APPENDIX TWO

FOOD SERVICE AGREEMENT

 This **Food Service Agreement** (this “**Agreement**”) is executed by and between **The University of Texas HEALTH SCIENCE CENTER AT HOUSTON**,an agency and institution of higher education authorized under the laws and Constitution of the State of Texas (“**University**”), and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Contractor**”) to be effective **\_\_\_\_\_\_\_\_, 20\_\_** (the “**Effective Date**”).

University is interested in contracting with an experienced and qualified food service company for full-service food and non-alcoholic beverage services all as more particularly described in **Schedule 1** attached and incorporated for all purposes.

Contractor has extensive experience in providing the Services (ref. **Schedule 1**) and is a qualified food service company.

 University wishes to obtain the Services from Contractor and Contractor desires to provide the Services to University.

For and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

**TERMS**

**Section 1.**

### Term

 The initial term (“**Initial Term**”) of this Agreement will begin on the Effective Date, and will expire on \_\_\_\_\_\_\_\_\_\_, 20\_\_, unless earlier terminated in accordance with the terms of this Agreement.

Upon expiration of the Initial Term, the parties may extend the term of this Agreement from year to year or for a period of years (each an “**Extension Term**”) in accordance with **Section 9.6**. Failure to agree to extend the term of this Agreement at least \_\_\_\_\_\_\_\_\_\_\_ **[Option:** one hundred twenty (120)**]** days before the expiration date of the Initial Term or any Extension Term, will result in the termination of this Agreement as of the expiration date then in effect.

The term “**contract year**” will mean that period of time beginning on the Effective Date and ending \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ **[Note: Insert date that is 12 months after Effective Date (i.e., if Effective Date is January 1, 2009, then insert December 31, 2009).]** and each twelve (12) month period thereafter, during the Initial Term or any Extension Term.

**Section 2.**

### Preparation Activities Work Schedule

Contractor’s activities (the “**Preparation Activities**”) to be performed in preparation to provide the Services and the related schedule for performance of the Preparation Activities is set forth in **Schedule 2**, attached and incorporated for all purposes. It is understood that time is of the essence with regard to this Agreement and that Contractor will complete all Preparation Activities, commence delivery of the Services and perform the Services to the satisfaction of University in accordance with this Agreement. University will have no obligation to accept late performance or to waive timely performance by Contractor.

**Section 3.**

### Contractor's Responsibilities

#### 3.1 Contractor's Representations and Warranties

3.1.1 Standards of Performance; Applicable Laws. Notwithstanding anything to the contrary contained in this Agreement, Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to the operation and management of the Services (ref. **Schedule 1**). Contractor accepts the relationship of trust and confidence established between it and University by this Agreement. Contractor will use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of University in accordance with University’s requirements and procedures, in accordance with the highest standards of Contractor’s profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders, including (a) the requirements of 25 Texas Administrative Code (“**TAC**”) §§229.161-.170, and .173, otherwise known as the Texas Food Establishment Rules (“**TFER**”), and (b) the *Rules and Regulations* (the “**Regents’ Rules**”) promulgated by the Board of Regents of The University of Texas System (“**Board**”), as well as with those of any other body or authority having jurisdiction (collectively, the “**Applicable Laws**”). Contractor also will obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor’s other duties and obligations under the terms of this Agreement. Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services. Upon University's request, Contractor will submit to University satisfactory evidence of Contractor’s compliance with this Section. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas* *Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor’s response to University’s procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

3.1.2 Sanitation, Health and Safety. Contractor will maintain clean, orderly and sanitary conditions (satisfactory to University in all respects) in all kitchens, food preparation areas, service areas, dining areas, loading docks, hoods and grease filters and for all equipment, floors and dining room chairs and tables associated with certain University cafeterias, snack bars, restaurants, and other locations more particularly identified in **Schedule 3** attached and incorporated for all purposes, or used by Contractor in the performance of the Services (collectively, the “**Space**”). In accordance with the Applicable Laws, including TFER,Contractor will obtain all necessary food handler’s permits (collectively, the “**Permit**”) from appropriate governmental entities. Upon receipt of written notice of suspension of the Permit, Contractor will immediately (1) provide written notice of same to University, and (2) cease performance of the Services and all other food handling operations *until written notice that the Permit is reinstated has been received by Contractor* *and University*.

 In the event University reasonably believes that Contractor is not in compliance with Applicable Laws (ref. **Section 3.1.1**.) and reasonably determines that the violation of the Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University’s campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor’s non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University’s option*, (i) require Contractor to cure within a timeframe that is acceptable to University, or (ii) suspend Contractor’s performance of the Services, and/or (iii) terminate this Agreement *without notice or opportunity to cure*. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of the Services and all other food handling operations under this Agreement.

3.1.3 Inspection. **contractor will provide university with copies of ALL health and safety inspection reports RELATED TO THE SERVICES IN ANY WAY, withIN three (3) days after contractor receives THe reports.**

3.1.4 Health Inspection Review. Contractor will provide food service operations in accordance with the terms stated in this Agreement. Except as provided in **Section 3.1.2**, instances of poor performance by Contractor will be documented by University and submitted to Contractor for immediate review and corrective action. A review meeting will be called between Contractor and University when documented instances of poor performance occur. A plan for corrective action agreeable to both parties will be drafted and implemented. University’s Representative (ref. **Section 3.1.11**)will determine whether and when performance is acceptable to University.

3.1.5 Good Standing; Signature Authority. If Contractor is a corporation, then Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor. If Contractor is a partnership, limited partnership, or limited liability partnership, then Contractor has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations under this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

* + 1. Contractor’s Authority. Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under this Agreement will (i) result in the violation of any provision, if a corporation, of Contractor’s articles of incorporation or by‑laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, of any partnership agreement by which Contractor is bound, (ii) result in the violation of any provision or any agreement by which Contractor is bound, or (iii) to the best of Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.
		2. Limitation of University’s Liability. Except for the obligations of University specifically provided in this Agreement, University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. In addition, notwithstanding any obligation or liability of University to Contractor, no present or future partner or affiliate of University or any agent, officer, director, employee, or regent of University, The University of Texas System (”**System**”), or of the components comprising the System, or anyone claiming under University has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
		3. Debts of Students. Pursuant to Rule 50303 of the Regents’ Rules (ref. **Schedule 4**) neither System nor University will be responsible for debts incurred by or owed to Contractor by individual students or student organizations. Neither University nor System will assume the role of a collection agency for Contractor. Neither University nor System will adjudicate disputes between students and Contractor over the existence or the amount of debts.
		4. Non-Exclusive Agreement; Reservation of Rights by University. UNIVERSITY RESERVES THE RIGHT TO OFFER FOR SALE THROUGH ANY OF ITS PRESENT OR FUTURE FACILITIES, PRODUCTS AND SERVICES THAT MAY BE COMPETITIVE OR SIMILAR IN NATURE TO PRODUCTS AND SERVICES OFFERED BY CONTRACTOR PURSUANT TO THIS AGREEMENT, includING existing vending contracts for soft drinks and snacks.
		5. Use of Food Service Locations by University. University may use the FOOD SERVICE LOCATIONS (ref. **Section 3.2.1**) ATALL TIMES *EXCEPT* *DURING Contractor’s OPERATING SCHEDULE* (ref. **section 3.2.2**).
		6. Customer Satisfaction. Contractor will implement and maintain a "customer satisfaction guaranteed" policy as more particularly set forth in **Schedule 5** attached and incorporated for all purposes. All Customer complaints and claims will be resolved at Contractor’s expense in accordance with the complaint resolution procedures set forth in **Schedule 5**. Any Customer complaint or claim that Contractor is not able to resolve to the satisfaction of the Customer will be referred to University’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Option:** chief business officer**]** (“**University’s Representative**”) for resolution. Contractor will comply with all decisions by University’s Representative regarding the Customer complaints and claims.
		7. Student Participation in Evaluation of Services. Contractor will comply with requirements of Section 51.945, *Texas Education Code*, and all University rules, regulations and policies regarding students’ involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University’s students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University’s prior written approval concerning the date, time and location for each meeting or forum at least thirty (30) days in advance.

#### 3.2 Services.

3.2.1 Food Service; Alcohol Sales. Contractor will provide the Services to University’s students, faculty, staff and invitees (collectively, the “**Customers**”) at the food service locations {collectively, “**Food Service Locations**”) more particularly described in **Schedule 3**.

* + 1. Operating Schedule. The Services will be provided in accordance with the operating schedule (the “**Operating Schedule**”) designated by Contractor. All aspects of the Operating Schedule and any changes to the Operating Schedule will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.

3.2.3 **[Option (Include if Services include a Cash Plan.):** Cash Plan **[Option (Include if University operates a Card System.):** Card System**]**. Contractor will provide the Cash Plan for Customers at all Food Service Locations in accordance with the terms set forth in **Schedule 6** attached and incorporated for all purposes, and pursuant to complete written menus (including item name, portion size and price) developed by Contractor and approved by University’s Representative in advance.

**[Option (Include if University operates a Card System.):** University operates a declining balance debit card system known as the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” (the “**Card System**”) as a form of payment by Customers for, among other things, the Services. In addition to cash payments, Contractor will accept the Card System as payment for the Cash Plan. **[Option:** Cash Plan Customers using the Card System will receive a \_\_\_ (\_\_\_%) discount off of their purchases. **]** **[Option:** This discount will not be available under the Board Plan.**]]**

* + 1. **[Option (Include if Services include a Short Term Meal Plan.):** Short Term Meal Plan. Contractor will provide the Short Term Meal Plan to University and non-University groups and organizations hosting camps and other activities on University’s premises (collectively, “**Summer Camp Programs**”) in accordance with the terms set forth in **Schedule 7** attached and incorporated for all purposes. Short Term Meal Plans are primarily offered in support of the Summer Camp Programs. Short Term Meal Plans may include breakfast, lunch, and dinner and may be provided in the Board Plan Dining Area. Short Term Meal Plan service hours will be coordinated with each Summer Camp Program. Contractor will invoice all Customers participating in the Short Term Meal Plan directly. Contractor will account for sales from Short Term Meal Plans separately from all other sale transactions.**]**
		2. **[Option (Include if Services include a Board Plan.):** Board Plan. Contractor will provide the Board Plan to participating Customers in accordance with the terms set forth in **Schedule 8** attached and incorporated for all purposes.**]**
		3. **[Option (Include if Services include a Catering Plan.):** Catering Plan. Upon University’s request, Contractor will provide the Catering Plan in accordance with the terms set forth in **Schedule 9** attached and incorporated for all purposes, at parties, banquets, teas, coffees, receptions, dinners and other special events (collectively, “**Special Events**”) held by University and non-University groups and organizations, in locations designated by University. The locations may be on or off University’s premises.**]**
		4. **[Option (Include if Services include a Concession Plan.):** Concession Plan. Contractor will provide the Concession Plan in accordance with the terms set forth in **Schedule 10** attached and incorporated for all purposes.**]**
		5. Marketing. Contractor will actively and aggressively market the Services to be provided by Contractor under this Agreement at each Food Service Location. All marketing will comply with the Regents’ Rules, including Rule 80103, and will be based on University preferences and needs identified by Customer feedback. Contractor is prohibited from advertising to the general public the location of Contractor’s operations on University’s premises; however, Contractor is not prohibited from advertising in the student newspaper and in other publications published primarily for distribution to students, faculty, and staff and are approved by University for distribution on University’s premises. Contractor will not be entitled to distribute advertising or marketing literature on University’s premises or to display posters or post commercial messages on public bulletin boards on University’s premises, except in accordance with the Regents’ Rules and University policies and procedures, and after written approval by University in each instance. Contractor will not communicate any messages that advertise, promote, or market Contractor’s services by means of University’s mail or email system unless prior to the communication University determines that the communication complies with the Regents’ Rules and University’s policies and procedures, and approves the communication in writing.Contractor may install and display signs, advertising and other marketing materials in the Food Service Locations; however, the form and size of any signs, advertising and marketing materials must be approved in writing in advance by University. Contractor’s requests for approvals under this Section will be delivered to University’s Representative.

**Section 4.**

### Prices and Costs Arrangements

#### 4.1 Price and Portion Sizes for Menu Items.

4.1.1 **[Option (Include if services include a Cash Plan.):** Cash Plan. The Cash Plan is more particularly described in **Section 3.2.3**. The price to be charged for each menu item sold by Contractor pursuant to the Cash Plan and the portion size for each menu item will be designated in writing by Contractor and will be competitive with the prices and portion sizes of local food establishments for similar items. All aspects of the Cash Plan and any changes to the Cash Plan will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.**]**

* + 1. **[Option (Include if Services include a Short Term Meal Plan.):** Short Term Meal Plan. The Short Term Meal Plan is more particularly described in **Section 3.2.4**.The price to be charged for each Short Term Meal Plan option and sample menus with portion sizes will be designated by Contractor in writing. All aspects of the Short Term Meal Plan and any changes to the Short Term Meal Plan will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.**]**
		2. **[Option (Include if Services include a Board Plan.):** Board Plan. The Board Plan is more particularly described in **Section 3.2.5**. The prices to be charged for each Board Plan option and sample menus with portion sizes will be designated by Contractor in writing. All aspects of each Board Plan option and any change to any Board Plan option will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.**]**
		3. **[Option (Include if Services include a Catering Plan.):** Catering Plan. The Catering Plan is more particularly described in **Section 3.2.6**. The price charged for each service, the price charged for each menu item and the portion size for each menu item under the Catering Plan will be designated by Contractor in writing and will be competitive with local caterers for similar services and items. If menu items or services not listed on **Schedule 9** are requested by University ornon-University groups or organizations, prices and portion sizes will be reasonable and subject to negotiation. All aspects of the Catering Plan and any changes to the Catering Plan will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.**]**
		4. **[Option (Include if Services include a Concession Plan.):** Concession Plan. The Concession Plan is more particularly described in **Section 3.2.7**. The price charged for each menu item sold by Contractor pursuant to the Concession Plan and the portion size for each menu item offered under the Concession Plan will be designated by Contractor in writing and will be competitive with the prices of local concession operations for similar items. All aspects of the Concession Plan and any changes to the Concession Plan will be subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.**]**

### 4.2 Adjustments to Price or Portion Size.

4.2.1 Most Plans. Any adjustment to the price or portion size of any menu item or the price of any service provided by Contractor pursuant to the **[Option (Include Plans that are included in the Services.):** **[**Cash Plan,**] [**Short Term Meal Plan,**] [**Catering Plan,**] [**and**] [**Concession Plan**]]** is subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld. All requests for adjustments will be supported by documentation, including raw cost data for the specified menu items clearly reflecting the change in costs for the items. Requests by Contractor for adjustments will be submitted in writing to University’s Representative at least \_\_\_\_ (\_\_) **[Option:** fourteen (14)**]** days prior to the proposed effective date for the adjustment.

* + 1. **[Option (Include if Services include a Board Plan.):** Board Plan. Board Plan rates are subject to adjustment on \_\_\_\_\_\_ **[Option:** August 15**]** of each contract year during the Initial Term or any Extension Term; provided that, Contractor submits written notice of its intent to increase Board Plan rates to University’s Representative not later than \_\_\_\_\_ **[Option:** March 15**]** of the current contract year. All requests for adjustments will be supported by documentation, including raw cost data for the specified Board Plan option reflecting the change in costs for the option.**]** Any adjustment to the price of any Board Plan option is subject to the prior written approval of University’s Representative. Approval will not be unreasonably withheld.

### 4.3 Costs and Expenses.

Contractor will:

* + 1. comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, as amended, including the provision of financial statements, payment statements derived from sales tax reports, and bonds;
		2. provide all food and non-alcoholic beverages to be served or provided in connection with Contractor's performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
		3. provide all paper products and kitchen supplies necessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement;
		4. provide all management and non-management personnel (including the payment of all salaries and fringe benefits due to the personnel) necessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement;
		5. provide uniforms and name tags (satisfactory to University in all respects) for Contractor’s personnel in accordance with **Section 6.2.10** of this Agreement;
		6. provide all laundry supplies, equipment and services necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;
		7. provide all janitorial supplies, equipment, and services necessary for the maintenance and cleaning of inside surfaces, furnishings, equipment, front doors, glass wall partitions, restrooms, walls, ceilings, loading docks, floors and vents associated with the Space or related to the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement. All floors will be stripped and waxed and all vents will be cleaned, at least three (3)times per contract year;
		8. replace all lost or damaged dinnerware, flatware, glassware, trays, and other kitchen and serving utensils (collectively, “**Smallwares**”) necessary to maintain the Smallwares inventory at the levels provided by University on the Effective Date of this Agreement. A comprehensive inventory of the Smallwares provided by University is attached as **Schedule 11** and incorporated for all purposes;
		9. provide all Smallwares not furnished by University that are necessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement;
		10. obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement;
		11. pay all taxes on the Services (including the sale of food and non-alcoholic beverages under the terms of this Agreement) as may be required by Applicable Laws;
		12. pay all insuranceand bond premiums required by the terms of this Agreement including **Sections 4.3.1** and **6.3**;
		13. pay all costs related to vehiclesnecessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement;
		14. pay all costs and charges related to telecommunication services provided to the Space by University;
		15. provide all office supplies, postage, printing supplies, and marketing materials necessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement;
		16. provide all **[Option (Include if University operates a Card System.):** Card System compatible**]** point-of-sale cash registers and appropriate accessories **[Option (Include if University provides some but not all cash registers.):** not furnished by University as University Owned Equipment (ref. **Section 7.3.1**)**]**, that are necessary for the performance of the Services and Contractor’s other duties and obligations under the terms of this Agreement. A comprehensive inventory of University Owned Equipment is attached as **Schedule 11** and incorporated for all purposes;
		17. maintain all University Owned Equipment in good working order;
		18. repair or replace (at University’s option) all University Owned Equipment and all other University equipment, furniture, plumbing fixtures, and electrical fixtures, lost or damaged by Contractor, its employees, representatives, agents, or subcontractors, including clearing of stoppages in drains caused by grease or other foreign matter lodged between the grease traps and the food service area of any part of the Space. **[Option:** University Owned Equipment that has exceeded its useful life will be replaced by University at University’s expense**]**.
		19. provide for the removal and proper disposal of all wet garbage from the Space and related areas;
		20. provide for the removal and proper disposal of all dry garbage from the Space and related areas;
		21. cause to be provided appropriate pest control services within the Space and adjacent areas. All pest control services must be (1) coordinated with University’s pest control efforts, and (2) pre-approved in writing by University’s Representative;
		22. comply, and cause its employees, representatives, agents, and subcontractors to comply, with all applicable University rules and policies, including **[Option (Use if this is a UT System contract; if not, insert the name of and link to University’s code of conduct.):** University’s *Standards of Conduct Guide* posted on the Internet at http://www.utsystem.edu/systemcompliance/SOCcombined.pdf as well as**]** University’s rules and polices related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions; and
		23. pay any and all other costs associated with the performance of the Services and Contractor’s other duties and obligations pursuant to the terms of this Agreement, not expressly required to be paid by University pursuant to **Section 7.3**.

## Section 5.

## Fiscal Arrangements

**[Note: The fiscal arrangements in this Agreement are highly fact specific. University should take care to confirm that the fiscal arrangements are acceptable to all appropriate University officials, including the chief business officer.]**

**5.1 Payment of Royalty. [Note: Consider whether University should request that all or a portion of the Royalty be guaranteed by Contractor. This request may cause Contractor to reduce other incentives.]**

5.1.1 Calculation. Contractor will pay University the Royalty on adjusted gross revenue generated by **[Option (Include Plans that are subject to Royalty.):** **[**Cash Plan**] [**Short Term Meal Plan**] [**Catering Plan**] [**and**] [**Concession Plan**]]**, all as more particularly provided in **Schedule 12** attached and incorporated for all purposes. The term “**adjusted gross revenue**” will mean gross food and non-alcoholic beverage revenue *less* all applicable sales taxes.

5.1.2 Payments; Accounting Periods. Contractor will pay University all amounts owing under this Agreement within thirty (30) days after the last day of each Accounting Period during the Initial Term or any Extension Term of this Agreement. *The term “****Accounting Period****,” as used in this Agreement, will mean one (1) calendar month.*

**5.2 [Option (Include if Services include Catering Plan.): Catering Payments.**

Payments by University will be made in accordance with Chapter 2251, *Texas* *Government Code*. Contractor will invoice University for the Services provided under the Catering Plan within \_\_\_\_\_\_\_\_\_\_ (\_\_) **[Option:** twenty (20)**]** days after the Catered Event. University will, within twenty‑one (21) days from the date it receives the invoice and applicable supporting documentation for payment, approve or disapprove the amount reflected in the invoice and if University approves the amount or any portion of the amount, University will pay to Contractor within thirty (30)days after the later of receipt of the invoice or complete performance of the Services, the amount so approved, provided Contractor is not in breach of or in default under this Agreement. If University disapproves any amount requested by Contractor, University will give Contractor specific reasons for its disapproval in writing.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Texas Tax Code,* and Title 34 TAC Section 3.322.

Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor’s banking information. Any changes to Contractor’s banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 9.15**.**]**

**5.3 Collection and Recording of Revenue.**

5.3.1 Revenue Collection Procedures. All revenue will be collected as more particularly provided in **Schedule 13** attached and incorporated for all purposes.

5.3.2 Recording Receipts. All revenue received as a result of this Agreement will be recorded in Contractor's general ledger. Contractor will process all cash sales through cash registers, maintain cash register tapes and sales records locally, and make the tapes and records accessible to University within five (5) days after University’s written request.

5.3.3 **[Option (Include if University operates a Card System.):** Card System Sales. Contractor will process all Card System sales through University’s Card System.**]**

5.3.4 **[Option: (Include if Contractor or its agents or subcontractors will process credit card payments to perform or further any portion of the Services.):** Payment Card Industry Standards. **[Note: If using this Option, contact OGC to confirm that the services provided by Contractor do not violate or conflict with existing UT System or State of Texas contracts or agreements.]** University is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, “**PCI DSS**”), including Payment Application Data Security Standards (collectively, “**PA DSS**”), promulgated by the Payment Card Industry Security Standards Council (“**PCI SSC**”). The compliance validation process requires University to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, “**System Components in Scope**”). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. As evidence of compliance, Contractor will provide to University on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the term of this Agreement, a copy of Contractor’s annual attestation of compliance signed by a Qualified Security Assessor (“**QSA**”) as more particularly described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University’s QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor’s agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University’s PCI DSS compliance, and (2) University’s information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.]

**5.4 Reporting.**

5.4.1 Periodic Statements. On the Effective Date, Contractor will submit to University two (2) copies of a financial statement prepared by a certified public accountant. Within \_\_\_\_ (\_\_) **[Option:** thirty (30)**]** days after the end of each Accounting Period during the Initial Term or any Extension Term, Contractor will submit to University two (2) copies of the following information covering the immediately preceding Accounting Period: (a) a statement of all revenues, including **[Option (Include Plans that are included in the Services.):** **[**Cash Plan revenue (including cash, credit card and Card System revenue)**]** **[**Board Plan**]** **[**Short Term Meal Plan**] [**Catering Plan**] [**and**] [**Concession Plan**]]** revenue; (b) a statement of gross and net sales and disbursements reported on a Food Service Location basis; (c) a consolidated statement of total food service operations covered by this Agreement, reported on an Accounting Period basis and year-to-date basis and (d) in accordance with Section 2252.063, *Texas Government Code*, payment statements derived from sales tax reports (ref. **Section 4.3.1**).

5.4.2 Statement Based on Sales Tax Reports. In accordance with Section 2252.063, *Texas Government Code*, Contractor will submit to University’s Representative, no later than the 15th day after the end of each fiscal year, an annual payment statement derived from all of Contractor’s sales tax reports for its operations in any Food Service Location during the preceding fiscal year. This annual payment statement must be certified by a certified public accountant licensed in the State of Texas (ref. **Section 4.3.1**). The term “**fiscal year**” will mean University’s fiscal year, that commences September 1 and ends August 31.

5.4.3 Annual Budget. On or before \_\_\_\_\_\_\_ **[Option:** May 1**]** of each contract year of this Agreement, Contractor will prepare and submit for University’s review and approval, two (2) copies of Contractor’s proposed budget for the performance of the Services at all Food Service Locations, including detailed revenue projections by location and by revenue source, as well as costs and other information reasonably requested by University.

5.4.4 Form of Reports. All reports will be presented in forms satisfactory to University in all respects.

**5.5 Inventory.**

5.5.1 Inventory Record Keeping. Contractor will maintain, in formats acceptable to University, annual inventory, acquisition, and loss records for (a) all University Owned Equipment and (b) all Contractor Owned Equipment (ref. **Section 5.5.2**).

5.5.2 Contractor Owned Equipment. Contractor will provide University with an inventory listing of all equipment owned by Contractor and used on University’s premises to perform the Services or Contractor’s other duties and obligations under the terms of this Agreement (collectively, “**Contractor Owned Equipment**”) to be used in the Space and will keep the list current. Any equipment located in the Space that is not on Contractor Owned Equipment list will be deemed to be University Owned Equipment and the sole property of University.

5.5.3 Purchase of Inventory. University may, at its option, purchase Contractor’s usable inventory of food and related supplies upon termination of this Agreement for any reason; provided, however, University will not purchase any food or supplies in open or partial packages, boxes, or containers. The purchase price for the inventory will bedetermined by Contractor’s verifiable invoice costs.

5.5.4 Annual Contractor Inventory. On each anniversary date of this Agreement and upon the effective date of the termination of this Agreement for any reason, a joint inventory of all Contractor Owned Equipment will be taken.

5.5.5 Annual University Owned Equipment and Replacement. Contractor will also assist University with University’s annual inventory review. Any shortage or loss of University Owned Equipment will be documented by University. Contractor will replace any shortage or loss with equipment satisfactory to University in all respects within \_\_\_\_ (\_\_) **[Option:** thirty (30)**]** days after receiving written notice of the shortage or loss from University.

**[Option:**

**5.6** **Additional Commitments.**

5.6.1 Financial Commitment. Contractor will make a Financial Commitment to University in the amount of \_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_) (the “**Financial Commitment**”). University will invest the Financial Commitment for renovation and future improvements to existing Food Service Locations, establishment of additional food service locations and other uses related to food service operations.

5.6.2 Installments. The Financial Commitment will be paid in multiple installments (each, a “**Financial Commitment Installment**”), according to **Schedule 14** attached and incorporated for all purposes. Contractor will pay each applicable Financial Commitment Installment within \_\_\_\_ (\_\_) **[Option:** thirty (30)**]** days following the commencement of the applicable contract year; provided, however, that Contractor will only be required to pay the Financial Commitment Installment if this Agreement is in full force and effect on the date that the Financial Commitment Installment is required to be paid.

5.6.3 Renovation and Installation. University will manage all Spacerenovations, purchase and install all food service equipment and furnishingswith input from Contractor, and disburse the Financial Commitment as University deems appropriate.

* 1. **Amortization.**
		1. Amortization of Financial Commitment. Contractor will amortize the Financial Commitment in accordance with the amortization schedule set out in **Schedule 14** attached and incorporated for all purposes. **[Note: Be sure that Schedule 14 reflects the installment schedule and the amortization schedule. Also, consider whether the amortization should be accelerated similar to IRS requirements rather than straight line.]**
		2. Reimbursement of Unamortized Balances. If, prior to complete amortization of the Financial Commitment, University terminates **[Note: If this Agreement permits amortization of the Financial Commitment beyond the Initial Term, University may be required to pay Contractor a lump sum upon expiration of the Initial Term if this contract is not renewed or extended. In the event this Agreement expires before the Financial Commitment is fully amortized, University will need to add language to this contract addressing that issue. Contact OGC for assistance.]** this Agreement for any reason other than default by Contractor pursuant to **Section 8.2** or **Section 3.1.2**, then to the extent authorized by the laws and Constitution of the State of Texas, University will, within \_\_\_\_\_ (\_\_) **[Option:** sixty (60)**]** daysafter the termination date, reimburse Contractor for any unamortized balance of the Financial Commitmentcalculated as of the termination date based on **Schedule 14**.

If, prior to complete amortization of the Financial Commitment, Contractor terminates **[Note: If this Agreement permits amortization of the Financial Commitment beyond the Initial Term, University may be required to pay Contractor a lump sum upon expiration of the Initial Term if this contract is not renewed or extended. In the event this Agreement expires before the Financial Commitment is fully amortized, University will need to add language to this contract addressing that issue. Contact OGC for assistance.]** this Agreement for default by University pursuant to **Section 8.2**, University will, to the extent authorized by the laws and Constitution of the State of Texas, within \_\_\_\_ (\_\_) **[Option:** sixty (60)**]** days after the termination date, reimburse Contractor for any unamortized balance of the Financial Commitmentcalculated as of the termination date based on **Schedule 14**.

Except as specifically required by this Section, University will have no obligation to reimburse Contractor for any unamortized balance of the Financial Commitment.**]**

5.7.3 Prorating Unamortized Balance of Financial Commitment. In the event this Agreement is terminated before the end of the then current contract year, the unamortized balance of the Financial Commitment will be prorated through the effective date of termination.

**5.8 Title.**

Title to any property paid for with Financial Commitment funds (with the exception, in each case, of any signage that bears the name of Contractor or any of its logos, service marks or trademarks or any logos, service marks or trademarks of a third party) will automatically become the property of University. Contractor will have no right of ownership or any claim in the property. Further, Contractor will provide University with any documentation reasonably necessary to evidence University’s ownership of the property. All documentation will be in form satisfactory to University in all respects.

**Section 6.**

### Management Responsibilities

# Independent Contractor.

Contractor recognizes that it is engaged by University as an independent contractor and acknowledges that University will have no responsibility to provide to Contractor or its officers, employees, personnel, agents, partners, or subcontractors, vacation, insurance or other fringe benefits normally associated with employee status. Contractor will perform the Services and discharge all of its duties and obligations under this Agreement in its capacity as an independent contractor. Contractor, in accordance with its status as an independent contractor, will conduct itself consistent with that status, and that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University. Contractor will not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of University, including unemployment insurance benefits, social security coverage or retirement benefits. Contractor will make its own arrangements for any benefits it may desire. Contractor is responsible for all income taxes required by Applicable Laws. All persons performing the Services will be officers, employees, personnel, agents, partners, or subcontractors solely of Contractor and will not be deemed, for any purpose whatsoever, officers, employees, personnel, agents, or partners, acting for or on behalf of, University.No acts or representations, whether oral or written, made by Contractor or its officers, employees, personnel, agents, partners, or subcontractors, to third parties will be binding on University, unless expressly accepted by University in writing.

* 1. Personnel.
		1. Properly Trained Staff; Efficient Performance of Services; **[Option:** Dietitian**]**. At all times, Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will maintain and have on duty at all Food Service Locations an adequately trainedstaff of employees or personnel sufficient for the efficient performance of the Services. Contractor will provide expert administrative, dietetic, purchasing, and personnel supervision, for the performance of the Services. **[Option:** In addition, upon University’s request, Contractor will provide the services of a registered dietitian for student dietary counseling and menu preparation.**]**
		2. Supervision. Contractor will provide adequate, competent supervision of its employees and personnel at each Food Service Location. Neither University’s Representative nor any other representative of University will supervise Contractor’s employees, representatives, agents, or subcontractors performing the Services; provided, however, University’s Representative will be available to Contractor to answer questions and provide necessary information.
		3. Licenses; Designated Representatives. All persons connected with Contractor directly in charge of the Services are duly registered and licensed under Applicable Laws, if so required by Applicable Laws. Contractor will assign to University a designated representative who will be responsible for the administration and coordination of the Services. Contractor will furnish efficient business administration and coordination and perform the Services in an expeditious and economical manner consistent with the interests of University.
		4. Anti-discrimination Provision. Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, handicap, national origin, or status as a veteran.
		5. Employee Conduct. Contractor will require all of its employees and personnel to adhere to the Regents’ Rules and University’s policies and procedures. Contractor will perform the Services without interfering in any way with the activities of University’s faculty, students, staff, visitors or invitees.
		6. Labor Unions. University will not be a party to, or be bound by, any labor union contract affecting Contractor’s employees or personnel. Any contract will be negotiated between Contractor and the labor union.
		7. University’s Rights to Refuse Entry and Eject. University has the rights to (a) require identification from any person on University’s premises, (b) refuse entry to persons having no legitimate business on University’s premises, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University’s rights described in this Section.
		8. Responsibility for Injury, Loss and Damage. Contractor will be responsible for any and all injury, loss and damage to persons or property caused by Contractor’s employees, representatives, agents, or subcontractors. At University’s option, Contractor will promptly repair, to the satisfaction of University, any damage Contractor, its employees, representatives, agents, or subcontractors, cause to University’s property or University may repair the damage and Contractor will promptly reimburse University for the cost of the repair.
		9. Limited Access;Space License. Contractor, its employees, representatives, agents, and subcontractors, will have the right to use and access only the Space to perform the Services and will have no right to use or access any other University facilities. University will permit Contractor to use the Space in accordance with the license contained in this Section. University licenses the Space in its current, “as is” condition to Contractor for use by Contractor and its employees, representatives, agents, and subcontractors in the performance of the Services and for no other purpose. This is a non-exclusive license to use the Space. University may enter the Space at any time for any reason. No unlawful activities will be permitted in the use of the Space. Contractor will comply with all Applicable Laws in connection with the use of the Space. Contractor will cause all of its employees, representatives, agents, and subcontractors to observe and comply with all Applicable Laws.

Contractor will not modify, alter or repair the Space or any other University facilities without the prior written approval of University and with project management of renovations by University.

Contractor will not harm the Space or make any use of the Space that is offensive as determined by University. Upon expiration or termination of this Agreement for any reason, Contractor will remove Contractor Owned Equipment and other effects, repair any damage caused by the removal, and peaceably deliver up the Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any personal property of Contractor not removed within two (2) days following the termination will be deemed abandoned by Contractor and University may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

Contractor will not suffer any mechanic's lien to be filed against the Space or the adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Space for Contractor. Nothing in this Agreement will be construed as the consent of University to subject University’s estate in the Space or adjoining facilities to any lien.

The Space is sufficiently equipped for Contractor to provide the Services in accordance with the terms and conditions of this Agreement.

UNIVERSITY WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY SERVICE TO THE SPACE. HOWEVER, UNIVERSITY WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE.

UNIVERSITY WILL NOT BE LIABLE TO CONTRACTOR, OR CONTRACTOR’S employees, representatives, agents, subcontractors, GUESTS OR INVITEES (COLLECTIVELY, “**CONTRACTOR PARTIES**”), FOR ANY LOSS, EXPENSE OR DAMAGE EITHER TO PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF THE SPACE, OR DUE TO ANY ACT OF ANY employee OR AGENT OF UNIVERSITY, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. UNIVERSITY, ITS EMPLOYEES, REPRESENTATIVES AND AGENTS WILL NOT BE LIABLE FOR AND CONTRACTOR WAIVES ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY CONTRACTOR PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON THE SPACE OR THE ADJOINING GROUNDS OR FACILITIES. CONTRACTOR WILL PAY ON DEMAND UNIVERSITY’S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF CONTRACTOR UNDER THIS LICENSE.

* + 1. Uniforms; Name Tags. While on duty, on or off University's premises, all of Contractor’s non-supervisory personnel will wear uniforms satisfactory to University in all respects. While on duty, on or off University premises, Contractor’s professional staff will wear name tags satisfactory to University in all respects.
		2. Health Examinations. Contractor will require all of its employees and personnel to submit to periodic health examinations as required by Applicable Laws. Upon University's request, Contractor will submit to University satisfactory evidence of Contractor’s compliance with this Section.

6.2.12 **Responsibility for Individuals Performing Services; Criminal Background Checks.** Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the Services, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Services, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University’s campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Services.

Prior to commencing performance of the Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals assigned to perform the Services.

6.2.13 Undocumented Workers. The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor is in compliance with and will remain in compliance with the provisions of the Immigration Act.

# 6.3 Insurance, Bond, Indemnification, and Liability.

6.3.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

6.3.1.1 Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than $1,000,000:

Employers Liability - Each Accident $1,000,000

Employers Liability - Each Employee $1,000,000

Employers Liability - Policy Limit $1,000,000

Workers’ Compensation policy must include under Item 3.A. on the information page of the Workers’ Compensation policy the state in which Work is to be performed for University.

6.3.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit $1,000,000

Damage to Rented Premises $ 300,000

Personal & Advertising Injury                  $1,000,000

General Aggregate                                             $2,000,000

Products - Completed Operations Aggregate      $2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor’s and subcontractor’s liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

6.3.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

 If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

 **[Option:** 6.3.1.4 Umbrella/Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and aggregate with a deductible of no more than $10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 6.3.1.1 Employer’s Liability; 6.3.1.2 Commercial General Liability; **[Option:** and**]** 6.3.1.3 Business Auto Liability **[Option:** ; and 6.3.1.5 Liquor Liability**]**. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.**]** **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

**[Option:** 6.3.1.5 Liquor Liability Insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate for bodily injury and property damage arising from selling, serving or furnishing of any alcoholic beverage by Contractor or Contractor’s employees, representatives, agents, or subcontractors in the performance of this Agreement.**]**

**[Option:** 6.3.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than $1,000,000 each occurrence, $3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy.No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.**]**

**[Option:** 6.3.1.7 Contractor’s Employee Dishonesty Insurance will be endorsed with a Client’s Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than **[Option:** $500,000**] [Option:** $1,000,000**]** per claim. If Contractor has property of University in its care, custody or control away from University’s premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor’s Employee Dishonesty policy will name University as Loss Payee.**]** **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

 **[Option:** 6.3.1.8 Directors’ and Officers’ Liability Insurance with limits of not less than $1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.**]**

**[Note: If this Agreement involves construction on property owned by the Board of Regents of The University of Texas System, please contact the UT System Office of Risk Management for guidance and relevant insurance requirements.]**

**[Note: If this Agreement poses potential risks related to data privacy, network or information security, please contact the UT System Office of Risk Management for guidance on relevant insurance requirements and seek review of the contract by the Institution’s Information Security Officer.]**

6.3.2 Contractor will deliver to University:

6.3.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

6.3.2.1.1 **All insurance policies** (with the exception of workers’ compensation, employer’s liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor’s acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

6.3.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 5**.

6.3.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

6.3.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Michael K. Ochoa, C.P.M.

 Procurement Services

Address: 1851 Crosspoint, OCB 1.160

 Houston, Texas 77054

Facsimile Number: 713-500-4710

Email Address: Michael.Ochoa@uth.tmc.edu

6.3.3 Contractor’s or subcontractor’s insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor’s or subcontractor’s insurance will be kept in force until all Work has been fully performed and accepted by University in writing. **[Option:** ,except as provided in this **Section 6.3.3**.**]**

**[Option:** 6.3.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.**]**

**[Option:** 6.3.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.**]**

6.3.4 Performance Bond. In accordance with Section 2252.064, *Texas Government Code*, Contractor will provide University with a performance bond for each contract year during the Initial Term and any Extension Term (ref. **Section 1**). The amount of the performance bond for the first contract year during the Initial Term will be equal to the amount of the projected Royalty payable to University during that contract year. Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to reflect the amount of the Royalty payable to University for the previous contract year. The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University’s Representative in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of the Services and all of Contractor’s other duties and obligations under this Agreement.

##  6.3.5 Indemnification.

6.3.5.1 To the fullest extent permitted by law, Contractor will indemnify, protect, defend with counsel approved by University, and hold harmless University and System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively “**Indemnitees**”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys’ fees incurred in investigating, defending or settling any of the foregoing (collectively “**Claims**”) by any person or entity, arising out of, caused by, or resulting from Contractor’s performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Contractor, anyone directly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

6.3.5.2 In addition, Contractor will indemnify, protect, defend with counsel approved by University, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Contractor, or the use by Indemnitees, at the direction of Contractor, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for infringement, University will promptly notify Contractor and Contractor will be given the opportunity to negotiate a settlement. In the event of litigation, University will reasonably cooperate with Contractor. All parties will be entitled to be represented by counsel at their own expense.

**Section 7.**

###### University’s Obligations

* 1. **[Option: Hiring Contractor’s Supervisory Employees or University’s Employees.** University will not actively solicit for employment any of Contractor’s Supervisory Employees during the Initial Term or any Extension Term, or for a period of six (6) months after the expiration or termination of this Agreement for any reason, unless the persons were formerly employees of University. In addition, Contractor will not actively solicit for employment any of University’s employees during the Initial Term or any Extension Term, or for a period of six (6) months after the expiration or termination of this Agreement for any reason. In this Section, “**Contractor’s Supervisory Employees**” means those persons who have performed management services for Contractor on University’s premises for at least six (6) months, and, in the event this Agreement has expired or terminated, performed the Services during the six (6) month period prior to the expiration or termination of this Agreement for any reason.**]**
	2. **[Option (May include if Agreement includes a Catering Plan and this provision is acceptable to University.): Approval for Off-Campus Caterer.** University will not permit any caterer other than Contractor to cater Special Events held on University premises without the prior written approval of Contractor; provided, however, if Contractor is unable to provide a particular menu item or service requested by the sponsor of the Special Event at a competitive price, then University may authorize another caterer to cater that particular Special Event without Contractor’s written approval.**]**
	3. **General Obligations.** University will:

7.3.1 **[Option (Use if University will provide cash registers.):** provide, for Contractor’s use in connection with the Services, the point-of-sale cash registers and appropriate accessories (collectively, the “**University Owned Equipment**”) more particularly described in **Schedule 11**;**]**

7.3.2 **[Option (If delete from this list, then add to Contractor’s obligations in Section 4.3.):** pay for utility service (including water, gas, and electric service, but specifically excluding telecommunication services (ref. **Section 4.3.14**)) necessary for performance of the Services.University will not be responsible for interruptions in water, gas, electric, telecommunication or other utility services. However, University will exercise reasonable diligence in pursuing the restoration of interrupted utility services;**]**

* + 1. clean exterior walls and windows of the Space;
		2. provide external maintenance on buildings where the Space is situated; and
		3. provide routine cleaning of all grease traps, duct work, plenum chambers and roof fans within the Space.

# Section 8.

**Termination**

### 8.1 Termination Without Cause. This Agreement may be terminated by University *without cause* by giving Contractor not less than \_\_\_\_\_\_\_\_ [Option: forty-five (45)] days written notice of University’s intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with Section 5.1 of this Agreement.

**[Option (Use only if University is comfortable granting Contractor the right to terminate this Agreement without cause.):** This Agreement may be terminated by Contractor without cause by giving University not less than \_\_\_\_\_\_\_\_\_\_ **[Option:** forty-five (45)**]** days’ written notice of Contractor’s intention to terminate this Agreement as of a specific date. In the event this Agreement is terminated by Contractor before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with **Section 5.1** of this Agreement.

**8.2** **Termination for** **Default****.** Except as provided in **Section 3.1.2**, in the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon \_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** thirty (30)**]** days’ written notice of termination setting forth the nature of the default; provided, that, the default is through no fault of the terminating party. Termination will not be effective if the default is fully cured prior to the end of the \_\_\_\_\_\_\_\_\_\_ **[Option:** thirty (30)**]** day period. If Contractor fails to cure any default within \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** thirty (30)**]** days after receiving written notice of default, University will be entitled (but will not be obligated) to cure the default and will have the right, at University's option, to collect any and all reasonable expenses incurred in connection with the curative actions from Contractor or to set off the expenses against any amounts due to Contractor under this Agreement.**]**

## 8.3 No Release of Liability. Termination of this Agreement under Sections 3.1.2, 8.1 or 8.2 will not relieve Contractor or any of its employees, representatives, agents, or subcontractors from liability for any default or breach under the terms of this Agreement or any other act or omission.

##

**8.4** **Transition Period.** If this Agreement expires or is terminated for any reason, then at University’s option, Contractor will continue to perform the Services in accordance with the terms of this Agreement until University contracts with a new qualified and experienced vendor(s) to perform the Services or is able to perform the Services in-house; provided, that, Contractor will not be required to continue performing the Services for more than \_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) **[Option:** three (3)**]** months after expiration or termination of this Agreement. Contractor will cooperate with, and assist, University’s efforts to transition the Services to another vendor(s) or to perform the Services in-house.

**8.5 [Option (Include if University will make pre-payments to Contractor under this Agreement.): Reimbursement by Contractor of Fees not Earned.** In the event this Agreement expires or is terminated, then within thirty (30) days after expiration or termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to expiration or termination, or (b) for goods or services that the University did not receive from Contractor prior to expiration or termination.**] [Note: Section 50 of Article 3 of the *Texas Constitution* prohibits the State of Texas or its agencies from lending the credit of the State. “Lending the credit of the State” has been broadly construed to include the making of payment prior to receipt of goods or complete performance of services. *Rhoads Drilling co. v. Allred*, 70 S.W. 2d 576, 582 (Tex. 1934); Attorney General Opinions WW-790 (1960) and WW-153 (1957). Nevertheless, according to relevant Attorney General Opinions MW-373 (1981) and JM-1229 (1990), pre-payments for goods and services may be made by the State of Texas so long as the pre-payment serves a public purpose and the State maintains controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved.**

**Based on Texas law related to pre-payments, the representative of U.T. with delegated authority to execute contracts containing pre-payment provisions, should analyze the transaction and make a determination regarding whether the facts lead to the conclusion that (1) there is in fact a public purpose for any pre-payments required by the contract and (2) there are sufficient controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved. This determination should be documented in a memorandum to U.T.'s file by setting forth the facts which lead to a conclusion of public purpose and sufficient controls to ensure the public purpose is achieved.]**

**8.6 Continuing Obligations.** The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination including **Sections 3.1.3**, **3.1.7**, **3.1.8**, **4.3**, **5.1, 5.2**, **5.4**, **5.5.4, 5.5.5**, **5.7.2**, **6.2.8**, **6.2.9**, **6.2.12**, **6.3**, **7.1**, **8**, **9.1**, **9.3**, **9.5**, **9.6**, **9.8**, **9.9**, **9.10**, **9.11**, **9.12**, **9.14**, **9.15**, **9.16**, **9.17**, **9.18**, **9.19** and **9.24**.

# Section 9.

### Miscellaneous

##

## Assignment and Subcontracting. Except as specifically provided in Schedule 15, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor’s duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20,§§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

**9.2 Historically Underutilized Business Subcontracting Plan.** Contractor will use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan (“**HSP**”) (ref. **Schedule 15**). Contractor will maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “**TPSS**”). Submission of compliance reports will be required as a condition for payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Chapter 20,§§20.101 – 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.

* + 1. Changes to the HSP.If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 9.6** to replace the HSP with the revised subcontracting plan.
		2. Expansion of the Services. If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to TPSS in accordance with 34 TAC Chapter 20,§§20.101 – 20.108.

**9.3 *Texas Family Code* Child Support Certification**.Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**9.4 Tax Certification**. If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

# 9.5 Loss of Funding. Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”) and allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

# Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.

# Force Majeure. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character [Option (Include for medical institutions.): (“force majeure occurrence”). Provided, however, in the event of a force majeure occurrence, Contractor will use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare services during the occurrence].

# Captions. The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

# Governing Law. Harris county, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

# Waiver. No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

# Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “University Records”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“FERPA”). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor’s exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with University’s rules, policies, and procedures regarding access to and use of University’s computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

9.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

9.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

9.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

9.11.4 **Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Services or the engagement of Contractor as an independent contractor of University in connection with the Services, or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of University.

9.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (“**TPIA**”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and **at no additional charge to University,** **Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public**.

9.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

9.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

# Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted assigns and successors.

# Appointment. University reserves the right from time to time to designate by notice to Contractor a representative to act partially or wholly for University in connection with the performance of University's obligations. Contractor will act only upon instructions from the representative unless otherwise specifically notified to the contrary.

# Audit of Records. At any time during the Initial Term or any Extension Term of this Agreement and for a period of four (4) years thereafter, University or a duly authorized audit representative of University, System, or the State of Texas, at its expense, will have the right to audit Contractor’s records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.

# Notices. Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

 If to University: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *with copy to:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or another person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to University as follows:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention:\_\_\_\_\_\_\_\_\_\_\_

 Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Note: Fax and email are required by law.]**

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *with copy to:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention:\_\_\_\_\_\_\_\_\_\_\_

 Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[Note: Fax and email are required by law.]**

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

* 1. **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included in this Agreement.
	2. **[Option:** **Injunctive and Equitable Relief.** In the event of a breach or threatened breach of the restrictions and obligations set forth in this Section, University cannot be reasonably or adequately compensated in damages. Accordingly, a breach by Contractor of the provisions of this Section will cause University irreparable injury and damage. Therefore, University will be entitled to injunctive and other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Section.**]**

# Breach of Contract Claims.

To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described in this Section, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor.

* + 1. Contractor’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
		2. If the parties are unable to resolve their disputes under **Section 9.18.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor’s sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
		3. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit. University has not waived its right to seek redress in the courts.
		4. The submission, processing and resolution of Contractor’s claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
		5. Except as provided in Chapter 2251, Texas Government Code, neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. Any periods set forth in this Agreement for notice and cure of defaults are not waived.
	1. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

# 9.20 Access by Individuals with Disabilities. Contractor represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate this Agreement and Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.

**9.21 Limitations.**  The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions that may be a part of this Agreement, including those terms and conditions relating to liens on University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

**[Option (Include Sections 9.22 through 9.28 if University is an institution that receives funds from Medicare/Medicaid or if cost of Services is included in amounts charged back to federal contracts or grants. Consult with University’s Office of Sponsored Projects for more information.):**

**9.22** **Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance**. Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor’s files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

**9.23** **Debarment**. Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“**U.S.**”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. “**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

**9.24** **Office of Inspector General Certification**. Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Contractor to work on site at University’s premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at University’s premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University’s premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University‘s premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>

**9.25** **Access to Documents**. To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

**9.26 Affirmative Action**. A written copy of Contractor’s Civil Rights "**Affirmative Action Compliance Program**" is attached as **Schedule** **16** to this Agreement and incorporated for all purposes, or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement is attached as **Schedule 16** to this Agreement and incorporated for all purposes.

**9.27 OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

**9.28 Discrimination Prohibited.** University and Contractor will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) (collectively, the “**Regulations**”). The regulations (1) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and (2) prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, the regulations require that University and Contractor take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**]**

**9.29 Ethics Matters;** **No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University’s Conflicts of Interest Policy available at **[Note: Insert University’s web page where Policy is posted.] [Option (Include for UT System only.):** <http://www.utsystem.edu/policy/policies/int160.html>**]**, University’s Standards of Conduct Guide available at **[Note: Insert University’s web page where Guide is posted.] [Option (Include for UT System only.):** <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>**]**, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

**[Option (Include if Contractor provides an Internet application, software or a database under this Agreement.): 9.30 External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor’s performance or provision of goods or services under this Agreement (“**External Terms**”). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.**]**

**[Note: Delete all bracketed ([ ]) and highlighted text before sending this Agreement to Contractor.]**

University and Contractor have executed and delivered this Agreement effective as of the Effective Date.

**CONTRACTOR: UNIVERSITY**:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ The University of Texas Health Science Center at Houston**

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

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

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

Date: Date:

**ATTACH:**

**Schedule 1 – Services**

**Schedule 2 – Preparation Activities and Schedule**

**Schedule 3 – Food Service Locations and Other Space**

**Schedule 4 – Rule 50303 of the Regents’ Rules, Debts of Students**

**Schedule 5 – Customer Satisfaction Policy/Complaint Resolution Procedures**

**Schedule 6 – Cash Plan Terms**

**[Option: Schedule 7 – Short Term Meal Plan Terms]**

**[Option: Schedule 8 – Board Plan Terms]**

**[Option: Schedule 9 – Catering Plan Terms]**

**[Option: Schedule 10 – Concession Plan Terms]**

**Schedule 11 – University Owned Equipment and Smallwares Inventory**

**Schedule 12 – Royalty Schedule**

**Schedule 13 – Revenue Collection Procedures**

**[Option: Schedule 14 – Installment and Amortization Schedule for Financial Commitment]**

**Schedule 15 – HUB Subcontracting Plan**

**[Option (Include if federal contract provisions are included in this Agreement.): Schedule 16 – Affirmative Action Compliance Program]**

**Schedule 1**

**Services**

Contractor will provide the following full-service food **[Option (include only if serving alcoholic beverages is part of the Services under this Agreement):** , beverage**]** and non-alcoholic beverage services (collectively, “**Services**”) in accordance with the terms of this Agreement:

**SCHEDULE 2**

**Preparation Activities and Schedule**

**SCHEDULE 3**

**Food Service Locations and Other Space**

**[Note: List each Food Service Location and all other space (including office space and storage) to be used by Contractor. Also, attach floor plans showing the boundaries of each Food Service Location and all other space.]**

The Food Service Locations are as follows:

1.

2.

3.

4.

5.

Other space that will be used by Contractor to perform the Services includes:

1.

2.

3.**SCHEDULE 4**

**Rule 50303 of the Regents’ Rules, Debts of Students**

**1. Title**

Debts of Students

**2. Rule and Regulation**

Sec. 1 Student Responsibilities. The University of Texas System is not

responsible for debts contracted by individual students or by

student organizations. However, students and student

organizations are expected to conduct themselves honorably in

all commercial transactions. The U. T. System will not assume

the role of a collection agency except for monies owed to the

System, nor will the System adjudicate disputes between

students and creditors over the existence or the amounts of

debts.

Sec. 2 Penalties for Nonpayment. In the event of nonpayment to the

U. T. System, one or more of the following actions may be

taken: (a) a bar against readmission for the student;

(b) withholding of the student's grades and official transcript;

(c) withholding of a degree to which the student otherwise would

be entitled.

**3. Definitions**

None

**4. Relevant Federal and State Statutes**

None

**5. Relevant System Policies, Procedures, and Forms**

None

**6. Who Should Know**

Administrators

Students

**7. System Administration Office(s) Responsible for Rule**

Office of Academic Affairs

Office of Health Affairs

**8. Dates Approved or Amended**

December 10, 2004

**9. Contact Information**

Questions or comments regarding this rule should be directed to:

• bor@utsystem.edu **SCHEDULE 5**

**Customer Satisfaction Policy/Complaint Resolution Procedures**

**SCHEDULE 6**

**Cash Plan Terms [Option (include if Services include Short Term Meal Plan): SCHEDULE 7**

**Short Term Meal Plan Terms]**

**[Option (include if Services include Board Plan): SCHEDULE 8**

**Board Plan Terms]**

**[Option (include if Services include Catering Plan): SCHEDULE 9**

**Catering Plan Terms]**

**[Option (include if Services include Concession Plan): SCHEDULE 10**

**Concession Plan Terms]**

**SCHEDULE 11**

**University Owned Equipment and Smallwares Inventory**

**SCHEDULE 12**

**Royalty Schedule**

**[NOTE: Consider whether University should request that all or a portion of the Royalty be guaranteed by Contractor. This request may cause Contractor to reduce other incentives.]**

**SCHEDULE 13**

###### Revenue Collection Procedures

**[Option (include if Financial Commitment will be amortized): SCHEDULE 14**

**Installment and Amortization Schedule for Financial Commitment**

**[NOTE: Confirm whether the amortization schedule extends beyond the Initial Term, If so, University may be required to pay Contractor a lump sum upon expiration of the Initial Term if this Agreement is not renewed. Also, consider whether the amortization should be accelerated similar to IRS requirements rather than straight line. ]**

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| --- | --- | --- | --- | --- |
| The Financial Commitment will be paid and amortized as follows: |  |  |  |  |
|  |  |  |  |  | **Cumulative**  |
| **Installment Date** |  | **Cumulative** |  | **Cumulative**  | **Reimbursable** |
| **[first day of contract year]** | **Commitment** | **Commitment** | **Amortization** | **Amortization** | **Unamortized Portion** |
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**]**

**SCHEDULE 15**

**HUB Subcontracting Plan**

**[Option (Include if federal contract provisions are included in this Agreement.):**

**SCHEDULE 16**

**Affirmative Action Compliance Program]**