**David Porter's**

# Five Foodservice Contract Red Flags

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It's not uncommon for campus administrators to wave the white flag not long (3 – 5 years) into their new foodservice agreements. Administrators can become frustrated as time goes on at the disparity between what was promised during the courtship, and what is not being delivered, and all of the hidden costs that they are being charged throughout the term of the new agreement.  Furthermore, the sense of relief and joy at the execution of the new or renegotiated agreement stemming from the notion that we are in "the good hands people" for the next 10 years, slowly or quickly evaporates. This feeling devolves into an unexpected game of finger pointing, frustration, and financial angst over the disparity of the magical promises made during the selection process and harsh and paralyzing reality of the long term legally binding relationship the school has to now deal with. Instead, false hope and initial sentiments abound as administrators tuck away the newly minted contracts with their foodservice management companies after the documents are signed. "Phew," many think, "now I don't have to worry about all of the complexities and challenges of dining for another several years."

Well, as Amy and Seth from SNL would say….. Really?.....***REALLY???***

Time and again, colleges and universities are often unintentionally or intentionally taken advantage of by the sophisticated and avuncular approach of sales teams of operators are who driven and legally bound with a fiduciary responsibility to place the interests of their stockholders above all else.  And in turn, every single promise, platitude, decision and "recommendation" that is proffered to a school is processed through that prism first and last.

Here are 5 red flags to look for.

1. **Capital investment & termination language.**

   The standard practice by operators is to include "buy back" language that requires immediate payback in full (within 30 days) of potentially millions of dollars of unamortized off balance sheet capital investment upon contract termination.

   Most contracts include termination language with or without cause. Termination language without cause that's reciprocal, combined with standard "buy back" language, if agreed to, has resulted in many contracts as a checkmate move by the operator.

2. **Boiler-plate contract terms that benefit the contractor by putting all risk on the school.**

   Contractors typically issue their own boiler plate contract document for the school to use. The document features language blessed by their internal legal review as produced to protect the operator's interest and shift any (and as much as possible) potential risk to the college or university.

   If the request for proposal to solicit bids to operate your foodservice program includes a draft management agreement, created on your behalf by your independent foodservice advocate/expert, that is proactively delivered to the operator you select immediately upon notification of award, then you take responsibility for ensuring the playing field will be level through contract negotiation and execution by both parties.

3. **Lack of clearly defined foodservice program requirements.**

   Many contracts provide a framework outlining a foodservice program (menu variety & selection, methods of service, hours of operation, method(s) of service, operating hours, operating days, national, regional or local brands, locations, levels of catering) rife with ambiguity.

   If every single element of every aspect of the foodservice program is stipulated and spelled out in the contract, prior to the full execution of the agreement, then the school and the operator benefit from clearly defined day-to-day foodservice program requirements and expectations. The school has a contract that can be used to administer the day-to-day 24/7 foodservice operation and your students win.

4. **Unclear list of responsibilities (who provides and pays for each item/responsibility).**

   These could include repair & maintenance of equipment, preventative maintenance of equipment, janitorial, trash removal, hood cleaning, grease trap cleaning, utilities, employee background checks, recycling, to name just a few.

   If the contract does not clearly list the responsibilities of the University and the responsibilities of the Operator, the University is exposed and at risk of significant and unanticipated on-going charges, responsibilities and headaches.

5. **Excludes important areas entirely, like sustainability, food purchasing guidelines and service specifications.**

   Most foodservice contracts do not address these critical areas. It is important to establish the baselines and goals for the term of the agreement. For instance, the sustainability section should address the minimum purchasing specifications from local vendors. The contract should also make clear the college's or university's sustainability initiatives and guidelines and detail how the contact will meet or exceed expectations in these areas. Well written contacts should also specifically spell out service requirements at each venue on campus during all day parts *by daypart* so that students aren't limited to, for example, only the deli bar and soup during slower days parts or limited service on weekends (both are common occurrences).

**Call Josh Lazarus at 410.451.3617 or speak to him at the Porter Khouw Consulting booth #451 at NACUBO in Nashville to arrange for a completely confidential (NDA required) evaluation of the programmatic, technical and financial terms and conditions of your current foodservice contract(s). Through the month of August, PKC is offering a 100 percent money back fee guarantee.**