno
 - o Flowers
 - o Aluminum water trays
 - o Stainless steel racks
 - o Linens
 - o Coffee
 - o Cake cutting

Make sure that both parties understand what will and what will not be included in the final cost.

- Review health codes in your area to find out if there are specific rules governing leftovers from an event. If not, the parties can decide among themselves what happens to any food remaining after a function.
- Many states have laws requiring that catering preparations be made only in approved kitchen facilities. In many cases, home kitchens will not have the right elements to be approved for commercial use. If you are starting your catering business, know that you may have to rent additional facilities to use for food preparation. Review state and local laws for additional details about the requirements in your area.
- The enclosed agreement is designed to protect the parties' rights during the contract term. It does not, however, describe what specific tasks will be performed or the rates applicable to any such work. These issues should be resolved by the parties, drafted, and attached to the enclosed document as Exhibit A.
- Before sitting down to draft Exhibit A, decide what your goals are. It can contain any agreed-on terms but should, at a minimum, include a description of the caterer's services, the amount to be paid, the terms of payment, deadlines for completion, and the specific end products expected (if any). Clarify the terms and conditions of your agreement before memorializing them in writing.
- Allow each party to spend time reviewing the agreement and (once drafted) Exhibit A. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.
- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- For many reasons, it's essential that a caterer be treated as an independent contractor, and not as an employee of the individuals or companies for which it works. If independent contractors are reclassified as employees, the company using those contractors will be required to reimburse the IRS or state tax authority for delinquent employment taxes, interest, and penalties. A written agreement can provide some protection from these charges, but is only the first step in establishing an individual's independent contractor status. Once signed, both parties must follow its terms exactly to make sure that status is maintained.
- Review your state's laws governing independent contractors. In recent years, many states have made it difficult for individuals to qualify, imposing absolute requirements about the freedom a contractor must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.

- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Catering Services Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a catering services agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization they are. Note that each party is given a name (e.g., "Company") that will be used throughout the agreement. The hiring party is called the "Company" and the caterer is called the "Caterer." If you are personally hiring a caterer (i.e., not as part of your business or other organization), you can feel free to change the word "Company" to "Host," "Purchaser," or your name wherever it appears in the document.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, the recitals include a simple statement of your intent to enter into a catering arrangement. There are two options offered, one describing a one-time catered event, and the other a more long-term relationship. Select the option that best characterizes your agreement. If only one event is contemplated, describe that event in as much detail as possible in the space provided. Consider that if the Agreement covers a one-time event only, you can use the term "**the** Event," but if you are contemplating a long-term services relationship, you can also use the term "**an** Event" every time a reference to the Event appears in the enclosed document.
- **Section 1: Responsibilities.** Lists each Party's responsibilities under the Agreement. Essentially, the Caterer is agreeing to perform the agreed-on services with adequate attention and care, and the Company is agreeing to assist in this performance by providing necessary information and guidance. Describe the location at which the event or events will take place.
- **Section 2: Nature of Relationship.** Explains that the Caterer is not an employee or partner of the Company. This is an important distinction for legal reasons, including requirements of insurance coverage, liability, and taxes. The agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee in the performance of their duties. Review your state's laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.
- **Section 3: Representations and Warranties.** Details the Parties' promises under the Agreement. Each Party is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that each is capable of entering the Agreement and satisfying its terms).

- **Section 4: Compensation.**

- (a) Initial Estimate. Requires the Company to complete an initial catering information sheet (a form of which is provided in Exhibit B) requesting the Services for the Event. Once the Caterer receives this sheet, it will provide the Company with an initial estimate of the cost of the Services it will be providing. Enter the amount of time before the Event that the Company has to provide this information sheet and the time after receiving that sheet within which the Caterer must provide its estimate.
- (b) Deposit. This is an optional provision requiring that the Company pay a Deposit to secure its reservation of the Caterer's services on the date of the Event. This provision will be more applicable to a one-time service arrangement, with only one Event being considered (i.e., not a long-term arrangement contemplating multiple events). According to the terms of this subsection, the amount of the Deposit depends on how much time remains before the Event. Delete this subsection if it doesn't apply to your arrangement.
- (c) Final Invoice. After the date of the Event, the Caterer is responsible for sending the Company a final invoice reflecting all of the costs and expenses actually incurred in creating the Event. The Company will pay any unpaid amounts (i.e., amounts not already included in the Deposit or other payments) within a certain period of time. Enter the time frames within which the Caterer must send its final invoice and the Company must remit its final payment.
- (d) No Payments In Certain Circumstances. The circumstances under which no payments will be made.
- (e) No Other Compensation. Emphasizes that the payments outlined are the Caterer's only compensation for its services under the Agreement.
- (f) Expenses. Notes that the Caterer will pay for its own expenses. This is another reflection of the fact that the Company and the Caterer are functioning as separate entities (i.e., not as employer and employee). If there are exceptions to this rule, you can include them in the space provided. Keep these exceptions limited if you choose to include them. If the Company pays for all of the Caterer's expenses, the relationship will be seen as more like that between an employer/employee than an independent contractor arrangement.
- (g) Taxes. Indicates that the Caterer is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a "salary" as an employee of the Company and the Company will not withhold those amounts on its behalf).

- **Section 5: Number of Attendees.** Provides a timeline for when the Company will inform the Caterer of the number of people who will be attending the Event. There is also a requirement that the Company notify the Caterer of how many children (under a designated age) will be attending. This will factor into both amounts prepared and cost.

Estimating the number of guests who will be attending your event is difficult, and subject to a host of factors. A good formula for determining is the following:

No. of guests invited x .66 x 1.15 = number of guests to anticipate.

Example: 300 invited guests x .66 = 198 x 1.15 = 228 anticipated guests.

If you're a Caterer, consider employing this formula if a client or potential client is confused about attendees at their event.

- **(Optional) Section 6: Outside Food and Beverages.** This is an optional provision stating that nobody except the Caterer can bring (or take out) food or beverages from the Event. If you do not wish to include any additional requirements, delete this section. If you do remove the provision, correct the section numbers and references in the Agreement.
- **Section 7: Equipment.** There are two options provided here, and you should select the one that best suits your arrangement. In the first, the Parties agree that the Company will provide certain equipment to enable the Caterer to perform its duties under the Agreement. Any equipment other than the items listed will have to be obtained by the Caterer. This does not mean that the Caterer can't pass on the cost of the additional items to the Company in its invoice (if agreed by the Parties). However, the Company is not obliged to procure it on the Caterer's behalf. In the second option, the Company is not providing any equipment to the Caterer, who will have to seek it out on its own. Select the option that best describes your agreement and delete the other.
- **Section 8: No Conflict of Interest; Other Activities.** The Caterer's promise that it is not currently working with any other company or product that competes with the Company. Note, however, that this section expressly permits the Caterer to contract with other companies to the extent its responsibilities under those contracts don't damage the Company or its interests.
- **Section 9: Term.** Indicates that the Agreement will last until termination or until the Services are completed. The bracketed sentence is optional, and relates more to a long-term services arrangement. If services are provided on an ongoing basis, there is no "end" of the services. The bracketed language allows you to express the end as a definite date. Delete this provision if this does not relate to your agreement.
- **Section 10: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the Agreement to end out-of-time (i.e., before the services are completed or the end of the term, if any). Write in the amount of notice a Party must give of its intent to terminate or to notify the other of a breach.
- **Section 11: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that borrowed property should be returned, this paragraph makes that plain. Enter the time period within which each Party must return the other's property. Note that two options are given, and the one you select will depend on your arrangement. If the agreement is for a one-time event, the time should be calculated in days after the Event itself. On the other hand, if there is more than one event being catered (i.e., the Parties have a long-term arrangement), it may not make sense to return borrowed property until the agreement ends. Select the bracketed phrase that best suits your agreement and delete the other one.
- **Section 12: Indemnification.** This provision allocates responsibilities between the Parties if problems arise in the future and protects each Party from the consequences of the other's negligent or intentional conduct.
- **Section 13: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both Parties.
- **Section 14: Assignment.** Explains that each Party must obtain the other's written permission before assigning its obligations and interests.

- **Section 15: Successors and Assigns.** States that the Parties' rights and obligations will be passed on to heirs or, in the case of companies, successor organizations or organizations to which rights and obligations have been permissibly assigned.
- **Section 16: Force Majeure.** Releases a Party from its obligations if its performance is made impossible by an event beyond its control (e.g., flood, earthquake, etc.). This release is effective only as long as circumstances continue to prevent that Party's completion of its tasks.
- **Section 17: No Implied Waiver.** Explains that if either Party allows the other to ignore or break an obligation under the agreement, it does not mean that Party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 18: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Caterer.
- **Section 19: Governing Law.** Allows the Parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 20: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain. It says that even if the Parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 21: Severability.** Protects the terms of the Agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire document. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 22: Entire Agreement.** The Parties' agreement that the document they're signing (together with its exhibits) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 23: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.
- **Exhibit A: Services, Compensation, and Specifications.** The form of [Exhibit A](#) provided is meant as an example only. You and the other Party should restructure and revise this exhibit to fit your situation and individual needs. There are two types of compensation arrangements outlined in the form. You can choose either, or come up with a third structure better suited to your agreement.
- **Exhibit B: Catering Information Sheet.** Again, the sample catering information sheet provided is for illustrative purposes only. You can feel free to customize this form to suit your business or your agreement.

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Form Sample

SAMPLE CATERING SERVICES AGREEMENT

This Catering Services Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, a _____ [individual/corporation/partnership/etc.] (the "Caterer"), and _____, a _____ [corporation/partnership/etc.] (the "Company," and together with the Caterer, the "Parties").

RECITALS

WHEREAS, the Caterer is actively engaged in the business of furnishing goods and services (e.g., food, beverages, wait staff, etc.), in connection with meetings, conference, parties, and other functions such as those conducted by the Company, and;

WHEREAS, the Company wishes to engage the Caterer as an independent contractor for the purpose of furnishing such goods and services [at _____ (the "Event")][on an ongoing basis at such events and functions that the Company holds (each an "Event")], and completing certain specified tasks on the terms and conditions set forth below; and

WHEREAS, the Caterer wishes to provide the Services (as defined below) at [the] [each] Event in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, the Parties hereby agree and promise