



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 10, 2020

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas of System  
210 West 7th Street  
Austin, Texas 78701

OR2020-22898

Dear Ms. Burnett:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 843509 (OGC# 197848).

The University of Texas at Dallas (the "university") received a request for the winning vendor's proposal pertaining to a specified solicitation. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Compass Group USA, Inc., d/b/a Chartwells ("Chartwells"). Accordingly, you state, and provide documentation showing, you notified Chartwells of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Chartwells. We have reviewed the submitted arguments and the submitted information.

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Chartwells

argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Chartwells has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code.<sup>1</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find Chartwells has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). As noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Chartwells argues some of its remaining information consists of trade secrets subject to section 552.110(b). However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Additionally, we find Chartwells has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Gov't Code § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Upon review, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Chartwells has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is subject to section 552.1101(a). Therefore, university may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code. The university must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/be

Ref: ID# 843509

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)

## FOOD SERVICE AGREEMENT

This **Food Service Agreement** (this "**Agreement**") is executed by and between **THE UNIVERSITY OF TEXAS AT DALLAS**, an agency and institution of higher education authorized under the laws and Constitution of the State of Texas ("**University**"), and **COMPASS GROUP USA, INC.**, by and through its Chartwells Division ("**Contractor**") to be effective January 1, 2019 (the "**Effective Date**").

- A. University is interested in contracting with an experienced and qualified food service company for full-service food, alcoholic beverage, and non-alcoholic beverage services all as more particularly described in **Schedule 1**, attached and incorporated for all purposes.
- B. Contractor has extensive experience in providing the Services (ref. **Schedule 1**) and is a qualified food service company.
- C. 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 AND CONDITIONS

#### Section 1.

##### Term

The initial term ("**Initial Term**") of this Agreement will begin on the Effective Date, and will expire on December 31, 2023 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 for an additional five (5) year period ending December 31, 2028 by written mutual agreement in accordance with Section 9.6. Failure to agree to extend the term of this Agreement at least 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 December 31, 2019 and each twelve (12) month period thereafter, during the Initial Term or any Extension Term.

**This Agreement requires approval by the Board of Regents of The University of Texas System, and shall not be effective for amounts exceeding an aggregate of One Million Dollars until approval is obtained.**

## 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 retail food rules in 25 Texas Administrative Code ("**TAC**") Chapter 228 ("**Retail Food Rules**"), 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, including all necessary Texas Alcoholic Beverage Commission ("**TABC**") permits for the service and sale of alcoholic beverages. 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 below ceiling level, 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 the Retail Food Rules, 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 subject to written notice and Contractor's opportunity to cure within five (5) to no more than ten (10) days of receipt of such notice. 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.
- 3.1.6 **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.
- 3.1.7 **Limitation of University's Liability.** EXCEPT FOR THE OBLIGATIONS OF UNIVERSITY SPECIFICALLY PROVIDED IN THIS AGREEMENT OR AS OTHERWISE PROVIDED BY APPLICABLE LAWS, 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.

- 3.1.8 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.
- 3.1.9 Non-Exclusive Agreement; Reservation of Rights by University. CONTRACTOR WILL BE AVAILABLE TO PROVIDE CATERING, AND WILL HAVE THE EXCLUSIVE RIGHT TO OPERATE THE FOOD SERVICE PROGRAM AT THE UNIVERSITY'S CAMPUS. UNIVERSITY RESERVES THE RIGHT TO APPROVE, VIA NORMAL PROCUREMENT PROCESSES, NO LESS THAN 3 AND NO MORE THAN 5 OUTSIDE VENDORS TO PROVIDE CATERING SERVICES ON THE UNIVERSITY'S CAMPUS IN ADDITION TO CONTRACTOR. ANY ADDITIONAL OUTSIDE CATERING VENDORS SHALL BE MUTUALLY AGREED BY UNIVERSITY AND CONTRACTOR. EXCEPT FOR THESE APPROVED VENDORS, WHICH LIST UNIVERSITY SHALL PUBLISH ON ITS OFFICIAL SITE, CONTRACTOR SHALL HAVE THE EXCLUSIVE RIGHT TO PROVIDE CATERING AND FOOD TRUCK SERVICES ON THE UNIVERSITY'S CAMPUS. UNIVERSITY RESERVES THE RIGHT TO OFFER FOR SALE THROUGH ANY OF ITS PRESENT OR FUTURE FACILITIES, SOFT DRINKS AND SNACKS SOLD THROUGH VENDING MACHINES.
- 3.1.10 Use of Food Service Locations by University. UNIVERSITY MAY USE THE FOOD SERVICE LOCATIONS (ref. **Section 3.2.1**) AT ALL TIMES EXCEPT DURING CONTRACTOR'S OPERATING SCHEDULE (ref. **Section 3.2.2**). PROVIDED THAT UNIVERSITY'S USE OF SUCH FACILITIES DOES NOT INTERFERE WITH CONTRACTOR'S OPERATIONS, AND PROVIDED FURTHER THAT UNIVERSITY RETURNS SUCH FACILITIES TO CONTRACTOR IN CLEAN CONDITION AND REPAIRS AND DAMAGE OCCURRING DURING THE PERIOD IN WHICH IT USES SAME.
- 3.1.11 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 Director of Food and Retail ("**University's Representative**") for resolution. Contractor will comply with all decisions by University's Representative regarding the Customer complaints and claims.
- 3.1.12 Student Participation in Evaluation of Services. Contractor will comply with applicable requirements of §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, which will at a minimum, include Contractor's attendance and participation in University's regularly scheduled Food Services Committee meetings. If Contractor wishes to schedule meetings other than the University's regularly scheduled food services committee meetings, then 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**.



Provided, however, alcoholic beverages will be served and sold only at The Pub (ref. **Schedule 3**) and at Special Events (ref. **Section 3.2.6**) subject to the prior written approval of University's Representative.

3.2.2 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 Cash Plan. 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.

University operates a declining balance debit card system known as the "COMET CARD" (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.

3.2.4 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. Other terms and conditions for the Short Term Meal Plan requested by University will be established by mutual agreement of the Parties and will be consistent with the terms and conditions of this agreement and will be evidenced in writing.

3.2.5 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.

3.2.6 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.

3.2.7 Concession Plan. Contractor will provide the Concession Plan in accordance with the terms set forth in **Schedule 10** attached and incorporated for all purposes.

3.2.8 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

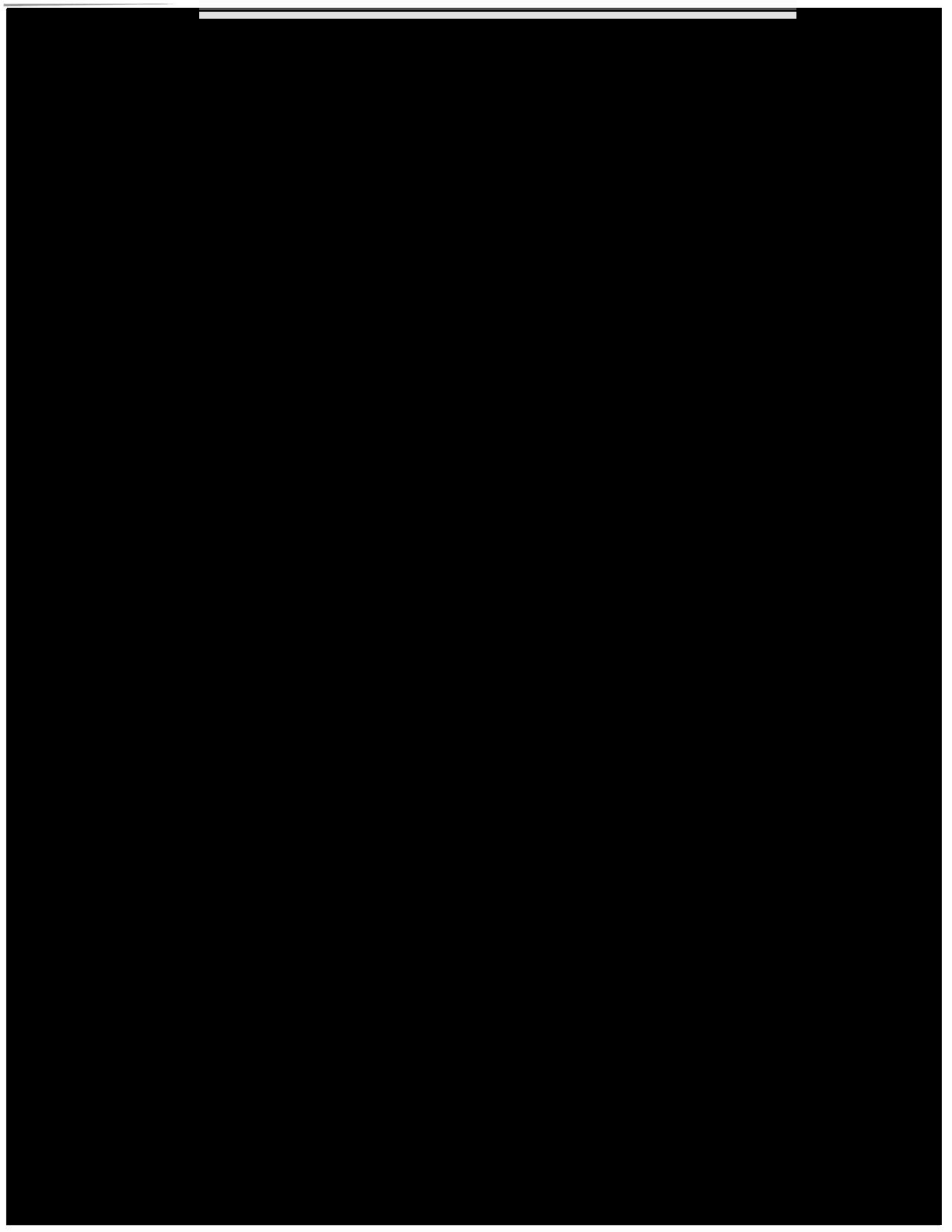
advertise, promote, or market Contractor's services by means of University's mail or email system unless prior to the communication, University determines that the communication complies with the Regents' Rules and University's policies and procedures, and approves the communication in writing. Contractor 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.

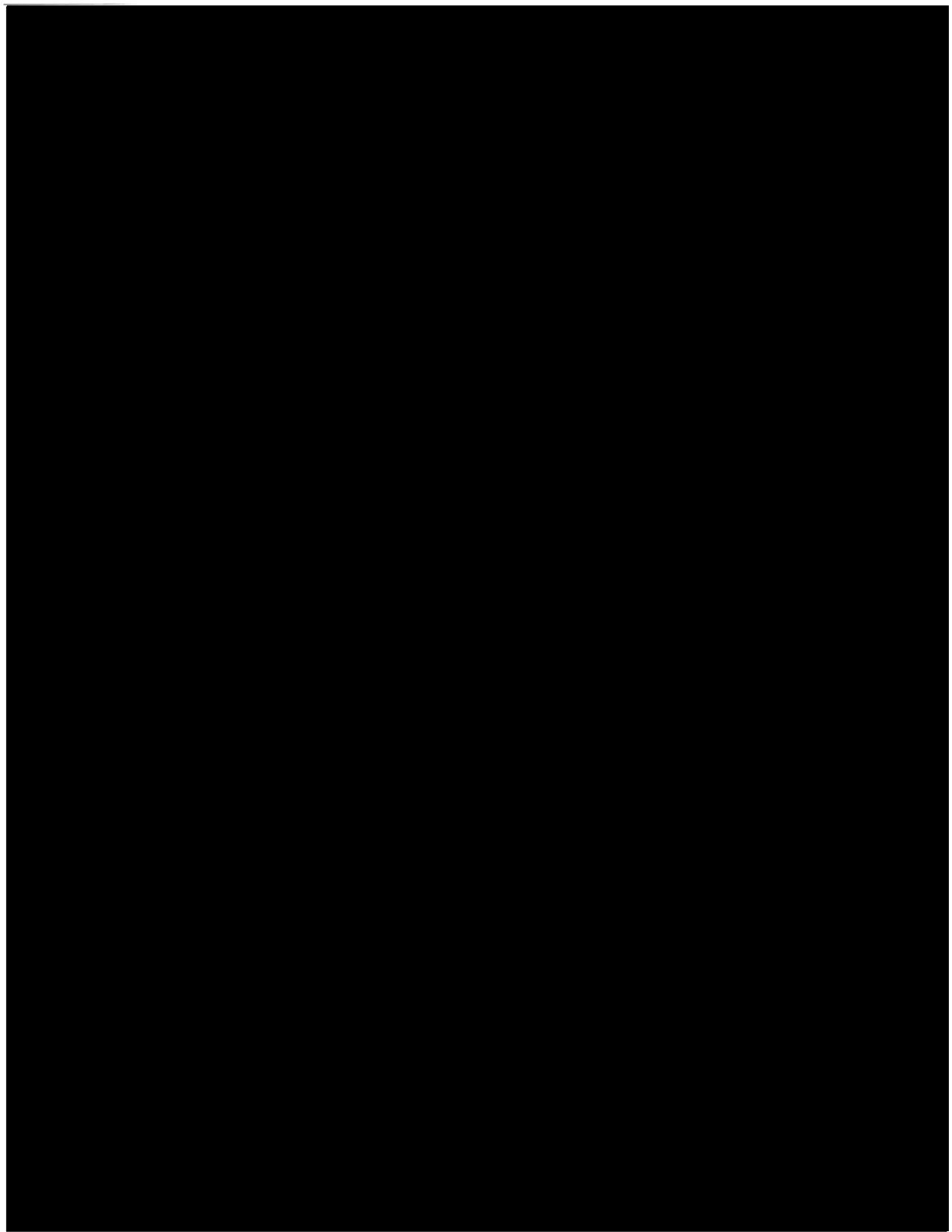
## Section 4.

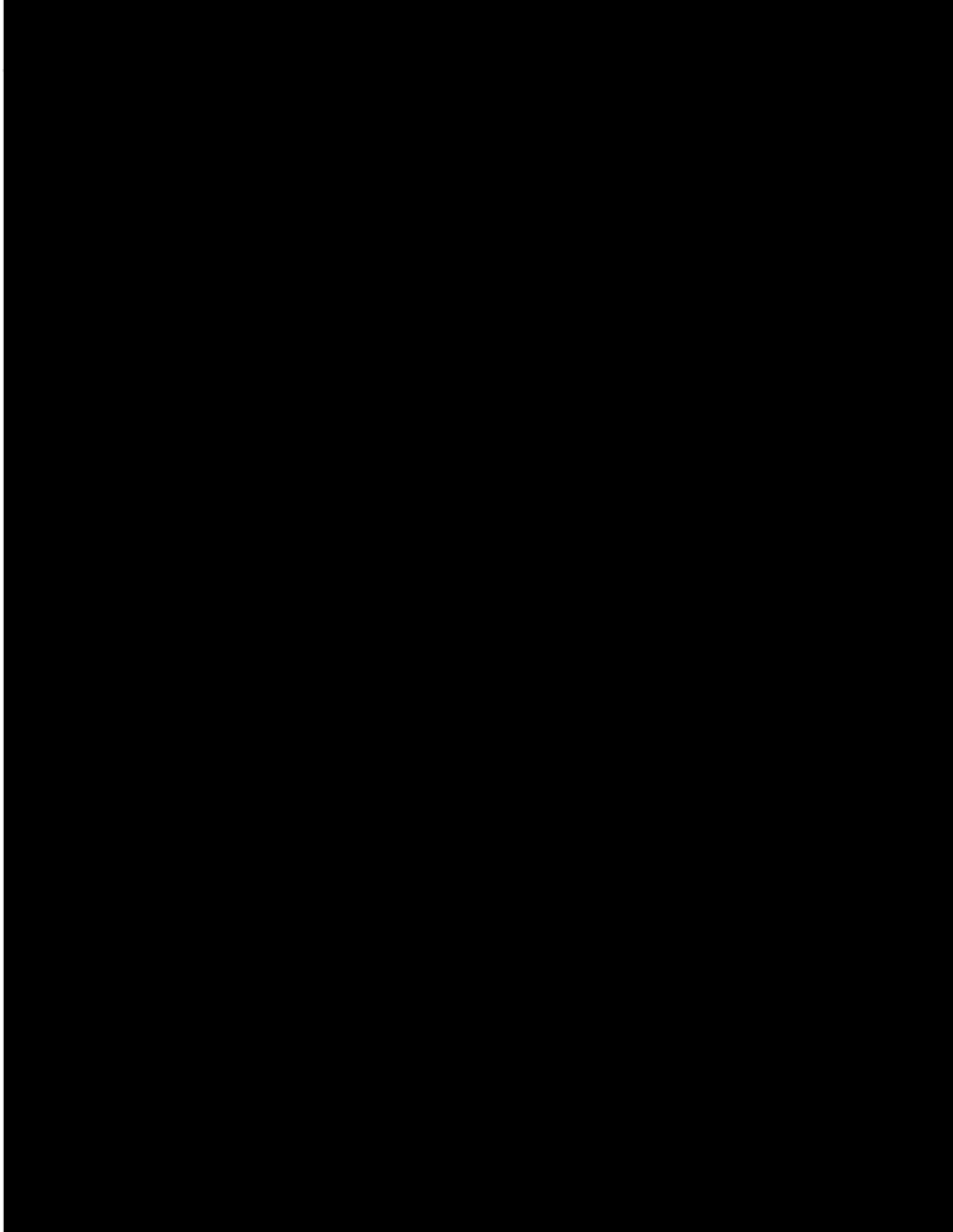
### Prices and Costs Arrangements

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

- 4.1.1 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.
- 4.1.2 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.
- 4.1.3 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.
- 4.1.4 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 or non-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.
- 4.1.5 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.
- 4.1.6 University accepts that Chartwells or its parent company, Compass Group USA, Inc. ("Compass") may receive volume, trade or cash discounts for items purchased as part of doing business at University/College and that those discounts will accrue to Chartwells and/or Compass and will not be credited back to University. University understands that certain charges reflected on the Profit and Loss statement are based on a portion of overall company expenses.





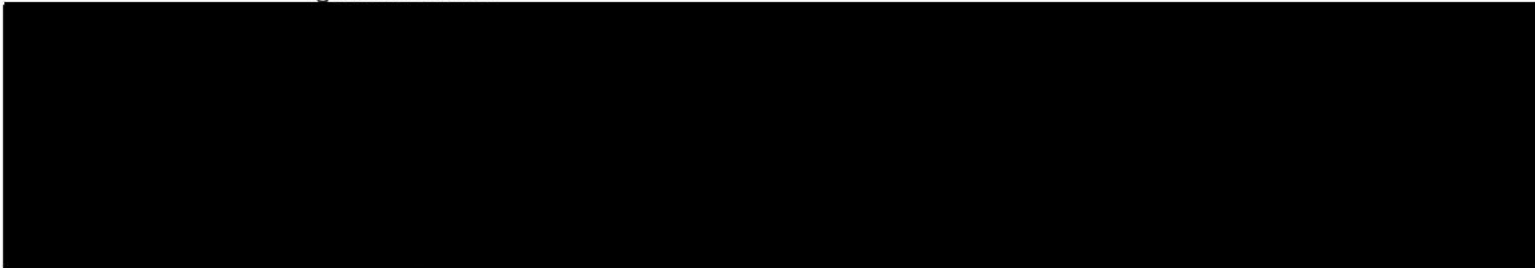




## Section 5.

### Fiscal Arrangements

#### 5.1 Payment of Royalty.

- 5.1.1 Calculation. Contractor will pay University the Royalty on adjusted gross revenue generated by Cash Plan, Short Term Meal Plan, Catering and University approved subcontractors serving food on University premises, all as more particularly provided in **Schedule 6** attached and incorporated for all purposes. The term "**adjusted gross revenue**" will mean all moneys received for sales or Services rendered at or from the University's premises excluding: (1) receipts from sales of meals to employees of Contractor; (2) any service charge made collected and turned over to employees; (3) the proceeds of the sale of any fixtures or equipment owned by Contractor; (4) proceeds from the sale or liquidation of any inventory which is not sold at retail; (5) any commission or processing fee paid in connection with sales by credit or bank cards; (6) sales and other taxes collected by Contractor or any other vendor as required by governmental authorities.
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#### 5.2 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 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 [§151.309, Texas Tax Code](#), and [34 TAC §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). This section does not permit University to make payment by credit or debit card. 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 9.16**.

### 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 Card System Sales. Contractor will process all Card System sales through University's Card System.
- 5.3.4 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. To the extent applicable to the Services provided hereunder, 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. Within 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 without limitation, Cash Plan revenue (including cash, credit card and Card System revenue Board Plan, Short Term Meal Plan, and Catering 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 [§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 [§2252.063, Texas Government Code](#), Contractor will submit to University's Representative, no later than the 15<sup>th</sup> 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 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.

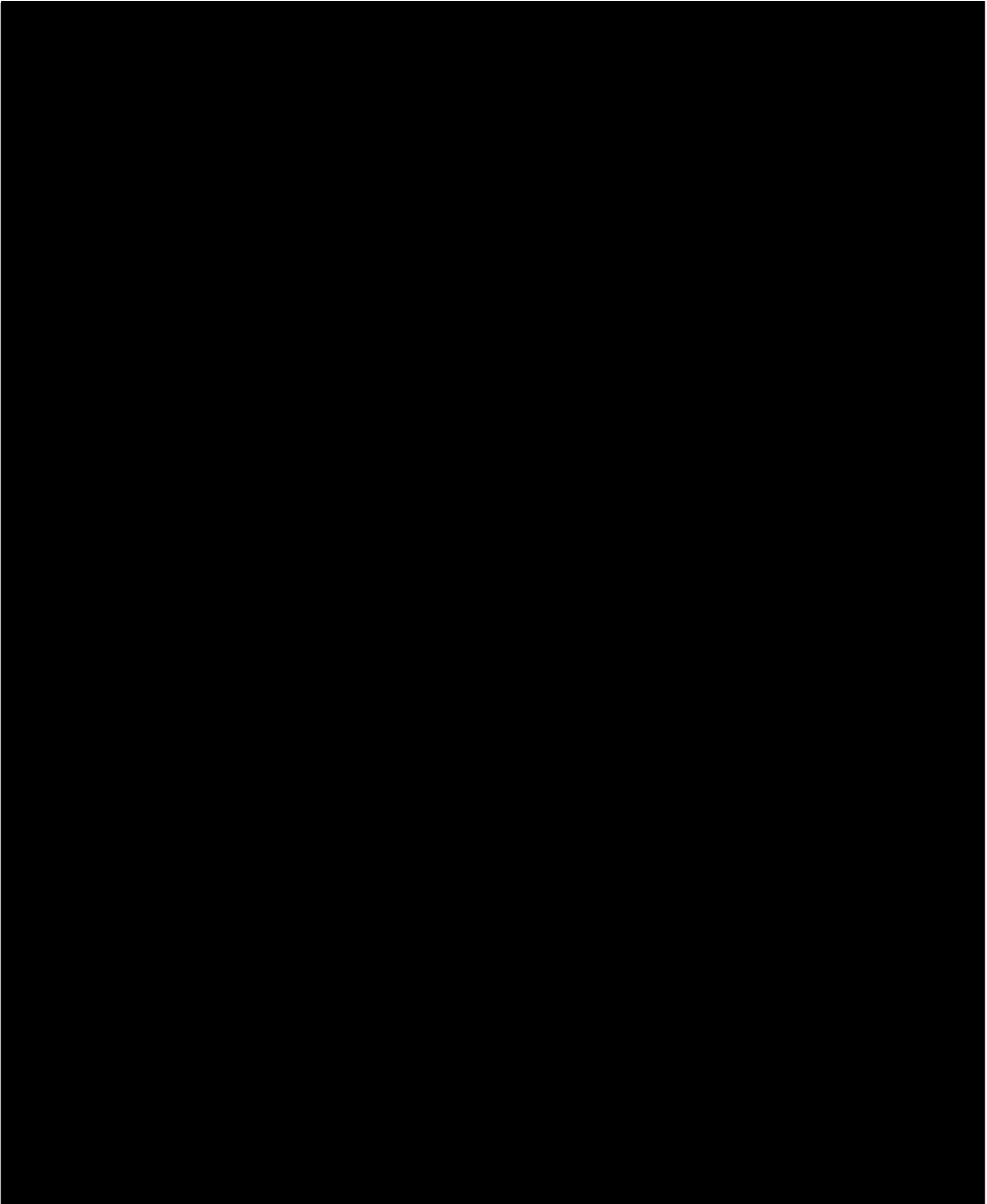
## 5.5 Inventory.

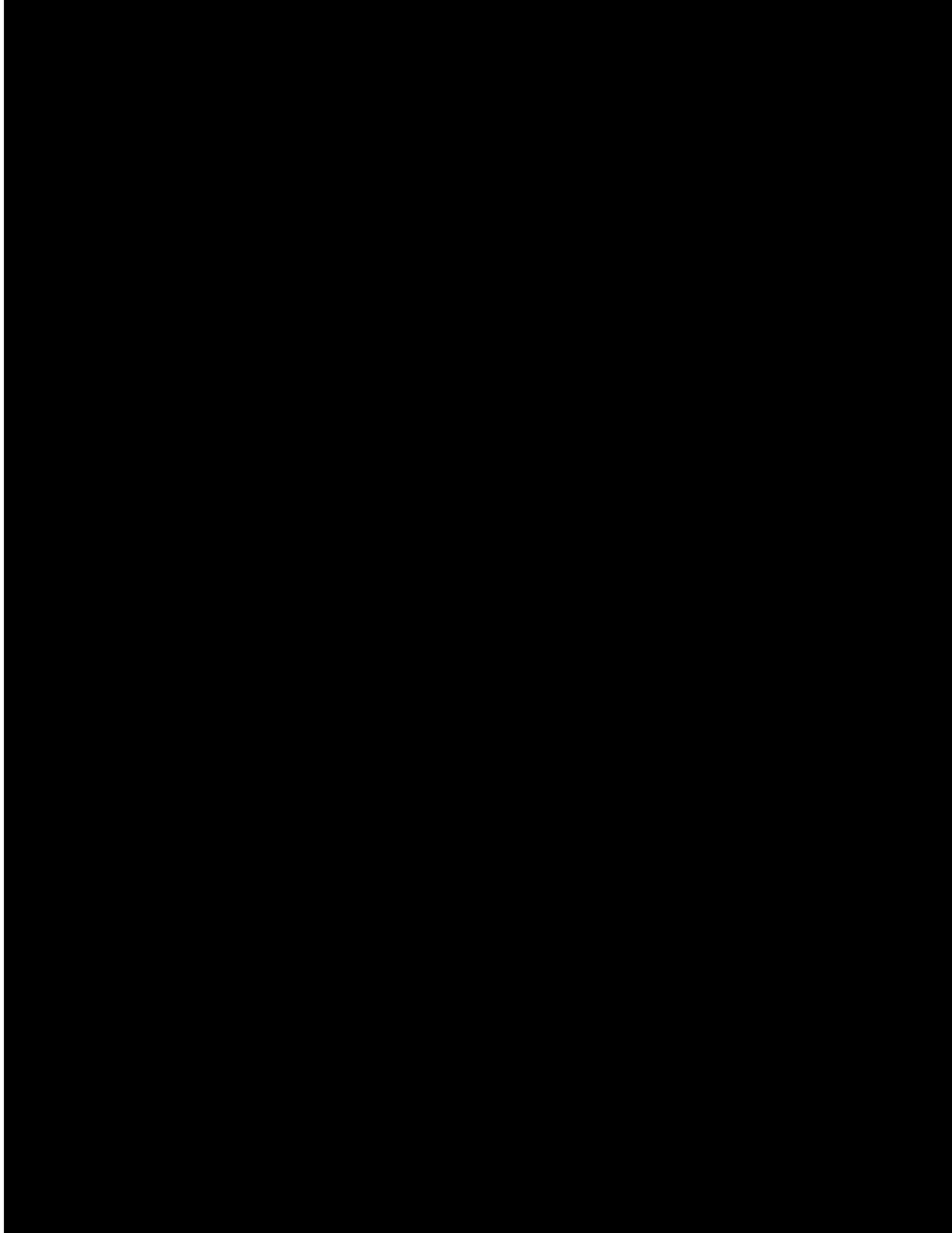
- 5.5.1 Inventory Record Keeping. Contractor will maintain, in formats acceptable to University, annual inventory, acquisition, and loss records for (a) all University Owned Equipment and (b) all Contractor Owned Equipment (ref. **Section 5.5.2**).
- 5.5.2 Contractor Owned Equipment. Contractor will 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 or cause a successor food service management provider to purchase Contractor's usable inventory of food and related supplies upon the expiration or earlier 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 be determined 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 expiration or earlier 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

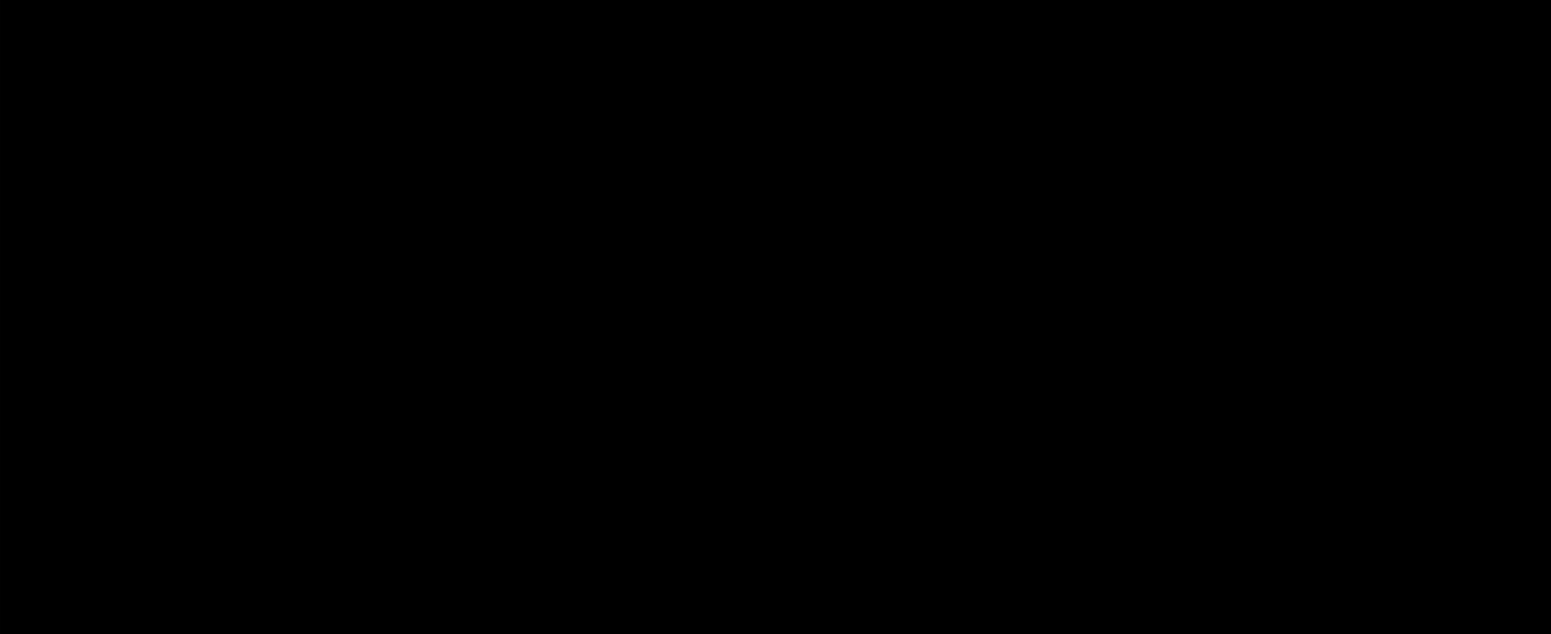




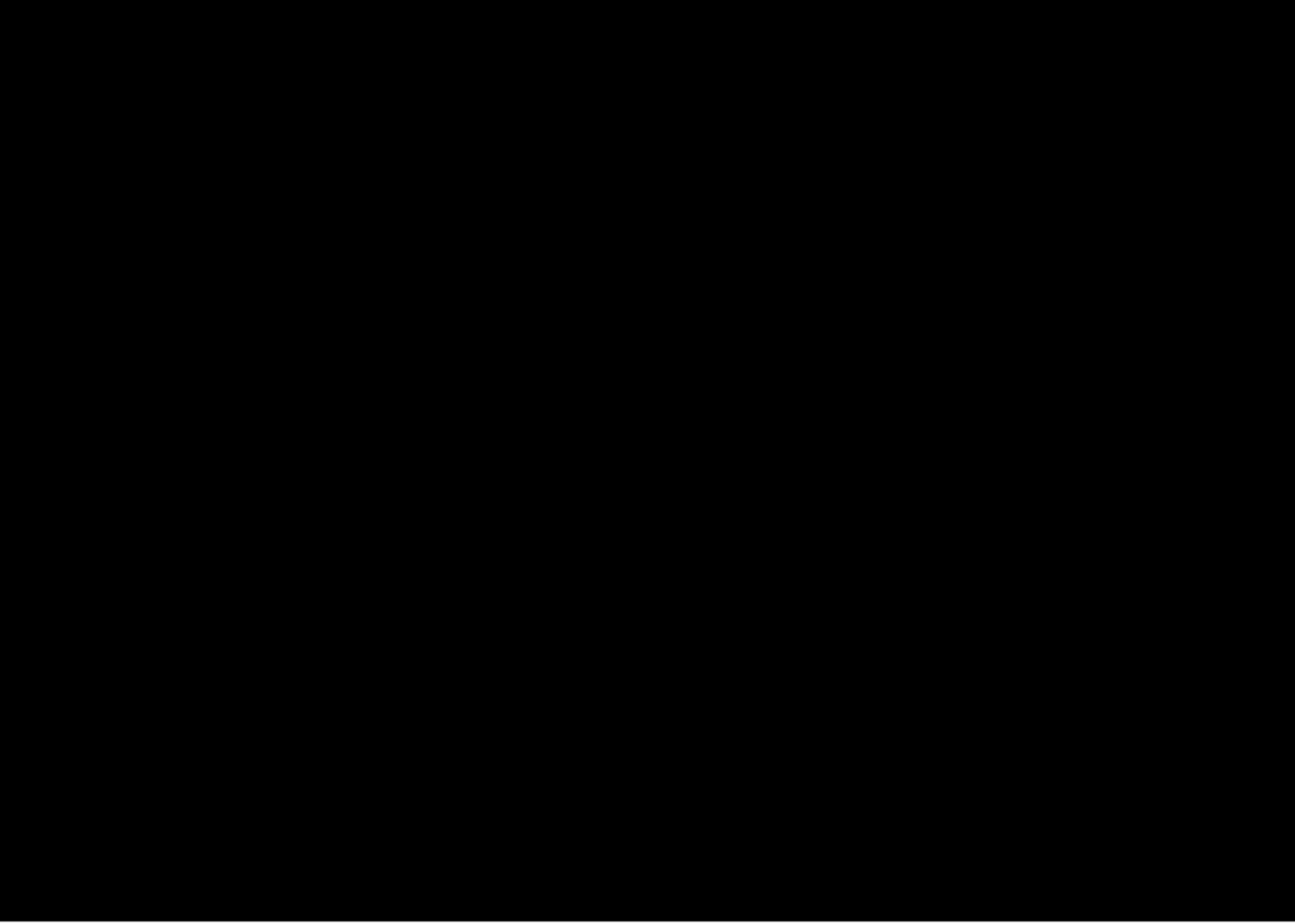
satisfactory to University in all respects within thirty (30) days after receiving written notice of the shortage or loss from University.

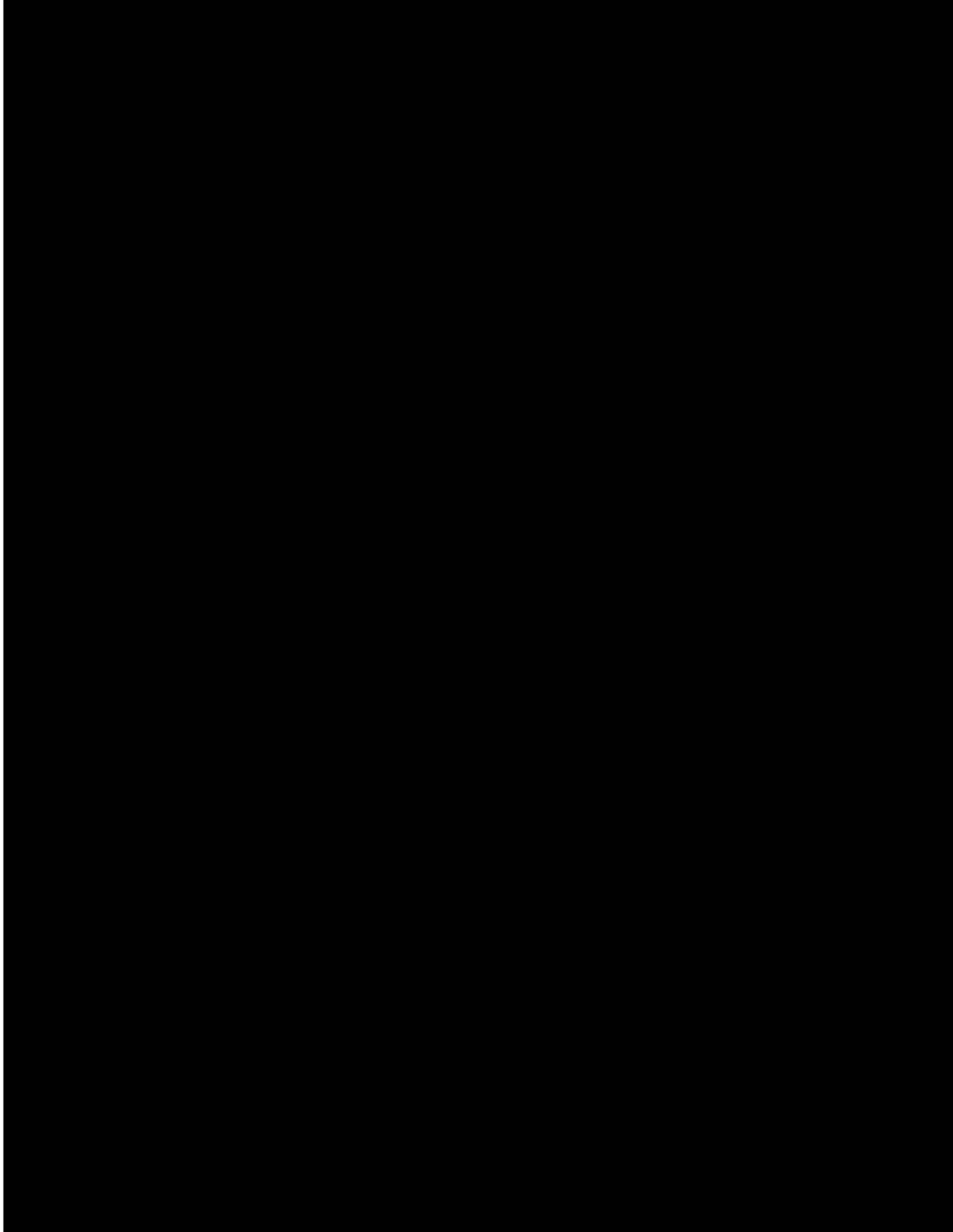






5.6.1.4 University shall pay Contractor a monthly transition services charge of \$87,500 per month payable in February 2019, and March 2019, as compensation for additional services provided during the first four months of the Term including promotional events, free meals and tastings to promote participation, and other programming offered during the initial four months of the Term in which Contractor provides additional benefits, services or goods. Contractor will present a summary documenting the proposed additional activities and expected outcomes. University will work with Contractor to reconcile these activities and expenses.





## 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 described in the preceding sentence. 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

#### 6.1 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. **Notwithstanding any provision to the contrary contained in this Agreement, University and Contractor acknowledge and agree that neither party intends to form a partnership, joint venture, association or other entity that is taxable under Applicable Laws.**

#### 6.2 Personnel.

6.2.1 Properly Trained Staff; Efficient Performance of Services: 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 trained staff 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. In addition, upon University's request and commencing no earlier than 2020, Contractor will provide the services of a registered dietitian for student dietary counseling and menu preparation.

6.2.2 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.

- 6.2.3 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.
- 6.2.4 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. **To the extent applicable to this Agreement, the parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Further, to the extent applicable to this Agreement the parties agree to comply with 29 CFR Part 471, Appendix A to Subpart A.**
- 6.2.5 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.
- 6.2.6 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 of this type will be negotiated between Contractor and the labor union.
- 6.2.7 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. University agrees that it will not exercise such rights in a manner that would require Contractor to violate applicable employment laws or collective bargaining agreements.
- 6.2.8 Responsibility for Injury, Loss and Damage. Contractor will be responsible for any and all injury, loss and damage to persons or property caused by the negligence, willful misconduct or breach of this Agreement by Contractor, 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.
- 6.2.9 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, or loss or destruction due to fire or other casualty, unless such loss, destruction or other casualty is caused by the negligence, willful misconduct, or breach of this Agreement by Contractor or Contractor's employees, representatives, agents, or subcontractors. 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.

- 6.2.10 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.
- 6.2.11 Health Examinations. Contractor will require all of its employees and personnel to submit to periodic health examinations as required by Applicable Laws. To the extent permitted by law, 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.

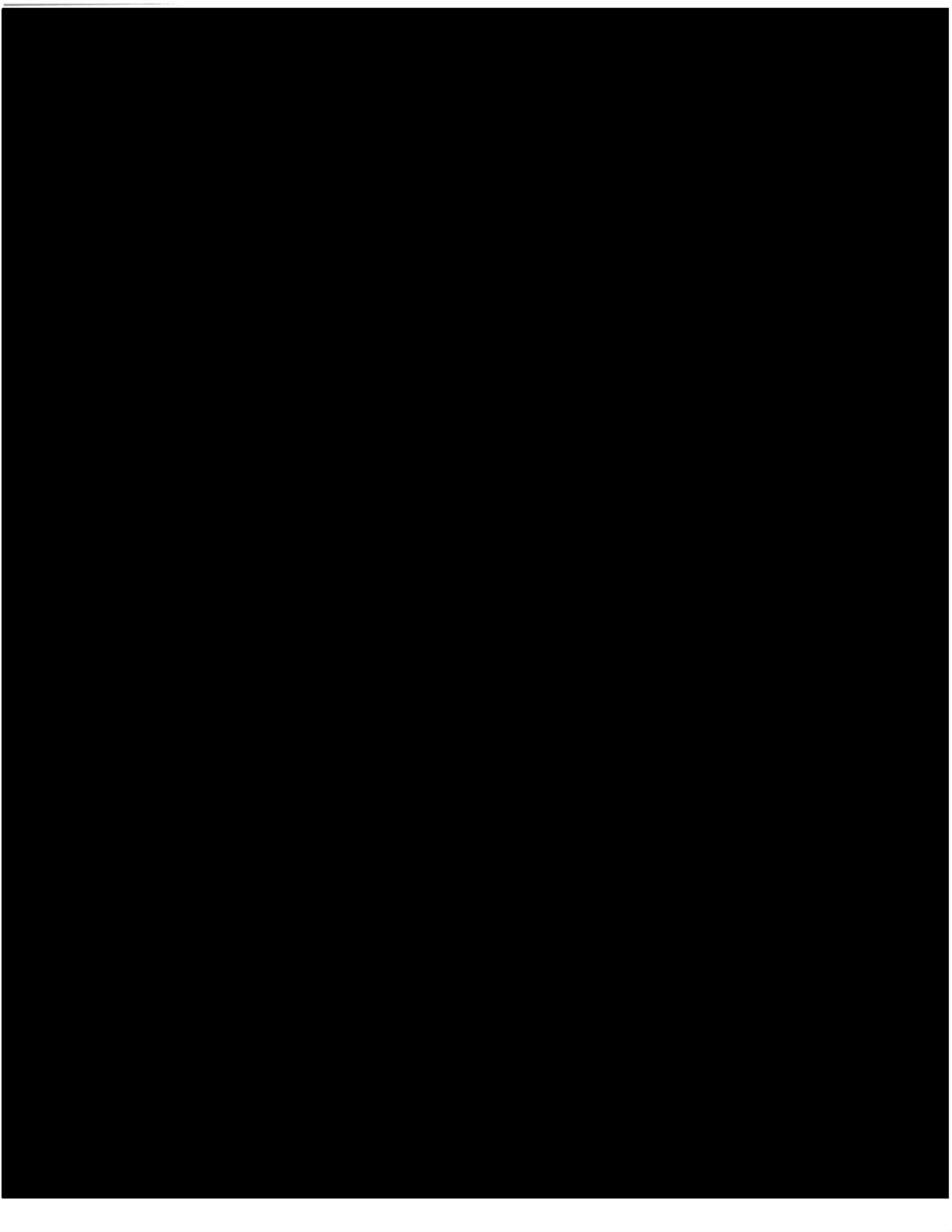
Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the 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 each individual assigned to perform the Services is qualified to provide the services. To the extent permitted by law, Contractor will not knowingly assign any individual to provide services on University's campus who has a history of or conviction for 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.





6.3.1.10 Minimum liability insurance limits as set forth in this Section 6.3.1 may be satisfied through a combination of primary and excess liability coverage.

6.3.2 Contractor will deliver to University:

6.3.2.1 After the execution and delivery of this Agreement and prior to the performance of any work by Contractor, evidence of insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and limits of all required insurance policies, and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

6.3.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability, and crime) will include the Board of Regents of The University of Texas System, The University of Texas System and University of Texas at Dallas 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 required herein. 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 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 of Texas at Dallas. The commercial general liability, auto liability, workers compensation, liquor liability, and umbrella insurance policies will 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. All insurance policies with the exception of the umbrella, network security and privacy will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation-or non-renewal.

6.3.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Upon commencement of the term of this Agreement, 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:	The University of Texas at Dallas 800 West Campbell Road SPN 2
Address:	Richardson Texas 75080 Attn: Office of Contract Administration
Email Address:	<a href="mailto:oca@utdallas.edu">oca@utdallas.edu</a>

6.3.3 Contractor's or subcontractor's commercial general liability, auto liability and umbrella liability insurance will be primary and non-contributory 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.

6.3.4 Performance Bond. In accordance with [§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 JUDGEMENTS, 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, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR

OMISSIONS OF CONTRACTOR, OR ANY AFFILIATE, AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR THE SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH DOES NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE OWNER, ITS OFFICERS, OF EMPLOYEES, SEPARATE CONTRACTORS OR ASSIGNED CONTRACTORS. 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.

6.3.5.3 TO THE FULLEST EXTENT PERMITTED BY LAW, UNIVERSITY WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS CONTRACTOR AND ITS AFFILIATED ENTERPRISES, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**CONTRACTOR 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 "**CONTRACTOR CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM UNIVERSITY'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 UNIVERSITY, ANYONE DIRECTLY EMPLOYED BY UNIVERSITY OR ANYONE FOR WHOSE ACTS UNIVERSITY MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY CONTRACTOR INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

6.3.5.4 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM PERFORMANCE UNDER THIS AGREEMENT.

### 6.3.6 Information Technology Security.

6.3.6.1 University will be solely responsible for its information technology systems, including, but not limited to, point-of-sale devices, e-commerce solutions, and computer hardware and software services and applications ("**University Systems**").

6.3.6.2 Contractor will be solely responsible for its information technology systems, including, but not limited to, point-of-sale devices, e-commerce solutions, and computer hardware and software services and applications ("**Contractor Systems**"). As such, Contractor will indemnify, defend and hold harmless University from and against all claims, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of, related to or resulting from: (i) Contractor's failure to allow University to interface and connect Contractor's information technology systems and the University Systems to the extent necessary for University to perform the services hereunder (or Contractor's failure to provide University with any reasonably requested assistance in connection therewith); (ii) the Contractor Systems, including, but not limited to, any breach or compromise thereof or any failure by Contractor to take the necessary security and privacy protections as are

commercially reasonable under the circumstances; (iii) Contractor's failure to comply with any applicable laws or regulations related to the protection of personal information; and/or (iv) Contractor's failure to comply with any card association rules related to the protection of cardholder data, including, but not limited to, the payment card industry data security standards.

**6.3.6.3 Safeguarding of FERPA Records.** Under this Agreement Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 10 U.S.C. Section 1232g (collectively, the "FERPA Records"). Therefore, the University designates Contractor as a University official with a legitimate educational interest in the FERPA Records. University represents, warrants and agrees that it shall not provide or expose any personally identifiable information from FERPA Records to Contractor unless it is related to Contractor's performance of this Agreement. Contractor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) take reasonable actions necessary to assure that the FERPA Records are safeguarded and the confidentiality of the FERPA Records are maintained in accordance with FERPA and the terms of this Agreement. 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 the FERPA Records.

**6.3.6.3.1 Notice of Impermissible Use.** If an impermissible use or disclosure of any of the FERPA 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.

**6.3.6.3.2 Termination.** If Contractor breaches this **Section 6.3.6.3**, University may terminate this Agreement in accordance with **Section 8** of this Agreement.

**6.3.6.3.3 Return of FERPA Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all FERPA 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. Thirty (30) days before destruction of any of the FERPA Records, Contractor will provide University with written notice of Contractor's intent to destroy the FERPA Records. Contractor will confirm to University in writing the destruction of the FERPA Records.

**6.3.6.3.4 Disclosure.** If Contractor discloses any of the FERPA 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.

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

## Section 7.

### University's Obligations

#### 7.1 Hiring Contractor's Supervisory Employees or University's Employees.

Subject to University's obligations under Applicable Laws, neither party, unless approved by both parties, will, during the Term of this Agreement or for six (6) months thereafter, actively solicit to hire or contract with either party's employees who manage any services or any other highly compensated employees, or any persons who were so employed by the other party, whether at the Premises or at any other facility operated by the other party ("Managerial Employees"), any time within six (6) months prior to the termination or expiration of this Agreement, nor will University permit Managerial Employees of Contractor to be employed on University's Premises, for a period of six (6) months subsequent to the termination or expiration of this Agreement (unless such employees were formerly employees of University) whether as an individual or as owner, partner, majority stockholder, director, officer, or employees of a food service provider ("Six-Month Non-Solicitation"). In the event of any Breach of such Six-Month Non-Solicitation, the breaching party will pay and the injured party will accept an amount equal to the annual salary of the relevant employee.

7.2 **Off-Campus Caterers.** All Facilities and equipment used by a third party caterer will be returned to Contractor in the condition in which it was found (excluding reasonable wear and tear) so as not to unreasonably interfere with Contractor's performance under this Agreement.

7.3 **General Obligations.** University, at its sole cost and expense, will:

- 7.3.1 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 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. University will exercise reasonable diligence in pursuing the restoration of interrupted utility services;
- 7.3.3 Clean exterior walls and windows of the Space;
- 7.3.4 Provide external maintenance on buildings where the Space is situated; and
- 7.3.5 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 sixty (60) 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 daily basis through the effective date of termination) in accordance with **Section 5.1** of this Agreement.

This Agreement may be terminated by Contractor without cause by giving University not less than sixty (60) 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 daily 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 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 thirty (30) day period. If Contractor fails to cure any default within 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 other than for University default, then at University's option, and provided that University continues to perform all of its obligations hereunder, 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 three (3) months after expiration or earlier 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.
- 8.6 Continuing Obligations.** The expiration or earlier 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, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.20, 9.24, 9.25, 9.27 and 9.28.**
- 8.7 Change in Circumstance.** The financial terms have been negotiated between the Parties upon the condition that Contractor will operate its Services at the same points of Service and remain in operation only the hours agreed to when Contractor begins operations hereunder, and upon the assumptions set forth in Section 8.7.1 below. If University changes the meal plan participation requirement or desires Contractor to operate its Services for additional points of Service and/or additional hours, or if any of the assumptions set forth below are not met, University and Contractor shall mutually agree on the appropriate financial arrangements for the new level of meal plan participation and additional points of Service and/or additional hours.

The financial and operational terms of this Agreement are also based on conditions in existence on the date Contractor commences service, including without limitation University's student population; labor costs (including but not limited to benefits and insurance costs); food and supply costs; federal, state and local sales, use and excise tax. In addition, Contractor has relied on representations regarding existing and future conditions made by University in connection with the negotiation and execution of this Agreement. In the event of a change in the conditions or the inaccuracy or breach of, or failure to fulfill, any representation of University, the Parties shall negotiate in good faith to

[REDACTED]

adjust the financial and operational terms on a mutually agreeable basis to reflect the impact of such change, inaccuracy or breach.

[REDACTED]

## Section 9.

### Miscellaneous

- 9.1 **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 §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The benefits and burdens of this Agreement are assignable by University. Notwithstanding the foregoing, Contractor may assign this Agreement to an affiliated company or wholly owned subsidiary with prior approval of University and without being released from any of Contractor's responsibilities under this Agreement.
- 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 Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). 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 SPSS in accordance with 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also revoke this Agreement for breach and make a claim against Contractor.
- 9.2.1 **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 §20.285](#); (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.



- 9.2.2 **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 §20.285](#) 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 §20.285](#), 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 §20.285](#). University may report nonperformance under this Agreement to SPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).
- 9.3 **Texas Family Code Child Support Certification.** Pursuant to [§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, provided, however, to the extent authorized by the laws and Constitution of the State of Texas, University will remain liable to repay Contractor the unamortized balance of the amount of the Financial Commitment actually paid and delivered to or for the benefit of the University and amounts due under invoices for Services performed pursuant to the terms and conditions of this Agreement prior to the Contractor's receipt of notice of termination. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 9.6 **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.
- 9.7 **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..
- 9.8 **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.
- 9.9 **Venue; Governing Law.** Dallas County Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

**9.10 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.

**9.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** In the course of providing Services hereunder, the parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other party which includes, but is not limited to, menus, recipes, signage, food service surveys and studies (other than those conducted in connection with Section 3.1.12 of this Agreement or Section 51.945, Texas Education Code,), and management guidelines, procedures, operating manuals and software, conspicuously marked as confidential (collectively, "Confidential Information"). The parties agree to hold in confidence and not disclose any Confidential Information during the Initial Term and the Extension Term of this Agreement and for two (2) years after the expiration or termination of this Agreement, except that the parties may disclose Confidential Information: (a) to its employees and affiliates or others to the extent necessary to perform its duties and obligations under this Agreement, provided that the non-disclosing party is first notified of the Confidential Information that will be disclosed to a third party and provided further that the Confidential Information is disclosed only after the third party signs a written document requiring the third party to maintain the Confidential Information in confidence as required under this Agreement; (b) to the extent expressly authorized in writing by the non-disclosing party; (c) to the extent that at the time of disclosure, the Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement; (d) to the extent that the Confidential Information is in the possession of the disclosing party at the time of disclosure and is not acquired directly or indirectly from the non-disclosing party; (e) to the extent the Confidential Information is subsequently received on a non-confidential basis from a third party having a right to provide the information; or (f) as required by Applicable Laws (including the Texas Public Information Act), an order during the course of a judicial or regulatory proceeding, or as required by a governmental authority. The parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other party. Each party's Confidential Information will remain the exclusive property of that party and will be returned to the owning party upon termination or expiration of this Agreement. In the event of any breach of this Section, the non-breaching party will be entitled to equitable relief, in addition to all other remedies otherwise available to the non-breaching party under Applicable Laws.

**9.12** 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 re-disclosure 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.

- 9.12.1 **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.
- 9.12.2 **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.
- 9.12.3 **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.
- 9.12.4 **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. This Section will not be deemed to restrict Contractor from listing the name of University as a client in its sales and marketing materials and proposals to prospective clients; however no UT Dallas or UT System marks shall be used and no University endorsement shall be implied.
- 9.12.5 **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 [§552.002](#) of TPIA and [§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.
- 9.12.6 **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.
- 9.12.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 9.13 **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.
- 9.14 **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.
- 9.15 **Audit of Records.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Such records shall include, without

limitation, all reports, records, financial information and other documents relating to the Services, including but not limited to financial statements, reports of capital investments, cash collection reports, route inventory cards, sales reports, and commission report. Contractor will include this provision in all contracts with permitted subcontractors.

All records shall be kept on file by contractor for a period of ten (10) years from the date the record is made. 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 directly relevant to all financial arrangements and 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.

**9.16 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 mail, 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:      The University of Texas at Dallas  
800 West Campbell Road SPN2  
Richardson Texas 75080  
Attention: Office of Contracts Administration  
[OCA@utdallas.edu](mailto:OCA@utdallas.edu)

*with copy to:*      *The University of Texas at Dallas*  
800 West Campbell Road SPN2  
Richardson Texas 75080  
Contracts Manager  
[procurement@utdallas.edu](mailto:procurement@utdallas.edu)

If to Contractor:      Compass Group USA, Inc. d/b/a Chartwells  
Attention: Lisa McEuen, CEO  
2 International Drive  
Rye Brook, New York 10573  
Facsimile No. (914) 935-5553

*with a copy to:*      Compass Group USA, Inc.  
Attention: General Counsel  
2400 Yorkmont Road  
Charlotte, North Carolina 28217  
Facsimile No. (704) 329-4010

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 [§2251.054, Texas Government Code](#), then Contractor will send that notice to University as follows:

The University of Texas at Dallas  
800 W. Campbell Road, SPN2  
Richardson Texas 75080  
Attention: Office of Contracts Administration

Fax: 972-883-2348  
Email: [OCA@utdallas.edu](mailto:OCA@utdallas.edu)

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

**9.17 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.

**9.18 Injunctive and Equitable Relief.** In the event of a breach or threatened breach of the restrictions and obligations set forth in this Section, University may not be able to be reasonably or adequately compensated in damages. Accordingly, a breach by Contractor of the provisions of this Section may cause University irreparable injury and damage. Therefore, University will be entitled to seek injunctive and other equitable relief in any court of competent jurisdiction to prevent or otherwise seek to restrain a breach of this Section.

**9.19 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.

9.19.1 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.

9.19.2 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.

9.19.3 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.

9.19.4 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.

- 9.19.5 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.
- 9.20 **Payment of Debt or Delinquency to the State.** Pursuant to §§[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.
- 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 §1861(v)(1)(i) of the Social Security Act ([42 U.S.C. §1395x](#)) as amended, and the provisions of [42 CFR §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 91-596](#)) 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 <https://utdallas.edu/compliance/conflicts-of-interest/>. Standards of Conduct Guide available at <https://www.utdallas.edu/conduct>. And University Ethics Policy at <https://utdallas.edu/oiec/files/Ethics-FY16pdf> neither or 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.

Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC’s electronic filing system, by reviewing the information on TEC’s website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html).

**9.30 Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**9.31 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate

**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.

**9.35 Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**9.36 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.



9.37 **Board Approval.** This Agreement is subject to review and approval by The Board of Regents of The University of Texas System (the "Board"). The validity and effectiveness of this Agreement is contingent upon the approval of this Agreement by the Board through the consent agenda requirements and approval process under the Rules and Regulations of the Board. If the Board does not approve this Agreement, then this Agreement is null, void, and of no effect; provided, however, that University shall pay Contractor for any Work that is provided by Contractor to the University hereunder prior to the notice, if any, of the Board's non-approval. Notwithstanding any other provision of this Agreement, in the event that the Board does not approve this Agreement, the total amount that University pays to Contractor for any Services that are provided by Contractor to the University under this Agreement will not in any event exceed \$1,000,000.

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

**CONTRACTOR:**

**Compass Group USA, Inc.  
by and through its Chartwells division**

By: 

Name: Lisa McEuen

Title: CEO, Chartwells K12

Date: 2/28/19

**UNIVERSITY:**

**The University of Texas at Dallas**

By: 

Name: **Dr. Calvin D. Jamison**

Title: **Vice President for Facilities &  
Economic Development**

Date: **3/4/2019**

**ATTACH:**

- Appendix A-Capital Improvements
- 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 and Royalty Terms
- Schedule 7 – Short Term Meal Plan Terms
- Schedule 8 – Board Plan Terms
- Schedule 9 – Catering Plan Terms
- Schedule 10 – Concession Plan Terms
- Schedule 11 – University Owned Equipment and Smallwares Inventory
- Schedule 12 – [RESERVED]
- Schedule 13 – Revenue Collection Procedures
- Schedule 14 – Installment and Amortization Schedule for Financial Commitment]
- Schedule 15 – HUB Subcontracting Plan

## Appendix A: Capital Improvements

### Article 1. Construction Safety

- 1.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to University and Facilities Management prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 1.2 Notices. Contractor shall provide notices as follows:
  - 1.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
  - 1.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to University and its agents as requested.
- 1.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
  - 1.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
  - 1.3.2 Give University prompt notice of all such events via report to University Police.
  - 1.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify University within seventy-two (72) hours of the emergency response event.
  - 1.3.4 Should Contractor fail to respond, University is authorized to direct other forces to take action as necessary and University may deduct any cost of remedial action from funds otherwise due Contractor.
- 1.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify University Police and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
  - 1.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
  - 1.4.2 Supply University, via University Police, with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide University with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 1.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify University immediately.
  - 1.5.1 Bind all Subcontractors to the same duty.

- 1.5.2 Upon receiving such notice, University will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, University will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 1.5.3 University may hire third-party contractors to perform any or all such steps.
- 1.5.4 Should compliance with University instructions result in an increase in Contractor's cost of performance, or delay the Work, University will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 1.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to University prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

## Article 2. Certification of No Asbestos Containing Material or Work

- 2.1 Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 2.2 Contractor shall provide a notarized certification to University that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.
- 2.3 Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:
- Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
  - National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos);
  - Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

## **SCHEDULE 1**

### **Services**

Contractor will provide the following full-service food, alcoholic beverage, and non-alcoholic beverage services (collectively, "**Services**") in accordance with the terms of this Agreement:

Contractor will provide all services as described in Contractors Proposal in response to the University's RFP UTD20180111-LH "University Food Services and subsequent offers made through a Best and Final Offer dated September 17, 2018. Those named documents are hereby incorporated by reference as a part of the Agreement. If there is a discrepancy between these documents and this agreement, this agreement shall prevail.

Contractor will use University's existing food service space as well as any future space to provide food services on University's campus related to retail, catering, meal plans, PUB and dining hall operations.

## **SCHEDULE 2**

### **Preparation Activities and Schedule**

Contractor shall officially conduct all food service operations, including catering (refer to Schedule 9 below) commencing on the effective date. Contractor will follow the implementation plan as provided in its response to the University's RFP UTD20180111LH to ensure adequate and quality levels of service are available at start-up.

### **SCHEDULE 3**

#### **Food Service Locations and Other Space**

The Food Service Locations, as defined in Section 3.2.1, are as follows:

1. Student Union Comet Café (Subway, Ben & Jerry's, Za'Tar)
2. Student Union Food Court (Smash'd, Moe's Southwest, Chick-Fil-A, Panda Express)
3. The PUB (in the Student Union)
4. Dining Hall West
5. The Market and Papa John's (Dining Hall West)
6. The Market (in the Student Union)
7. The Market (in the Student Services Building)
8. The Market (in Engineering West Building)
9. Bookstore Coffee Shop (in the Visitor Center Building)
10. Jason's Deli (School of Management)
11. Coffee Corner (School of Management)
12. 12. Novel Brew (McDermott Library)
13. 13. Starbucks (Student Union)
14. 14. Einstein Brothers Bagels (Parking Structure 3)
15. 15. IHOP Express (Parking Structure 3)

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

1. Office, Student Union 2.902
2. Office, Student Union 2.506
3. Catering kitchens in McDermott Suite and Davidson-Gundy Alumni Center
4. Student Union Kitchen and storage
5. University and Contractor shall discuss and mutually agree on location for proposed food hall

## **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](mailto:bor@utsystem.edu)

## **SCHEDULE 5**

### **Customer Satisfaction Policy/Complaint Resolution Procedures**

Contractor will work with University to ensure a high level of Customer satisfaction and an appropriate response to complaints. Contractor's Proposal in response to the University's RFP UTD20180111-LH "UNIVERSITY FOOD SERVICE" outlines the resolution of complaints, measurement tools and programs, and the implementation of on-site insights in Section 3.2 of the Proposal, which commitments are incorporated herein by reference.



Contractor agrees to pay to University a Royalty based on Adjusted Gross Revenues as defined in Section 5.1.1 as follows:

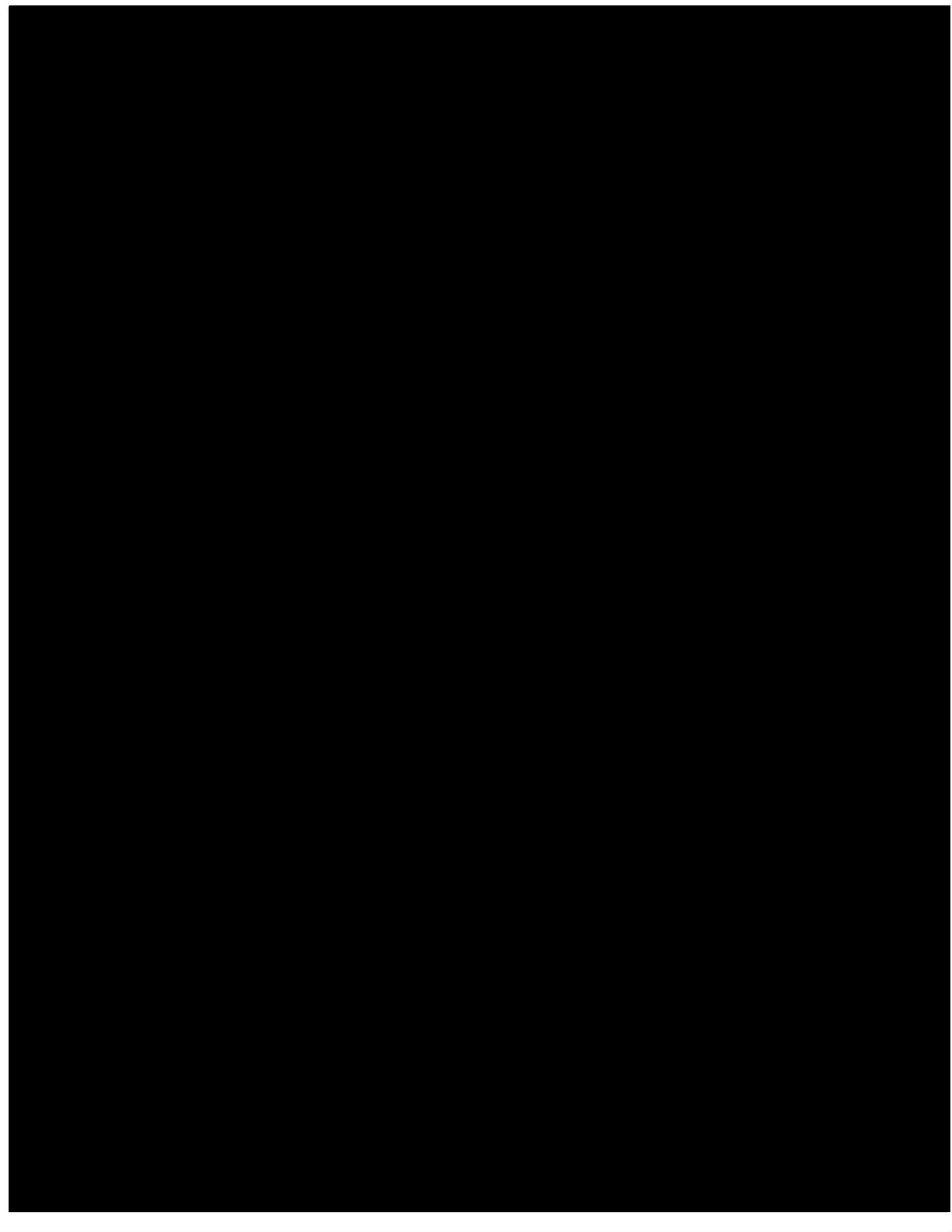
Adjusted Gross Revenue	Royalty Percentage
\$0 - \$9,500,000	10% *
\$9,500,001 or greater	15% *

\* These Royalty Percentages do not apply to adjusted gross revenue of food sales to students through University approved subcontractors of Contractor such as food trucks and mobile or temporary food services. The Contractor agrees to pay to University an amount equal to 50% of any royalty that Contractor receives from subcontractors, but in no case less than 5% of the subcontractors' gross revenues.

## **SCHEDULE 7**

### **Short Term Meal Plan Terms**

The terms and conditions for any Short Term Meal Plans desired by University for purposes stated in Section 3.2.4 or other purposes shall be mutually determined by both parties on an as-needed basis, consistent with the terms and conditions of this Agreement, and shall be evidenced in writing.



## SCHEDULE 9

### Catering Plan Terms

Contractor acknowledges the importance of catering at The University of Texas at Dallas. As outlined in the RFP, the University's strategic plan requires Contractor to grow as the University grows and provide catering, access to outside catering options, and food truck services that will be of acceptable quality and value as the University strives toward status as a nationally-recognized institution of the first class.

As such, University shall regularly identify, via procurement processes, **no less than 3 and no more than 5** outside vendors approved to provide catering services on University's campus in addition to Contractor. **Additional approved outside catering vendors shall be subject to mutual agreement of Contractor and University.** Except for these approved vendors, which list University shall publish on its official web site, Contractor shall have the exclusive right to provide catering and food truck services to the University's campus.

Catering performed for a third party shall require a fifty percent (50%) deposit upon booking with the remaining fifty percent (50%) due on the day of the event.

## **SCHEDULE 10**

### **Concession Plan Terms**

Initially, University has no plans to use Contractor to provide for University's food or beverage concessions needs. However, University and contractor reserve the right to add mutually acceptable terms to this agreement, in the form of an amendment, should the University require Contractor to provide these services.

**SCHEDULE 11**

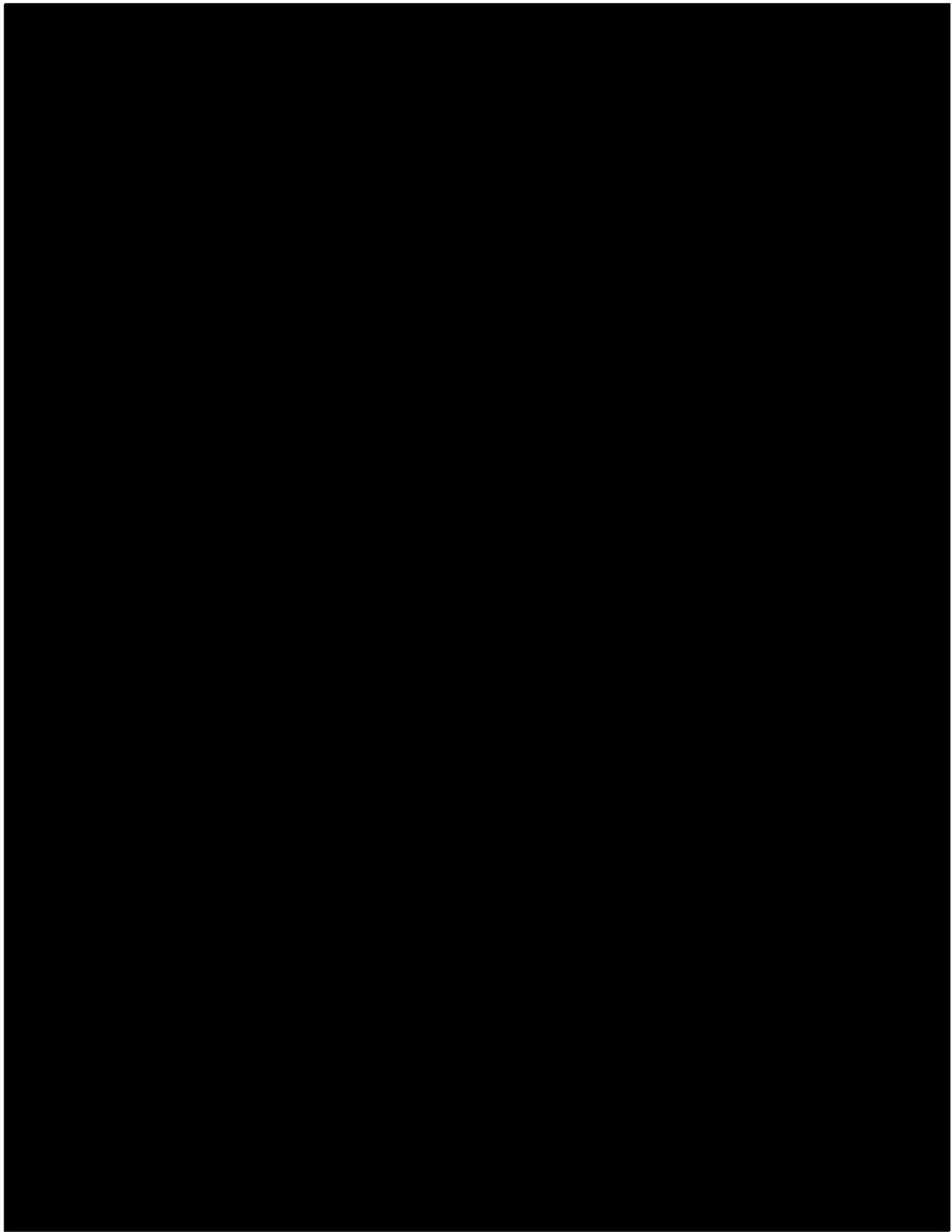
**University Owned Equipment and Smallwares Inventory**

See attached

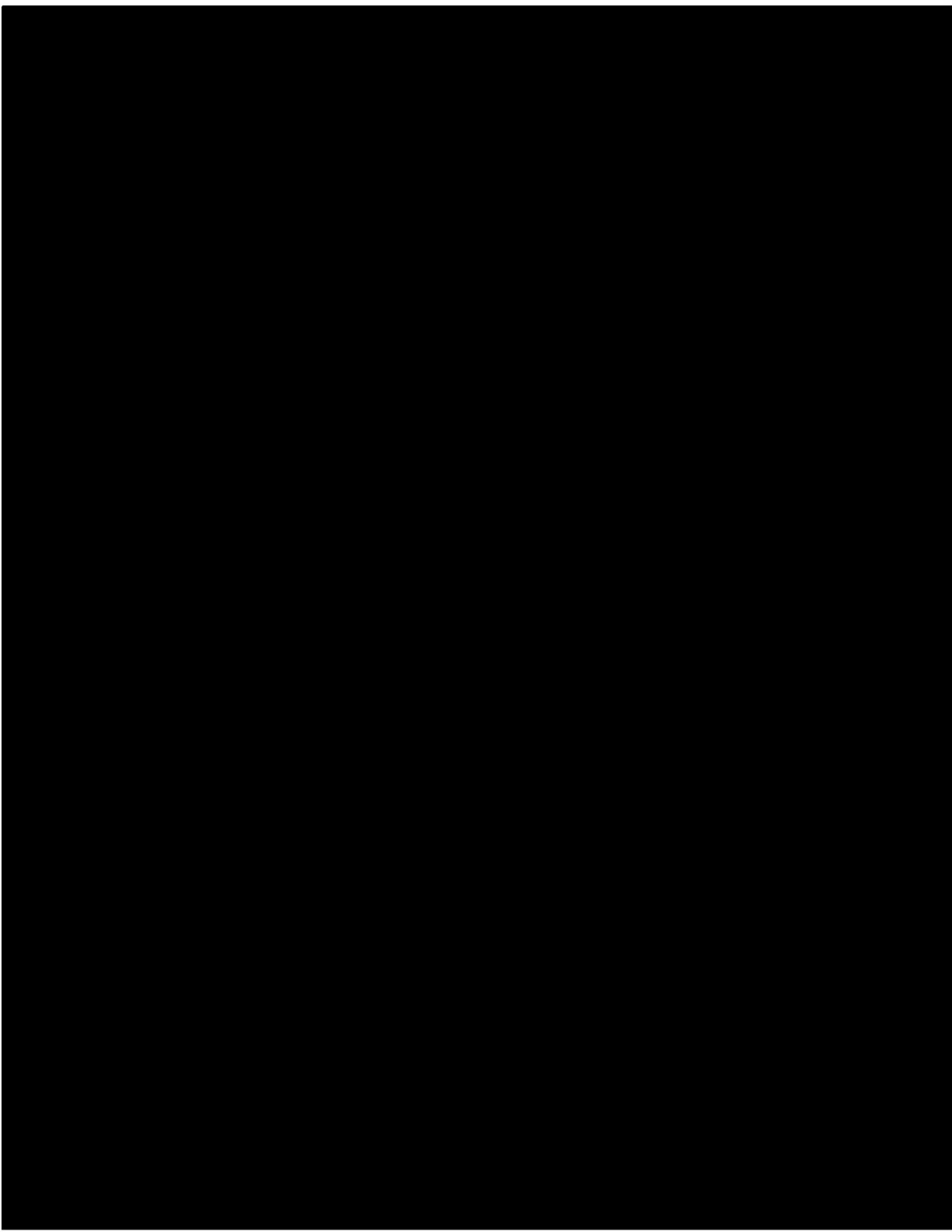
**SCHEDULE 12**

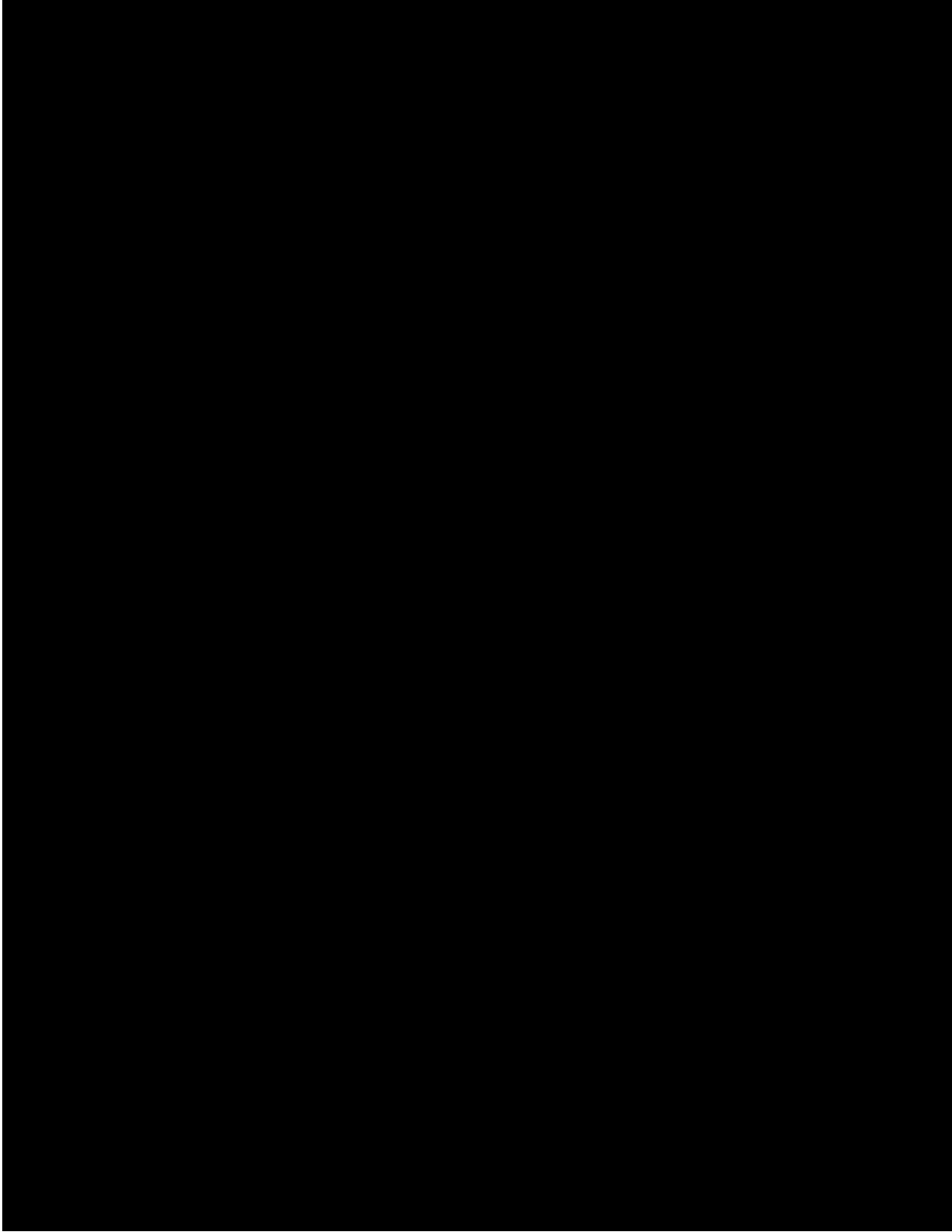
**[RESERVED]**

Reference Section 5.6 Commitments









**SCHEDULE 15**

**HUB Subcontracting Plan**

Contractor's HUB Subcontracting Plan was submitted in its response to the RFP and accepted by the University and is incorporated by reference and made a part of this Agreement.