REQUEST FOR PROPOSAL

by

The University of Texas at Arlington

for

Selection of a Vendor to Provide Operation and Management of Food Services

RFP No. 2016-002

Submittal Deadline: November 6, 2015

Issued: September 16, 2015
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INTRODUCTION

1.1 Description of The University of Texas at Arlington.

The University of Texas at Arlington ("University") is part of The University of Texas System and is governed by the Board of Regents of The University of Texas System. The University is accredited by the Commission on Colleges of Southern Association of Colleges and Schools to award bachelor's, master's and doctoral degrees. Please visit the University's website at www.uta.edu for additional information about the University.

The main campus of the University is located at 701 S. Nedderman Drive in Arlington, Texas. The University currently has approximately 37,000 undergraduate, graduate, and doctoral students on the main campus with growth projected at 4-5% annually; over 5,000 faculty and staff. In addition, the University has an average of 27,000 continuing education students on campus annually. The University receives thousands of visitors each year, both in direct connection with its students, staff and faculty, as well as visitors to collegiate and high school sporting events, exhibits, conferences and symposia, summer camps, and cultural, academic, outreach and entertainment events held at the University. Please visit the University's website at www.uta.edu for additional information about the University.

1.2 Residential Profile

University's residence hall population includes six (6) halls; Arlington Hall, Brazos House, Kalpana Chawla (KC) Hall, Lipscomb Hall, Trinity House, and Vandergriff Hall. University's apartment community population includes sixteen (16) communities; Arbor Oaks, Autumn Hollow, Center Point, Cooper Chase, Cottonwood Ridge, Garden Club, The Heights on Pecan, The Lofts, Maple Square, Meadow Run, Oak Landing, Pecan Place, Timber Brook, University Village, West Crossing, and Woodland Springs. University also has an agreement in place with Campus Living Villages for Centennial Court, a community that resides on the campus.

Maximum assignable space for each residence hall location is:

<table>
<thead>
<tr>
<th>Hall</th>
<th>Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arlington Hall</td>
<td>596</td>
</tr>
<tr>
<td>Brazos House</td>
<td>96</td>
</tr>
<tr>
<td>KC Hall</td>
<td>419</td>
</tr>
<tr>
<td>Lipscomb Hall</td>
<td>323</td>
</tr>
<tr>
<td>Trinity House</td>
<td>236</td>
</tr>
<tr>
<td>Vandergriff Hall</td>
<td>501</td>
</tr>
</tbody>
</table>

*Denotes a mandatory board plan requirement for students residing in this hall
**University wishes to receive an add alternate proposal with these halls becoming mandatory board plan halls.

Historically, the University has seen approximately 45% participation overall within the residence halls where meal plan participation is voluntary for the Fall Semester. University has seen approximately 35% participation overall within the residence halls where meal plan is voluntary for the Spring Semester.
Apartment complexes vary in style and leasing options. University leases two complexes by the bed consisting of 668 total beds. University has an additional 944 units that vary in size and are capable of holding from 1 to 4 students per unit.

University does not warrant or guarantee how many residents will occupy the residence halls or apartment complexes throughout the length of any agreement or contractual arrangement resulting from this RFP. Note: Historically occupancy rates have been very strong within residence halls and apartment complexes.

**Important Note:**
University is in the process of constructing a new residence hall to be located on the west side of campus. The new hall will have a population of 500 with completion of phase one, planned for Fall 2018, and an additional 500 beds will be added with completion of phase two, planned for Fall 2020. All of the beds that are added during these projects will have a mandatory meal plan requirement. During phase one of the construction project a dining hall is being added to accommodate the increased population, as well as, to serve as a food service area for the west side of campus.

In conjunction with the addition of these residence halls, the University will be removing Trinity House and Brazos House through a phased approach.

### 1.3 Background and Special Circumstances

#### 1.3.1 Current Contractual Arrangement.
University’s current food service provider and management is Aramark Educational Services of Texas, LLC (Aramark). Aramark provides a cash plan, short term meal plan, board plan, catering plan, and concession plan.

#### 1.3.2 Operating Hours
The current operating hours for the Fall and Spring Semesters are provided below. The University would like all proposals to include expanded morning, evening, late night, weekend, and Summer Semester hours.

<table>
<thead>
<tr>
<th>Resident Dining</th>
<th>Monday – Friday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>7 am – 9:30 am</td>
</tr>
<tr>
<td>Continental</td>
<td>9:30 am – 11 am</td>
</tr>
<tr>
<td>Lunch</td>
<td>11 am – 2 pm</td>
</tr>
<tr>
<td>Midday</td>
<td>2 pm – 5 pm</td>
</tr>
<tr>
<td>Dinner</td>
<td>5 pm – 9 pm</td>
</tr>
<tr>
<td>Brunch</td>
<td></td>
</tr>
<tr>
<td>Dinner</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plaza Food Court</th>
<th>Monday – Thursday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chick-fil-A</td>
<td>7:30 am – 10:30 pm</td>
</tr>
<tr>
<td>Panda Express</td>
<td>10 am – 10:30 pm*</td>
</tr>
<tr>
<td>Subway</td>
<td>10 am – 10:30 pm*</td>
</tr>
<tr>
<td>Moe’s</td>
<td>10 am – 10:30 pm*</td>
</tr>
<tr>
<td>Sushic</td>
<td>10 am – 5 pm**</td>
</tr>
</tbody>
</table>

*Locations rotate for dinner service (after 5 pm); only two locations open at any given time.
**Counter service ceases after lunch, but grab and go cooler remains filled.
<table>
<thead>
<tr>
<th><strong>Friday</strong></th>
<th><strong>Monday – Thursday</strong></th>
<th><strong>Friday</strong></th>
<th><strong>Saturday</strong></th>
<th><strong>Sunday</strong></th>
<th><strong>Monday – Thursday</strong></th>
<th><strong>Friday</strong></th>
<th><strong>Saturday</strong></th>
<th><strong>Sunday</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chick-fil-A</td>
<td>7:30 am – 3 pm</td>
<td>7:30 am – 3 pm</td>
<td>7 am – 3 pm</td>
<td>3 pm – 10 pm</td>
<td>7:30 am – 11 pm</td>
<td>7 am – 6 pm</td>
<td>8 am – 1:30 pm</td>
<td>3 pm – 10 pm</td>
</tr>
<tr>
<td>Panda Express</td>
<td>10 am – 3 pm</td>
<td>10 am – 3 pm</td>
<td>8 am – 7 pm</td>
<td>1 pm – 6:30 pm</td>
<td>8 am – 3 pm</td>
<td>8 am – 3 pm</td>
<td>9 am – 3 pm</td>
<td>closed</td>
</tr>
<tr>
<td>Subway</td>
<td>10 am – 3 pm</td>
<td>8 am – 3 pm</td>
<td>8 am – 3 pm</td>
<td></td>
<td>7:30 am – 11 pm</td>
<td>7:30 am – 3:30 pm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moe's</td>
<td>10 am – 3 pm</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sushic</td>
<td>10 am – 3 pm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Coffee Service</strong></td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
<td>Starbucks (University Center)</td>
</tr>
<tr>
<td></td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
<td>We Proudly Brew (Central Library)</td>
</tr>
<tr>
<td><strong>Convenience Store</strong></td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
<td>P.O.D (University Center)</td>
</tr>
<tr>
<td></td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
<td>MAC Market (Activities Center)</td>
</tr>
<tr>
<td></td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
<td>P.O.D. Express (Central Library)</td>
</tr>
<tr>
<td><strong>Einstein Brothers Bagels</strong></td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
<td>Einstein's (Fine Arts Building)</td>
</tr>
<tr>
<td><strong>University Club</strong></td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
<td>University Club (Davis Hall)</td>
</tr>
</tbody>
</table>
1.3.3 Pre-Existing Exclusivity Rights

The successful respondent will be required to maintain compliance with any pre-existing and future exclusivity rights granted by the University.

The University has granted The Pepsi Bottling Group exclusive rights (a) to offer beverages for sale on the Campus through vending machines; (b) to supply beverages, dispensing equipment, and related supplies for concession/food service operations on Campus; and to advertise and market beverages on Campus, for the purpose of promoting the consumption and sale of beverages generally and on Campus. The exclusivity rights do not extend to the P.O.D. Market or the MAC Market. However, the Pepsi Bottling Group has first right to cooler locations and must have no less than 65% of cooler space. The beverage contract will remain in effect until December 31, 2018.

The University has granted Follett Higher Education Group exclusive rights to manage and operate the Bookstore on University premises. Follett has the exclusive rights to sell textbooks, reference material, and educational resources utilized in official University for-credit courses instructed by University faculty. Such rights will pertain to such textbooks, reference materials, and educational resources, regardless of whether such items are printed or computer-based or course packs.

Snack Vending machines are not intended to be and are not covered by this RFP or any agreement or contract resulting from this RFP.

1.3.4 Sales History

Exhibit A, attached and incorporated for all purposes, provides estimated food sales revenues at all University food service locations for fiscal year 2014-2015. Increasing enrollment, at an estimated 4-5% annually, in combination with a growing residential profile will be positive factors contributing to increasing sales in future years. University does not represent or warrant that these sales figures will be achieved in future years and University specifically disclaims any such representations or warranties.

1.3.5 Competitive Products and Services

University reserves the right to offer for sale through any of its facilities (present or future), products and services which may be competitive or similar in nature to products and services offered by successful Proposer. This may include, but is not limited to, existing vending contracts for soft drinks and snacks, as well as the sale of other similar products and the provision of similar services by University in its facilities. Registered student organizations occasionally sell food as a fund raising activity on campus in areas designated by University. The University's shops at College Park also have restaurants that serve food to the campus community. Respondents should consider including in their response adding an additional dining service location in College Park.
1.3.6 Franchise and Branded Concepts

The current provider has franchise agreements in place with Starbucks, Einstein Brother Bagels, Moe's Southwest Grill, Panda Express, Chick-fil-a, and Subway. Successful proposer will be required to have agreements in place with these franchises or similar national branded franchises that provide/offer similar food options.

1.3.7 Campus Card System

University currently manages and maintains a University card system ("the Mav Card"). The Mav Card serves as the official identification card of the University community. The card serves as a payment card known as "Mav Money" and may be utilized to purchase a wide variety of goods and services on University’s campus and at select businesses within Arlington. The Mav Card must be presented to utilize mandatory and non-mandatory meal plans. All food service venues must accept the Mav Card. University utilizes Cbord’s CSGold System for Mav Card operations.

1.3.8 Sustainability Initiatives

University is dedicated to being a sustainable campus and ensuring that all partnerships share in the same goal. Current initiatives and strategies that have been implemented or that the University would like to see implemented by successful proposer are as follows:

a. "Weigh the Waste" program – food waste is discarded and collected in a receptacle, weighed and tracked weekly.

b. Use to-go containers that are made of 100% recyclable material

c. Utilize cardboard compactor for all appropriate debris

d. Eliminate use of trays within dining areas

e. Offer reusable coffee mugs and reusable soft drink cups

f. Promote food service sustainability initiatives

g. Purchase products from suppliers within a 150 mile radius

1.4 Objective of this Request for Proposal

The University is soliciting proposals from qualified vendors in response to this Request for Proposal for Selection of a Vendor to Provide Operation and Management of Food Services (the "Services"), RFP No. 2016-002 (this "RFP"). The Services, which are more specifically described in Section 5.4 (Scope of Work) of this RFP, include full-service food, alcoholic beverage, and non-alcoholic beverage services including a Cash Plan, Short Term Meal Plan, Board Plan, and Catering Plan, as well as C-Store operations. In addition, the University is open to receiving proposals for added services, in addition to these mandatory ones, for instance a grocery store or C-Store located in the College Park District, restaurant, or other retail operation. As well, the University would like to receive an add alternate scenario a mandatory board plan in Brazos, Trinity, and Lipscomb Halls.

The university is also interested in receiving proposals that will provide capital investments for further expansion and improvements to dining facilities and services, as well as financial contributions toward other development and sponsorship initiatives.
1.6 Term of the Agreement

The initial term of the resulting Agreement will be for ten (10) years, beginning June 1, 2016, and thereafter the University shall have the right, at its sole option, to renew the Agreement for up to one (1) additional renewal term of five (5) years.
SECTION 2
NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 3 p.m., Central Prevailing Time on Friday, November 6, 2015 (the “Submittal Deadline”).

2.2 University Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following University contact (the “University Contact”):

Joe White
Senior Contract Specialist
Email: josephsw@uta.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to University Contact. University Contact must receive all questions or concerns no later than October 9, 2015. University will have a reasonable amount of time to respond to questions or concerns. It is University’s intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

The successful Proposer, if any, selected by University in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as the “Contractor.”

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) services to University (quality/quantity), (2) total overall income and investment to University, (3) total overall cost to University, (4) affordability for our campus community, (5) project management expertise, and (6) proposed organizational structure and staffing plan. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of Contractor will be based on the information provided by Proposer in its proposal. University may give consideration to additional information if University deems such information relevant. The criteria to be considered by University in evaluating proposals and selecting Contractor will be those factors listed below:

2.3.1 Threshold Criteria Not Scored

2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and

2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.
2.3.2 Scoring Criteria

2.3.2.1 The cost of goods and services (15 points);
- The cost of goods and services to University students and University Community

2.3.2.2 The reputation of the Proposer and of the Proposer’s goods or services (15 points);
- The reputation of Proposer for serving other colleges/universities and quality of services provided
- Demonstrated experience in meeting the changing needs/demands of campus dining programs

2.3.2.3 The quality of the Proposer’s goods or services (20 points);
- The ability to support special event needs on & off campus
- The ability to provide a varied and exciting approach to campus dining for board plan participants
- The ability to meet student needs in terms of hours of service and variety of food options
- The ability to provide an innovative and vibrant food service operation for an evolving campus

2.3.2.4 The extent to which the goods or services meet the University’s needs (15 points);
- The ability to support and achieve customer satisfaction
- The plan to provide a varied approach in terms of food service (cash plan, board plan, catering services, and C-Store operations) throughout campus and campus buildings
- The ability to support the University in terms of emergencies (snow, storms, etc.)

2.3.2.5 The Proposer’s past relationship with the University (5 points);

2.3.2.6 The total long-term cost to the University of acquiring the Proposer’s goods or services (20 points); and
- The financial benefits to the University both short-term and long-term of acquiring the Proposer’s goods or services
- The ability to invest in new development of food service options on campus, as well as, improvements to existing infrastructure
- The ability to invest in the University as a partner through sponsorship opportunities for events such as Maverick Speaker Series, Commencement, Mavs Meet After Party, Late Night Breakfast, etc.
- Any other benefits that would be received by the University

2.3.2.7 Any other relevant factors that a private business entity would consider in selecting a vendor (10 points).
- The proposed management team, in terms of prior experience and qualifications; organizational structure; staffing plan; and ability to support when needs increase beyond the leadership teams ability to support
- Acceptance of the terms and conditions of the Food Service Agreement
2.4 Key Events Schedule

Issuance of RFP
September 16, 2015

Pre-Proposal Conference
(ref. Section 2.6 of this RFP)
October 2, 2015

Deadline for Questions/Concerns
(ref. Section 2.2 of this RFP)
October 9, 2015

Submittal Deadline
(ref. Section 2.1 of this RFP)
3 p.m. Central Prevailing
Time on Friday, November 6, 2015

2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "HUB") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this Section 2.5 will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by University to ensure compliance with the HUB program.

2.5.2 University has reviewed this RFP in accordance with Title 34, Texas Administrative Code, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan ("HSP") is required as part of Proposer's proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as APPENDIX THREE and incorporated for all purposes.

Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including APPENDIX THREE. Proposers that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Government Code.

Questions regarding the HSP may be directed to:
Contractor will not be permitted to change its HSP unless: (1) Contractor completes a newly modified version of the HSP in accordance with the terms of APPENDIX THREE that sets forth all changes requested by Contractor, (2) Contractor provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by University and Contractor to conform to the modified HSP.

Proposer must submit one (1) originals of the HSP to University at the same time it submits its proposal to University (ref. Section 3.2 of this RFP.) The three (3) originals of the HSP must be submitted under separate cover and in a separate envelope (the "HSP Envelope"). Proposer must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:

2.5.3.1 the RFP No. (ref. Section 1.3 of this RFP) and the Submittal Deadline (ref. Section 2.1 of this RFP), both located in the lower left hand corner of the top surface of the envelope,

2.5.3.2 the name and the return address of Proposer, and

2.5.3.3 the phrase "HUB Subcontracting Plan".

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements will be rejected by University and returned to Proposer unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Proposer's HSP Envelope prior to opening the proposal submitted by Proposer, in order to ensure that Proposer has submitted the number of completed and signed originals of Proposer's HUB Subcontracting Plan ("HSP") that are required by this RFP. A Proposer's failure to submit the number of completed and signed originals of the HSP that are required by this RFP will result in University's rejection of the proposal submitted by that Proposer as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to Proposer unopened (ref. Section 1.5 of APPENDIX ONE to this RFP). Note: The requirement that Proposer provide three originals of the HSP under this Section 2.5.4 is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal as specified in Section 3.1 of this RFP.

2.6 Pre-Proposal Conference

University will hold a mandatory pre-proposal conference at 9 a.m., Central Prevailing Time on Friday, October 2, 2015, in Conference Room 102 of the Watson Building (ref. APPENDIX FOUR Campus Map) located at 219 West Main Street / Arlington, Texas 76010. The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP, and will be followed by a site visit to various dining facilities on campus.
SECTION 3
SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit a total of five (5) complete and identical copies of its entire proposal. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. Section 2 of APPENDIX ONE) of at least one (1) copy of the submitted proposal. The copy of Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal. In addition, a complete and exact electronic copy of the proposal must be submitted on a flash/thumb drive.

3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. Section 2.1 of this RFP) and should be delivered to:

Physical Address
Joe White
Senior Contract Specialist
The University of Texas at Arlington
219 W. Main St.
Arlington, TX 76010

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred and twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (ref. APPENDIX TWO), the Notice to Proposer (ref. Section 2 of this RFP), Proposal Requirements (ref. APPENDIX ONE) and the Specifications and Additional Questions (ref. Section 5 of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

3.4.1 Specifications and Additional Questions (ref. Section 5 of this RFP);

3.4.2 Agreement (ref. APPENDIX TWO);

3.4.3 Proposal Requirements (ref. APPENDIX ONE);

3.4.4 Notice to Proposers (ref. Section 2 of this RFP).
3.5 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

3.5.1 Signed and Completed Execution of Offer (ref. Section 2 of APPENDIX ONE)

3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. Section 6 of this RFP)

3.5.3 Responses to Proposer's General Questionnaire (ref. Section 3 of APPENDIX ONE)

3.5.4 Signed and Completed Addenda Checklist (ref. Section 4 of APPENDIX ONE)

3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. Section 5 of this RFP)

3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. Section 2.5 of this RFP and APPENDIX THREE).
SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. APPENDIX TWO) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any contract or agreement that results from this RFP.

If Proposer takes exception to any terms or conditions set forth in APPENDIX TWO of this RFP, Proposer will submit a list of the exceptions in their proposal. There is no guarantee that any exceptions will be granted.
SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS AND REQUIREMENTS

5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in Section 2.3 of this RFP, the successful Proposer is referred to as the "Contractor."

5.2 Minimum Requirements

Each Proposal must include information that clearly indicates that Proposer meets each of the following minimum qualification requirements:

5.2.1 Must have a minimum of 20 years food service expertise.

5.2.2 Must have 15 years' experience providing food service in higher education campus environment.

5.2.3 Must have successfully provided catering at an institution of higher education with an annual volume exceeding one million dollars.

5.2.4 A minimum of ten (10) current accounts at institutions of higher education having a student population exceeding 20,000.

5.2.5 A minimum of five (5) current accounts at institutions of higher education in which Proposer operates board plan, cash plan, and catering at the same institution.

5.3 Omitted

5.4 Scope of Work

Contractor will provide the Services more particularly described below including but not limited to:

5.4.1 Cash Plan

University requires a high quality and competitive, within the local market, Cash Plan to meet the needs of students, faculty, and staff. Current food service venues and their locations as well as other spaces that will be used by Contractor to perform the services are included in Exhibit B - Food Service Locations. The University would entertain expansion of food service locations to buildings not currently supported.

A) Residential Dining: Residential dining, named the Connection Café, is located on the ground floor of the University Center. It offers an all-you-care-to-eat dining experience featuring soup, salad bar, deli counter, daily variety of hot entrée station, grill station, pasta station, pizza station, exhibition station, vegetarian station, dessert bar, waffle bar, bread station, international station, and beverage station.

B) Food Court: The food court, named The Plaza, is located on the ground floor
of the University Center. The current concepts residing in this space are Moe's Southwest Grill, Sushic, Panda Express, Chick-fil-A, and Subway. In addition there are various beverages and impulse buy items located within this space.

C) Convenience Stores: University has three convenience stores located around campus. The location of each convenience store is as follows: The Maverick Activities Center, named MAC Market; the Central Library, named P.O.D. Express; and the University Center, named P.O.D. The P.O.D. in the University Center is the largest and offers grab and go hot and cold sandwiches, fresh fruit, fresh pastries, salads, microwaveable meals, protein bars, various beverages, various snacks and candy. This location also offers a selection of home items such as: detergent, cake mixes, storage bags, school supplies, and various health and beauty items. The other two smaller convenience stores offer primarily beverages and snacks.

D) Starbucks: University has a full service location on the first floor of the University Center. The location has all standard beverages offered at a free standing location along with the pastries, breakfast sandwiches, lunch sandwiches and salads.

E) We Proudly Brew: University has a smaller scale version of a Starbucks store located on the first floor of the Central Library. This location offers a limited menu of Starbucks drinks and a few grab and go items.

F) Einstein Bros. Bagels: University has a fully licensed store located on the first floor of the Fine Arts Building. Location offers a full complement of bagels, sandwiches, and beverages as available at a full licensed free standing store.

G) University Club: The University Club is a private faculty club located on the lower level of Davis Hall. The University Club provides a full service sit down style restaurant available for breakfast and lunch, as well as catered events. Options included for breakfast pastries, oatmeal, yogurts, and beverages. Options included for lunch are salad, soup, sandwich, entrée, dessert, and desert.

H) Additional food service is provided at various retail locations housed within the College Park District. These venues include Pie Five Pizza, Coolberry, La Blue Casa, and Texadelphia. There are currently other retail spaces that are not leased, but may be in the future. These spaces, also, could be made available as an optional lease. The University has no intention of altering the agreements that are already in place with these retail locations, and may add additional venues at its sole discretion.

5.4.2 Board Plans
The Contractor offers board plans as outlined in further detail below. The University enters into Board Plan Contracts with participants. The University will in its sole discretion, establish all terms and conditions associated with the Board Plan Contracts. University will work closely with Contractor in establishing board plan types and pricing of board plans. University is responsible for collection of all revenue associated with board plans.

The board plans are designed to provide various levels of flexibility. Residents living in a required board plan hall must choose a mandatory board plan. Residents living in a non-mandatory board plan hall have the option to choose a board plan. The charge for the Board Plan Contract is combined with the Housing Contract and charges are posted to student accounts.

*University currently does not offer but would consider meal plan equivalents.*
Residence Life provides board plans to four (4) paraprofessional staff members and sixty (60) student staff members. The University reserves the right to add or subtract staff members throughout the life of the contract.

Residence Life staff are provided with a complimentary board plan as part of their employment. Currently this affects five (5) administrative staff members and eight (8) resident directors. University reserves the option of providing further board plans to Residence Life staff as new properties are constructed.

It is the University's intent when contracting with the selected Respondent that any balances remaining in a student's Dining Dollars account will roll forward from fall semester to spring semester, and any remaining balance at the end of the spring semester will be transferred to the student's MavDollars declining balance account.

5.4.2.1 Mandatory Board Plans
There are four (4) mandatory board plan options. All board plan options are combined with Dining Dollars, which are accepted for food and beverage purchases at food service locations managed by Contractor. All board plan options are combined with College Park Dollars, as well, which are accepted for food and beverage (non-alcoholic) at the restaurants located in the University's College Park District. Mandatory board plans rates are subject to approval by University and University of Texas System.

Mandatory board plan structure, for one semester, is as follows:

<table>
<thead>
<tr>
<th>Board Plan</th>
<th>Meal Swipes</th>
<th>Dining Dollars</th>
<th>College Park Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Platinum</td>
<td>Unlimited 7 days per week</td>
<td>$150</td>
<td>$50</td>
</tr>
<tr>
<td>Gold</td>
<td>Unlimited 5 days per week</td>
<td>$175</td>
<td>$50</td>
</tr>
<tr>
<td>Silver</td>
<td>190 meal swipes*</td>
<td>$225</td>
<td>$50</td>
</tr>
<tr>
<td>Bronze</td>
<td>165 meal swipes*</td>
<td>$300</td>
<td>$50</td>
</tr>
</tbody>
</table>

* only one meal maybe used per meal period

Currently Mandatory Meal Plans are based on minimum Resident Dining operating days of 223 service days during the academic year. Special event meals are offered in the Resident Dining location on a periodic basis (examples: recognition of holidays and cultural awareness).

5.4.2.2 Voluntary Board Plans
University offers three (3) board plan options for students that do not reside in a residence hall. All board plan options are combined with Dining Dollars, which are accepted for food and beverage at food service locations managed by Contractor. Voluntary board plan rates are subject to approval by University and University of Texas System.
Voluntary board plan structure, for one semester, is as follows:

<table>
<thead>
<tr>
<th>Board Plan</th>
<th>Meal Swipes</th>
<th>Dining Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-the-Go 1</td>
<td>21</td>
<td>$215</td>
</tr>
<tr>
<td>On-the-Go 2</td>
<td>50</td>
<td>$125</td>
</tr>
<tr>
<td>On-the-Go 3</td>
<td>70</td>
<td>$100</td>
</tr>
</tbody>
</table>

**5.4.2.3 Summer Board Plans**

University offers four (4) meal plan options during the summer semesters. All meal plans are combined with Dining Dollars, which are accepted for food and beverage purchases at food service locations managed by Contractor. Summer Board Plans are subject to approval by University and University of Texas System.

Summer board plan structure is as follows:

<table>
<thead>
<tr>
<th>Board Plan</th>
<th>Meal Swipes</th>
<th>Dining Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summer 11-week Plan A</td>
<td>140</td>
<td>$100</td>
</tr>
<tr>
<td>Summer 11-week Plan B</td>
<td>110</td>
<td>$100</td>
</tr>
<tr>
<td>Summer 6-week Plan A</td>
<td>70</td>
<td>$50</td>
</tr>
<tr>
<td>Summer 6-week Plan B</td>
<td>55</td>
<td>$50</td>
</tr>
</tbody>
</table>

**5.4.3 Short Term Meal Plan**

Short term meal plans are available to University and non-University groups and organizations hosting camps, conferences, and other activities on University’s premises. Short term meal plans are offered primarily in support of Summer Camp programs. Short term meal plans currently include breakfast, lunch, and dinner with service provided within the Connection Café. Short term meal plan service will be coordinated with each Summer Camp Program. Contractor shall directly invoice customers participating in short term meal plans.

**5.4.4 Catering Plan**

Catering is a crucial component of the Food Service operation that demands a high level of service expectations from University. The Contractor must demonstrate the knowledge, experience, flexibility, and capability required to perform in a first class and professional manner. The catering program will need to address the diverse needs and budgets of students, faculty, staff, and administrators. The University would also expect that special events held at off campus locations would be supported by Proposer. University currently has exclusivity rights in place with current food service provider, but has yet to determine whether exclusivity will be available to future Contractor.
5.4.5 Proposer’s Representations and Warranties

5.4.5.1 Standards of Performance; Applicable Laws. Notwithstanding anything to the contrary contained in this RFP or subsequent Agreement, Both parties agree and acknowledge that University will be in reliance on Proposer’s special and unique knowledge and abilities with respect to the operation and management of full-service food, alcoholic beverage and non-alcoholic beverage services. Proposer agrees to 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 Proposer's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders, including without limitation (a) the requirements of 25 Texas Administrative Code §§229.161-229.171, and 229.173-229.175, otherwise known as the Texas Food Establishment Rules ("TFER"), and (b) the Rules and Regulations promulgated by the Board of Regents of The University of Texas System (the "Regents' Rules"), as well as with those of any other body or authority having jurisdiction (collectively, the "Applicable Laws"). Proposer also agrees that it has the ability to obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Proposer's other duties and obligations, including but not limited to all necessary Texas Alcoholic Beverage Commission ("TABC") permits for the service and sale of alcoholic beverages if required. Proposer warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services.

5.4.5.2 Sanitation, Health and Safety. Proposer represents, warrants and agrees that if awarded a contract, it shall maintain clean, orderly and sanitary conditions (satisfactory to University in all respects) in all kitchens, food preparation areas, service areas, dining areas, loading docks, hoods and grease filters and for all equipment, floors and dining room chairs and tables associated with certain University cafeterias, snack bars, restaurants, and other locations (collectively, the "Food Service Locations"). In accordance with the Applicable Laws, including but not limited to TFER, Proposer shall obtain all necessary food handler’s permits from appropriate governmental entities.

5.4.5.3 Inspection. Proposer agrees that if selected as the vendor of choice, they shall provide University with copies of all health and safety inspection reports related to the services in any way, within three (3) business days after receipt of such reports.

5.4.5.4 Debts of Students. Proposer understands and agrees that if awarded a contract, neither The University of Texas System nor University shall be responsible for debts owed to Proposer by individual students or by student organizations.
5.4.5.5 Non-Exclusive Agreement; Reservation of Rights by University. Proposer understands and agrees that University has reserved the right to offer for sale through any of its present or future facilities, products and services which may be competitive or similar in nature to products and services offered by proposer. This may include, but not be limited to existing vending contracts for soft drinks and snacks.

5.4.5.6 Use of Food Service Locations by University. Proposer understands and agrees that University shall and does have the right to use the food service locations at all times except during Proposer's operating schedule.

5.4.5.7 Customer Satisfaction. Proposer represents warrants and agrees that if selected as vendor of choice it shall implement and maintain a "customer satisfaction guaranteed" policy. Proposers should fully describe in their proposal their customer satisfaction policy and process as well as complaint resolution process.

Proposer will need to have representation available to meet with the Food Service Advisory Committee. The committee meets monthly to provide feedback on dining options and quality of food and beverage choices on campus; to provide feedback on proposed food and beverage locations and improvements; and channeling complaints on food service to the appropriate personnel.

5.4.5.8 Student Participation in Evaluation of Services. Proposer represents, warrants and agrees that if selected as vendor of choice it shall comply with requirements set forth in Section 51.945, Texas Education Code, regarding students' involvement in the evaluation of the Services and their performance.

5.4.6 Costs and Expenses

Proposer agrees that if selected as the vendor of choice, at its sole cost and expense, shall:

5.4.6.1 comply with all requirements of Subchapter C, Chapter 2252, Texas Government Code, as amended;
5.4.6.2 provide all food, alcoholic beverages, and non-alcoholic beverages to be served or provided in connection with Proposer's performance of the services and other duties and obligations;
5.4.6.3 provide all paper products and kitchen supplies necessary for the performance of the Services and other duties and obligations;
5.4.6.4 provide all management and non-management personnel (including the payment of all salaries and fringe benefits due to such personnel) necessary for the performance of the Services and other duties and obligations;
5.4.6.5 provide uniforms and name tags (satisfactory to University in all respects) for Proposer's personnel;
5.4.6.6 provide all laundry supplies, equipment and services necessary for the performance of the Services and other duties and obligations;
5.4.6.7 provide all janitorial supplies, equipment, and services necessary for the maintenance and cleaning of inside surfaces, furnishings, equipment,
front doors, glass wall partitions, restrooms, walls, ceilings, loading docks, floors and vents associated with the Food Service Locations or related to the performance of the Services or other duties and obligations. It is anticipated that all such floors shall be stripped and waxed and all such vents shall be cleaned, at least three (3) times per year. Proposer’s must account for this cost in their proposal;

5.4.6.8 replace all lost or damaged dinnerware, flatware, glassware, trays, and other kitchen and serving utensils (collectively, "Smallwares") necessary to maintain the Smallwares inventory at the levels provided by University. A comprehensive inventory of the Smallwares provided by University will be provided to the vendor of choice;

5.4.6.9 provide all Smallwares not furnished by University which are necessary for the performance of the Services and other duties and obligations;

5.4.6.10 obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or other duties and obligations;

5.4.6.11 pay all taxes on the Services (including without limitation the sale of food, alcoholic beverages, and non-alcoholic beverages) as may be required by applicable federal, state, county, or city laws and regulations;

5.4.6.12 pay all insurance and bond premiums required;

5.4.6.13 pay all costs related to vehicles necessary for the performance of the Services and other duties and obligations;

5.4.6.14 pay all costs and charges related to telecommunication services provided to the Food Service Locations by University;

5.4.6.15 provide all office supplies, postage, printing supplies, and marketing materials necessary for the performance of the Services and other duties and obligations;

5.4.6.16 provide all Card System compatible point-of-sale cash registers and appropriate accessories not furnished by University which are necessary for the performance of the Services other duties and obligations;

Following is a list of registers already in place:

University Center:
- WS4LX – 9 ea.
- WS5A – 4 ea.

Engineering Research:
- WS4LX – 1 ea.

Library:
- WS4LX – 1 ea.

Maverick Activities Center:
- WS4LX – 1 ea.

University Club Davis Hall:
- WS4LX – 2 ea.

5.4.6.17 maintain all University Owned Equipment in good working order;

5.4.6.18 repair or replace (at University’s option) all University Owned Equipment and all other University equipment, furniture, plumbing fixtures, and electrical fixtures, lost or damaged by Proposer, its agents, employees or personnel, including, without limitation, clearing of stoppages in drains caused by grease or other foreign matter lodged between the grease traps and the food service area of any Food Service Location; University Owned Equipment that has exceeded its useful life shall be replaced by
University at University's expense (Proposer to provide University timely notice for budgeting/replacement purposes).

5.4.6.19 provide for the removal and proper disposal of all wet garbage from all dining services areas;

5.4.6.20 provide for the removal and proper disposal of all dry garbage from all dining services areas;

5.4.6.21 cause to be provided appropriate pest control services within the Food Service Locations and adjacent areas. All pest control services must be (1) coordinated with University's pest control efforts, and (2) pre-approved in writing by University's Representative; and

5.4.6.22 pay any and all other costs associated with the performance of the Services and other duties and obligations, not expressly required to be paid by University.

5.4.7 Management Responsibilities

5.4.7.1 Independent Contractor

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

5.4.7.2 Personnel

Properly Trained Staff; Efficient Performance of Services; Dietitian. At all times, Proposer warrants, represents, covenants, and agrees that if selected as Contractor, it will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance. Contractor shall 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 shall provide expert administrative, purchasing, and personnel supervision, for the performance of the Services. In addition, Contractor shall provide the services of a registered dietitian for student dietary counseling and menu preparation.

**Supervision.** Contractor shall provide adequate, competent supervision of its employees and personnel at each Food Service Location. Neither University's Representative nor any other representative of University shall supervise Contractor's employees, personnel or agents performing the Services; provided, however, University's Representative shall be available to Contractor to answer questions and provide necessary information.

**Licenses: Designated Representatives.** The Proposer warrants, represents, covenants, and agrees that all persons connected with and directly in charge of the Services are duly registered and licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations. If selected as the vendor of choice, Proposer shall assign to University a designated representative who shall be responsible for the administration and coordination of the Services. Proposer represents and agrees to furnish efficient business administration and coordination and perform the Services in an expeditious and economical manner consistent with the interests of University.

5.4.7.3 **Anti-discrimination Provision.** If selected, Proposer shall not discriminate against any employee or applicant for employment, or customer, on the basis of age, race, sexual orientation, religion, creed, color, sex, disability, national origin, or status as a veteran.

5.4.7.4 **Employee Conduct.** If selected, Proposer shall require all of its employees and personnel to adhere to all of University's policies and regulations, and shall perform the Services without interfering in any way with the activities of University's faculty, students, staff, visitors or invitees.

5.4.7.5 **Labor Unions.** University shall not be a party to, or be bound by, any labor union contract affecting Proposer's employees or personnel. Any such contract shall be negotiated between Proposer and the labor union, and not adversely impact on Proposer's service deliveries.

5.4.7.6 **Responsibility for Employees.** Proposer shall be responsible for any and all injury, loss and damage to persons or property caused by Proposer's agents, employees or personnel. Upon request by University, Proposer shall promptly repair or replace, to the satisfaction of University, any damage Proposer, its employees, personnel or agents, cause to University's property. In the event Proposer fails to make such repairs to the satisfaction of University, University, at its option, may repair such damage and Proposer shall promptly reimburse University for the cost of such repair or replacement.
5.4.7.7 **Limited Access.** Proposer, its employees, personnel and agents, shall have the right to use and access only those University facilities that are necessary to perform the Services and shall have no right to use or access any other facilities of University.

5.4.7.8 **Uniforms; Name Tags.** While on duty, on or off University's premises, all of Proposer's non-supervisory personnel shall wear uniforms satisfactory to University in all respects. While on duty, on or off University premises, Proposer's professional staff shall wear name tags satisfactory to University in all respects.

5.4.7.9 **Health Examinations.** Proposer shall require all of its employees and personnel to submit to periodic health examinations as required by law. Upon University's request, Proposer shall submit to University satisfactory evidence of Proposer's compliance with all applicable health laws, rules and regulations.

5.4.7.10 **Criminal Background Checks.** Proposer shall conduct Criminal Background Checks on all employees. If selected as the vendor of choice, Proposer shall provide a letter stating "This letter is being sent to certify compliance with UT Arlington's policy that vendors perform criminal background screening on individuals assigned to work on the UTA campus. [VENDOR NAME] performs criminal background checks on all employees as part of our company policy, including those individuals listed below who will be working on the U.T. Arlington campus. [VENDOR NAME] strives to provide a safe working environment and would not knowingly assign an employee to provide services on the University of Texas at Arlington campus who has a history of criminal conduct, including violent or sexual offenses."

As a result of Senate Bill 11 in the 84th Legislative Session, University will be a “concealed carry campus” effective August 1, 2016.

5.4.8 **Inventory**

5.4.8.1 **Inventory Record Keeping:** Contractor shall maintain, in formats acceptable to University, annual inventory, acquisition, and loss records for (a) all University Owned Equipment and (b) all Contractor Owned Equipment.

5.4.8.2 **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, to be used in the Food Service Locations or the Office Space and will keep the list current. Any equipment located in the Food Service Locations or the Office Space that is not on the Contractor Owned Equipment list shall be deemed to be University Owned Equipment and the sole property of University.
5.4.8.3 **Purchase of Usable Inventory:** University may, at its option, purchase Contractor's usable inventory of food and related supplies upon termination of any subsequent Agreement for any reason; provided, however, University shall not purchase any food or supplies in open or partial packages, boxes, or containers. The purchase price for such inventory shall be determined by Contractor's verifiable invoice costs.

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

5.4.8.5 **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 such shortage or loss with equipment satisfactory to University in all respects within thirty (30) days after receiving written notice of such shortage or loss from the University.
SECTION 6
FINANCIAL ARRANGEMENTS AND DELIVERY SCHEDULE

Proposal of: ____________________________________________
(Proposer Company Name)

To: The University of Texas at Arlington
Ref.: Selection of a Vendor to Provide Operation and Management of Food Services
RFP No.: 2016-002

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Consideration for Services Offered

6.1.1 Royalties: It is anticipated that royalties will be paid to the University based on a percentage of adjusted gross revenue from each plan and each location. The term "adjusted gross revenue" shall mean gross food, alcoholic beverage, and non-alcoholic beverage revenue less all applicable sales taxes. Please list below the royalty percentage your firm will pay to the University for each plan and location (or if proposing a different structure please provide details):

Cash Plan Royalty: __________ %

Short Term Meal Plan Royalty: __________ %

Board Plan Royalty (paid with Dining Dollars): __________ %

Board Plan Royalty (all other adjusted gross revenue): __________ %

The Market*: __________ % (of net revenue up to $500,000)

________________ % (of net revenue $500,001 - $900,000)

________________ % (of net revenue $900,001 and above)

*Excluding Bookstore Merchandise

Catering (exclusive rights): __________ %

Catering (non-exclusive rights): __________ %
6.1.2 **Payments; Accounting Periods:** Contractor shall pay University all amounts owing under any subsequent Agreement within thirty (30) days after the last day of each Accounting Period during the Initial Term or any Extension Term of this Agreement. The term "Accounting Period" shall mean one (1) calendar month.

6.1.3 **Catering Payments:** Successful proposer shall invoice University for the Services provided under the Catering Plan within 20 days after the Catered Event. University will, within thirty (30) days from the date it receives such invoice and applicable supporting documentation for payment, approve or disapprove the amount reflected in such invoice and if University approves such amount or any portion of such amount, University shall pay within thirty (30) days after receipt of the invoice, the amount so approved, provided the Contractor is not in breach of or in default under this Agreement. If University disapproves any amount requested by Contractor, University shall give Contractor specific reasons for its disapproval in writing. University and Contractor will negotiate in good faith to determine the amount owed for such invoice.

6.2 **Collection and Recording Revenue**

6.2.1 **Revenue Collection Procedures:** All revenue will be collected based on a mutually agreeable process which shall be incorporated into any subsequent agreement.

6.2.2 **Recording Receipts:** All receipts shall be recorded in Contractor's general ledger. Contractor shall process all cash sales through cash registers, maintain cash register tapes and sales records locally, and make such tapes and records accessible to University upon request.

6.2.3 **Card System Sales.** Contractor shall process all Card System sales through the University's Card System.

6.3 **Reporting**

6.3.1 **Periodic Statements.** Within thirty (30) days after the end of each Accounting Period during the Initial Term or any Extension Term of this Agreement, Contractor shall 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 but not limited to cash, credit card and Card System revenue) and Catering Plan and Board Plan revenue; (b) a statement of gross and net sales and disbursements reported on a Food Service Location basis; (c) a consolidated statement of total food service operations covered by this Agreement, reported on an Accounting Period basis and year-to-date basis and (d) in accordance with Section 2252.063, *Texas Government Code*, payment statements derived from sales tax reports.

6.3.2 **Statement Based on Sales Tax Reports.** Contractor shall submit to the University's Representative, no later than the 15th day after the end of each fiscal year, an annual payment statement derived from all of Contractor's sales tax reports for its operations in any Food Service Location during the preceding fiscal year. This annual payment statement must be certified by a certified public accountant licensed in the State of Texas. The term "fiscal year" shall mean University's fiscal year, which commences September 1 and ends August 31.
6.3.3 On or before April 1 of each year of any subsequent Agreement, Contractor will prepare and submit for the 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, but not limited to, detailed revenue projections by location and by revenue source, as well as costs and other information reasonably requested by the University for the upcoming fiscal year.

6.3.4 **Form of Reports:** All reports shall be presented in forms reasonably acceptable to University.

6.4 Investments

6.4.1 It is anticipated that the successful Proposer will make certain investments, both initially and on-going on an annual basis, to be used by the University for renovations, future improvements to existing Food Service Locations, establishment of additional food service locations and other uses deemed appropriate by University. *Proposer shall indicate in their proposal the investment level to be entered into under any subsequent Agreement.*

Any equipment purchased by Contractor on University's behalf (with the exception of 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) shall be purchased as a "sale-for resale" to the University. Pursuant to Texas Tax Code § 151.309(4), as a state agency, University is exempt from the sales tax. In addition, as set forth in Comptroller Rule 3.322(c) (34 TAC 3.322), University is not required upon request to prove its exempt status.

6.4.2 **Renovation and Installation:** University, in its sole discretion, shall manage all Food Service Location renovations, purchase and install all food service equipment and furnishings with input from Contractor, and disburse any financial investments and commitments as University deems appropriate.

6.4.3 **Athletic Sponsorships and Promotional Opportunities:** The successful Proposer will be afforded various Athletic sponsorship and promotional opportunities as set forth below in consideration for financial contributions, for use at the University's discretion, for provision of special dining events or thematic programming relating to the University's general education mission. The current structure for such contributions is a monthly payment to the University, excluding the months of June and July. *Please indicate the monthly contribution you propose below:*

$________________ / monthly in consideration for:

Center Court Rotational Signage – College Park Center  
Outfield Wall Sign – Clay Gould Baseball Stadium  
Premium Tickets & Hospitality – College Park Center  
Print – Full Page, full color advertisement in game programs  
Media – Radio spots and internet banner position on UT Arlington Athletics website  
Logo Usage – Use of UT Arlington spirit logo for promotional purposes and opportunity to create general retail promotion.
NOTE: The above reflects the current sponsorship structure. If Proposer wishes to propose a different plan or structure, include all details and financial considerations in your proposal.

6.5 Title.

Title to any property paid for with any investments or 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) shall automatically become the property of University. Contractor shall have no right of ownership or any claim in such property. Further, Contractor shall provide University with any documentation reasonably necessary to evidence University's ownership of any such property. All such documentation shall be in form satisfactory to University in all respects.

6.6 Delivery Schedule of Events and Time Periods

It is anticipated that the food services provider selected as a result of this RFP will begin providing service on or about June 1, 2016. A phased approach to the transition, if provider selected is not the current provider, is the most likely scenario. Please provide details in your proposal of how your firm proposes to handle the transition period.

Respectfully submitted,

Proposer: __________________________

By: __________________________

(Authorized Signature for Proposer)

Name: __________________________

Title: __________________________

Date: __________________________
APPENDIX ONE

PROPOSAL REQUIREMENTS

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1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University’s responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. Section 4 of APPENDIX ONE). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany Proposer’s proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone number and FAX number to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to such party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.
Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Government Code, Chapter 552.001, et seq.). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, Government Code.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "Agreement") attached to this RFP as APPENDIX TWO and incorporated for all purposes.

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. University will open the HSP Envelope submitted by a Proposer prior to opening Proposer's proposal in order to ensure that Proposer has submitted the number of completed and signed originals of Proposer's HUB Subcontracting Plan ("HSP") that are required by this RFP (ref. Section 2.5.4 of the RFP.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of Proposers. In conducting such negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At University's sole option and discretion, University may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University will defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of University.

After submission of a proposal but before final selection of Contractor is made, University may permit a Proposer to revise its proposal in order to obtain Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal,
including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. Section 1.5 of APPENDIX ONE), [b] the Criteria for Selection (ref. 2.3 of this RFP), [c] the Specifications and Additional Questions (ref. Section 5 of this RFP), [d] the terms and conditions of the Agreement (ref. APPENDIX TWO), and [e] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.

1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.

1.8.3 University will not provide compensation to Proposer for any expenses incurred by Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.

1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.

1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on
completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.

1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.

1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. Section 5 of this RFP) if applicable. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. Section 2 of APPENDIX ONE) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. Section 6 of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, Proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing the Services to University, and the time period within which Proposer proposes to be able to complete each such phase.
1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. Section 3 of APPENDIX ONE). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. Section 4 of APPENDIX ONE) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

Proposer should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFP No. (ref. Section 1.3 of this RFP) and the Submittal Deadline (ref. Section 2.1 of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of Proposer should be clearly visible.

Proposer must also submit the number of originals of the HUB Subcontracting Plan ("HSP") as required by this RFP (ref. Section 2.5 of the RFP.)

Upon Proposer's request and at Proposer's expense, University will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

University will not accept proposals submitted by telephone, proposals submitted by Facsimile ("FAX") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to University, in University's sole discretion.

By signing the Execution of Offer (ref. Section 2 of APPENDIX ONE) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on University that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent...
to enter into the Agreement with University as specified herein and that such intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

1.9.7 Page Size, Binders, and Dividers

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

1.9.8 Table of Contents

Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Proposer includes supplemental information or non-required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

1.9.9 Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.
SECTION 2
EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER’S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH PROPOSER’S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

2.1 By signature hereon, Proposer represents and warrants the following:

2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer; (3) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer’s preparation of a response to this RFP.

2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.

2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.

2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.

2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.

2.1.6 If selected by University, Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.

2.1.7 If selected by University, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.

2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
2.1.9 **PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGligent ACTS OR OMissions OR willFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, subcontractOR, OR SUPPLIER OF Proposer IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.**

2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

2.2 By signature hereon, Proposer offers and agrees to furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP.

2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and Proposer may be removed from all proposal lists at University.

2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.

2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
2.7 By signature hereon, Proposer certifies as follows:

"Under Section 231.006, Family Code, relating to child support, Proposer certifies that the individual or business entity named in Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."

2.8 By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, Government Code). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Proposer.

2.9 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

2.10 By signature hereon, Proposer represents and warrants that all products and services offered to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the Texas Hazard Communication Act, Chapter 502, Health and Safety Code, and all related regulations in effect or proposed as of the date of this RFP.

2.11 Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Proposer.

2.12 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: __________________________

If Proposer is a Corporation then Proposer's Corporate Charter Number: ______

RFP No.: 2016-002
NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)
SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer’s General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer will explain the reason when responding N/A or N/R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

________________________________________________________________________

Address of principal place of business:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Address of office that would be providing service under the Agreement:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Number of years in Business: ______________

State of incorporation: ______________________

Number of Employees: ______________________

Annual Revenues Volume: ______________

Name of Parent Corporation, if any

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.
3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under an Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.

3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to Section 231.006, Family Code, and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the Texas Public Information Act, Chapter 552, Government Code, and other applicable law.

3.2 Approach to Project Services

3.2.1 Proposer will provide a statement of Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in Section 5.4 Scope of Work of this RFP.

3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of an Agreement.
3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:

3.2.3.1 Identification of tasks to be performed;

3.2.3.2 Time frames to perform the identified tasks;

3.2.3.3 Project management methodology;

3.2.3.4 Implementation strategy; and

3.2.3.5 The expected time frame in which the services would be implemented.

3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in the RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.

3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.
SECTION 4

ADDENDA CHECKLIST

Proposal of: __________________________
(Proposer Company Name)

To: The University of Texas at Arlington

Ref.: Selection of Vendor to Provide Operation and Management of Food Services

RFP No.: 2016-002

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

   No. 1 _____  No. 2 _____  No. 3 _____  No. 4 _____  No. 5 _____

Respectfully submitted,

Proposer: __________________________

By: __________________________
(Authorized Signature for Proposer)

Name: __________________________

Title: __________________________

Date: __________________________
APPENDIX TWO

AGREEMENT
FOOD SERVICE AGREEMENT
Example only

(NOTE: Many similar terms are already included in the RFP document. This Appendix is intended to give Proposers an idea of what the full Agreement will entail. In the event of conflict of any terms, the more stringent requirement or that which offers the most benefit to the University will prevail)

This Food Service Agreement (this “Agreement”) is executed by and between THE UNIVERSITY OF TEXAS ____________________, an agency and institution of higher education authorized under the laws and Constitution of the State of Texas (“University”), and ____________________, a _____________ (“Contractor”) to be effective ________, 20__ (the “Effective Date”).

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

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

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

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

TERMS

Section 1.

Term

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

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

The term “contract year” will mean that period of time beginning on the Effective Date and ending ________, 20__ and each twelve (12) month period thereafter, during the Initial Term or any Extension Term.
Section 2.

Preparation Activities Work Schedule

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

Section 3.

Contractor’s Responsibilities

3.1 Contractor’s Representations and Warranties

3.1.1 Standards of Performance; Applicable Laws. Notwithstanding anything to the contrary contained in this Agreement, Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to the operation and management of the Services (ref. Schedule 1). Contractor accepts the relationship of trust and confidence established between it and University by this Agreement. Contractor will use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of University in accordance with University's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances and orders, including (a) the requirements of 25 Texas Administrative Code (“TAC”) §§229.161-.170, and .173, otherwise known as the Texas Food Establishment Rules (“TFER”), and (b) the Rules and Regulations (the "Regents' Rules") promulgated by the Board of Regents of The University of Texas System ("Board"), as well as with those of any other body or authority having jurisdiction (collectively, the "Applicable Laws"). Contractor also will obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement, 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 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 TF ER, 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 3.1.1.1) and reasonably determines that the violation of the Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University's campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) at University’s option, (i) require Contractor to cure within a timeframe that is acceptable to University, or (ii) suspend Contractor’s performance of the Services, and/or (iii) terminate this Agreement without notice or opportunity to cure. Upon receipt of written notice of suspension or termination of this Agreement, Contractor will immediately cease performance of the Services and all other food handling operations under this Agreement.

3.1.3 **Inspection.** CONTRACTOR WILL PROVIDE UNIVERSITY WITH COPIES OF ALL HEALTH AND SAFETY INSPECTION REPORTS RELATED TO THE SERVICES IN ANY WAY, WITHIN _____ (_____) THREE (3) DAYS AFTER CONTRACTOR RECEIVES THE REPORTS.

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

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

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, 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.** UNIVERSITY RESERVES THE RIGHT TO OFFER FOR SALE THROUGH ANY OF ITS PRESENT OR FUTURE FACILITIES, PRODUCTS AND SERVICES THAT MAY BE COMPETITIVE OR SIMILAR IN NATURE TO PRODUCTS AND SERVICES OFFERED BY CONTRACTOR PURSUANT TO THIS AGREEMENT, INCLUDING EXISTING VENDING CONTRACTS FOR SOFT DRINKS AND SNACKS.

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).

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 ________________chief business officer (“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 requirements of Section 51.945, *Texas Education Code*, and all University rules, regulations and policies regarding students’ involvement in the evaluation of the performance of Contractor, by periodically holding meetings or forums to provide University’s students with a reasonable opportunity to discuss the performance of Contractor. Contractor will obtain University’s prior written approval concerning the date, time and location for each meeting or forum at least thirty (30) days in advance.

3.2 **Services.**

3.2.1 **Food Service: Alcohol Sales.** Contractor will provide the Services to University’s students, faculty, staff and invitees (collectively, the "Customers") at the food service locations (collectively, "Food Service Locations") more particularly described in Schedule 3. Provided, however, alcoholic beverages will be served and sold only at ____________ (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 Card System.** Contractor will provide the Cash Plan for Customers at all Food Service Locations in accordance with the terms set forth in Schedule 6 attached and incorporated for all purposes, and pursuant to complete written menus (including item name, portion size and price) developed by Contractor and approved by University’s Representative in advance.

University operates a declining balance debit card system known as the "___________" (the "Card System") as a form of payment by Customers for, among other things, the Services. In addition to cash payments, Contractor will accept the Card System as payment for the Cash Plan. Cash Plan Customers using the Card System will receive a ___ (___\%) discount off of their purchases.

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.
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 Not Used

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 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 **Not Used**

4.2 **Adjustments to Price or Portion Size.**

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

4.2.2 **Board Plan.** Board Plan rates are subject to adjustment on August 15 of each contract year during the Initial Term or any Extension Term; provided that, Contractor submits written notice of its intent to increase Board Plan rates to University's Representative not later than March 15 of the current contract year. All requests for adjustments will be supported by documentation, including raw cost data for the specified Board Plan option reflecting the change in costs for the option. Any adjustment to the price of any Board Plan option is subject to the prior written approval of University's Representative. Approval will not be unreasonably withheld.
4.3 Costs and Expenses.

Contractor will:

4.3.1 comply with all requirements of Subchapter C, Chapter 2252, Texas Government Code, as amended, including the provision of financial statements, payment statements derived from sales tax reports, and bonds;

4.3.2 provide all food, alcoholic beverages and non-alcoholic beverages to be served or provided in connection with Contractor's performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.3 provide all paper products and kitchen supplies necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.4 provide all management and non-management personnel (including the payment of all salaries and fringe benefits due to the personnel) necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.5 provide uniforms and name tags (satisfactory to University in all respects) for Contractor's personnel in accordance with Section 6.2.10 of this Agreement;

4.3.6 provide all laundry supplies, equipment and services necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.7 provide all janitorial supplies, equipment, and services necessary for the maintenance and cleaning of inside surfaces, furnishings, equipment, front doors, glass wall partitions, restrooms, walls, ceilings, loading docks, floors and vents associated with the Space or related to the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement. All floors will be stripped and waxed and all vents will be cleaned, at least _______( ) three (3) times per contract year;

4.3.8 replace all lost or damaged dinnerware, flatware, glassware, trays, and other kitchen and serving utensils (collectively, "Smallwares") necessary to maintain the Smallwares inventory at the levels provided by University on the Effective Date of this Agreement. A comprehensive inventory of the Smallwares provided by University is attached as Schedule 11 and incorporated for all purposes;

4.3.9 provide all Smallwares not furnished by University that are necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.10 obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement;

4.3.11 pay all taxes on the Services (including the sale of food, alcoholic beverages and non-alcoholic beverages under the terms of this Agreement) as may be required by Applicable Laws;

4.3.12 pay all insurance and bond premiums required by the terms of this Agreement including Sections 4.3.1 and 6.3;

4.3.13 pay all costs related to vehicles necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.14 pay all costs and charges related to telecommunication services provided to the Space by University;

4.3.15 provide all office supplies, postage, printing supplies, and marketing materials necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement;

4.3.16 provide all Card System compatible point-of-sale cash registers and appropriate accessories not furnished by University as University Owned Equipment (ref. Section 7.3.1), that are necessary for the performance of the Services and
Contractor's other duties and obligations under the terms of this Agreement. A comprehensive inventory of University Owned Equipment is attached as Schedule 11 and incorporated for all purposes;

4.3.17 maintain all University Owned Equipment in good working order;
4.3.18 repair or replace (at University’s option) all University Owned Equipment and all other University equipment, furniture, plumbing fixtures, and electrical fixtures, lost or damaged by Contractor, its employees, representatives, agents, or subcontractors, including clearing of stoppages in drains caused by grease or other foreign matter lodged between the grease traps and the food service area of any part of the Space. University Owned Equipment that has exceeded its useful life will be replaced by University at University's expense.

4.3.19 provide for the removal and proper disposal of all wet garbage from the Space and related areas;
4.3.20 provide for the removal and proper disposal of all dry garbage from the Space and related areas;
4.3.21 cause to be provided appropriate pest control services within the Space and adjacent areas. All pest control services must be (1) coordinated with University's pest control efforts, and (2) pre-approved in writing by University's Representative;
4.3.22 comply, and cause its employees, representatives, agents, and subcontractors to comply, with all applicable University rules and policies, including University's Standards of Conduct Guide posted on the Internet at http://www.utsystem.edu/systemcompliance/SOCcombined.pdf as well as University's rules and policies related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions; and
4.3.23 pay any and all other costs associated with the performance of the Services and Contractor's other duties and obligations pursuant to the terms of this Agreement, not expressly required to be paid by University pursuant to Section 7.3.

Section 5.

Fiscal Arrangements

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, and Catering Plan, and, all as more particularly provided in Schedule 12 attached and incorporated for all purposes. The term "adjusted gross revenue" will mean gross food, alcoholic beverage and non-alcoholic beverage revenue less all applicable sales taxes.

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

Payments by University will be made in accordance with Chapter 2252, *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 Section 151.309, *Texas Tax Code*, and Title 34 TAC Section 3.322.

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

5.3 **Collection and Recording of Revenue.**

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

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

5.3.3 **Card System Sales.** Contractor will process all Card System sales through University's Card System.

5.3.4 **Payment Card Industry Standards.** University is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, "PCI DSS"), including Payment Application Data Security Standards (collectively, "PA DSS"), promulgated by the Payment Card Industry Security Standards Council ("PCI SSC"). The compliance validation process requires University to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, "System Components in Scope"). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS
published on the PCI SSC website for service providers and payment applications. As evidence of compliance, Contractor will provide to University on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the term of this Agreement, a copy of Contractor’s annual attestation of compliance signed by a Qualified Security Assessor ("QSA") as more particularly described on the PCI SSC website.

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

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

5.4 Reporting.

5.4.1 Periodic Statements. On the Effective Date, Contractor will submit to University two (2) copies of a financial statement prepared by a certified public accountant. Within ____ (__) 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 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 Section 2252.063, Texas Government Code, payment statements derived from sales tax reports (ref. Section 4.3.1).

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

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

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

5.5 **Inventory.**

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

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

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

5.6.1 **Financial Commitment.** Contractor will make a Financial Commitment to University in the amount of ________ ($______) (the "Financial Commitment"). University will invest the Financial Commitment for renovation and future improvements to existing Food Service Locations, establishment of additional food service locations and other uses related to food service operations.
5.6.2 **Installments.** The Financial Commitment will be paid in multiple installments (each, a "Financial Commitment Installment"), according to Schedule 14 attached and incorporated for all purposes. Contractor will pay each applicable Financial Commitment Installment within ____ (___) thirty (30) days following the commencement of the applicable contract year; provided, however, that Contractor will only be required to pay the Financial Commitment Installment if this Agreement is in full force and effect on the date that the Financial Commitment Installment is required to be paid.

5.6.3 **Renovation and Installation.** University will manage all Space renovations, purchase and install all food service equipment and furnishings with input from Contractor, and disburse the Financial Commitment as University deems appropriate.

5.7 **Amortization.**

5.7.1 **Amortization of Financial Commitment.** Contractor will amortize the Financial Commitment in accordance with the amortization schedule set out in Schedule 14 attached and incorporated for all purposes.

5.7.2 **Reimbursement of Unamortized Balances.** If, prior to complete amortization of the Financial Commitment, University terminates this Agreement for any reason other than default by Contractor pursuant to Section 8.2 or Section 3.1.2, then to the extent authorized by the laws and Constitution of the State of Texas, University will, within ____ (___) sixty (60) days after the termination date, reimburse Contractor for any unamortized balance of the Financial Commitment calculated as of the termination date based on Schedule 14.

If, prior to complete amortization of the Financial Commitment, Contractor terminates this Agreement for default by University pursuant to Section 8.2, University will, to the extent authorized by the laws and Constitution of the State of Texas, within ____ (___) sixty (60) days after the termination date, reimburse Contractor for any unamortized balance of the Financial Commitment calculated as of the termination date based on Schedule 14.

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

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

5.8 **Title.**

Title to any property paid for with Financial Commitment funds (with the exception, in each case, of any signage that bears the name of Contractor or any of its logos, service marks or trademarks or any logos, service marks or trademarks of a third party) will automatically become the property of University. Contractor will have no right of ownership or any claim in the property. Further, Contractor will provide University with any documentation reasonably necessary to evidence University's ownership of the property. All documentation will be in form satisfactory to University in all respects.
Section 6.

Management Responsibilities

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.

6.2 Personnel.

6.2.1 Properly Trained Staff; Efficient Performance of Services; Dietitian. At all times, Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will maintain and have on duty at all Food Service Locations an adequately 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, 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.

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 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.

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 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 excepted. Any personal property of Contractor not removed within two (2) days following the termination will be deemed abandoned.
by Contractor and University may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

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

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

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

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

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. 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 on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Services on University's premises.

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 on the List.

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

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

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

6.3 Insurance, Bond, Indemnification, and Liability.

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

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

| Employer Liability - Each Accident | $1,000,000 |
| Employers Liability - Each Employee | $1,000,000 |
| Employers Liability - Policy Limit | $1,000,000 |

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

In the event watercraft is used in the course of performing Work, the
maritime coverage endorsement must be added unless a separate
Protection & Indemnity coverage is maintained. In the event operations
are conducted in relation to navigable waters which may qualify
employees for United States Longshore & Harbor Workers
Compensation Act ("USL&H") benefits, the USL&H endorsement must
be added.

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

| Each Occurrence Limit | $1,000,000 |
| Damage to Rented Premises | $300,000 |
| Personal & Advertising Injury | $1,000,000 |
| General Aggregate | $2,000,000 |
| Products - Completed Operations Aggregate | $2,000,000 |

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

6.3.1.3 Business Auto Liability Insurance covering all owned, non-owned or
hired automobiles, with limits of not less than $1,000,000 single limit of
liability per accident for Bodily Injury and Property Damage;
If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Contractors transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.

6.3.1.4 Umbrella/Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and aggregate with a deductible of no more than $10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 6.3.1.1 Employer’s Liability; 6.3.1.2 Commercial General Liability; and 6.3.1.3 Business Auto Liability; and 6.3.1.5 Liquor Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

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

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

6.3.1.7 Contractor’s Employee Dishonesty Insurance will be endorsed with a Client’s Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than $1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University’s premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor’s Employee Dishonesty policy will name University as Loss Payee.
6.3.1.8 Directors' and Officers' Liability Insurance with limits of not less than $1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

6.3.2 Contractor will deliver to University:

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

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

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

6.3.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
6.3.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:
Address:

Facsimile Number:
Email Address:

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

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

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

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

6.3.5 Indemnification.

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

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

Section 7.

UNIVERSITY’S OBLIGATIONS

7.1 Hiring Contractor’s Supervisory Employees or University’s Employees. University will not actively solicit for employment any of Contractor’s Supervisory Employees during the Initial Term or any Extension Term, or for a period of six (6) months after the expiration or termination of this Agreement for any reason, unless the persons were formerly employees of University. In addition, Contractor will not actively solicit for employment any of University’s employees during the Initial Term or any Extension Term, or for a period of six (6) months after the expiration or termination of this Agreement for any reason. In this Section, “Contractor’s Supervisory Employees” means those persons who have performed management services for Contractor on University’s premises for at least six (6) months, and, in the event this Agreement has expired or terminated, performed the Services during the six (6) month period prior to the expiration or termination of this Agreement for any reason.

7.2 Not Used

7.3 General Obligations. University 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 clean exterior walls and windows of the Space;

7.3.3 provide external maintenance on buildings where the Space is situated; and

7.3.4 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 forty-five (45) days written notice of University's intention to terminate this Agreement as of a specified date. In the event this Agreement is terminated by University before the end of the then current contract year, the Royalty will be paid by Contractor to University (on a pro-rata basis through the effective date of termination) in accordance with Section 5.1 of this Agreement.

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, then at University's option, Contractor will continue to perform the Services in accordance with the terms of this Agreement until University contracts with a new qualified and experienced vendor(s) to perform the Services or is able to perform the Services in-house; provided, that, Contractor will not be required to continue performing the Services for more than ___________ (___) three (3) months after expiration or termination of this Agreement. Contractor will cooperate with, and assist, University's efforts to transition the Services to another vendor(s) or to perform the Services in-house.

8.5 Not Used

8.6 Continuing Obligations. The expiration or termination of this Agreement will not relieve either party of any obligations under this Agreement that by their nature survive expiration or termination including Sections 3.1.3, 3.1.7, 3.1.8, 4.3, 5.1, 5.2, 5.4, 5.5.4, 5.5.5, 5.7.2, 6.2.8, 6.2.9, 6.2.12, 6.3, 7.1, 8, 9.1, 9.3, 9.5, 9.6, 9.8, 9.9, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19 and 9.24.
Section 9.

Miscellaneous

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 Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

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

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 Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with Section 9.6 to replace the HSP with the revised subcontracting plan.
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 Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to TPSS in accordance with 34 TAC Chapter 20, §§20.101 – 20.108.

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

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

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

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 ("force majeure occurrence").

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

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

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

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

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

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

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

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

9.12 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.

9.13 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.

9.14 Audit of Records. At any time during the Initial Term or any Extension Term of this Agreement and for a period of four (4) years thereafter, University or a duly authorized audit representative of University, System, or the State of Texas, at its expense, will have the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event an audit reveals any errors or underpayments to University, Contractor will pay to University the full amount of the underpayments within thirty (30) days after being notified in writing of the audit findings.
9.15 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University:

________________________

________________________

Attention:________________

*with copy to:*

________________________

________________________

Attention:________________

If to Contractor:

________________________

________________________

Attention:________________

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

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

________________________

________________________

Attention:________________

Fax:_____________________

Email:___________________

*with copy to:*

________________________

________________________

________________________

________________________

Attention:________________

Fax:_____________________

Email:___________________

or other person or address as may be given in writing by University to Contractor in accordance with this section.
9.16 **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.

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

9.18 **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.

9.18.1 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.

9.18.2 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.

9.18.3 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.
9.18.4 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2280, as currently effective, hereafter enacted or subsequently amended.

9.18.5 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.

9.19 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

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

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

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

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

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

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

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

9.25 **Access to Documents.** To the extent applicable to this Agreement, in accordance with Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

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

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

9.28 **Discrimination Prohibited.** UNIVERSITY AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(A), 60-300.5(A) AND 60-741.5(A) (COLLECTIVELY, THE "REGULATIONS"). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UNIVERSITY AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.

9.29 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at http://www.utsystem.edu/policy/policies/int160.html, University's Standards of Conduct Guide available at http://www.utsystem.edu/systemcompliance/SOCcombined.pdf, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

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

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

**CONTRACTOR:**

Arlington

By: _____________________________
Name: ___________________________
Title: ___________________________
Date: ___________________________

**UNIVERSITY:**

The University of Texas at

By: _____________________________
Name: ___________________________
Title: ___________________________
Date: ___________________________
APPENDIX THREE

HUB SUBCONTRACTING PLAN
HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract
- Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2 c. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all of the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract
- Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. - No
- Section 2 d. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - Yes, I will be subcontracting portions of the contract
- Section 2 b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. - No
- Section 2 d. - No
- Section 4 - Affirmation
- GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

- Section 1 - Respondent and Requisition Information
- Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 - Self Performing Justification
- Section 4 - Affirmation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*
HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

--- Agency Special Instructions/Additional Requirements ---

In accordance with 34 TAC §20.14(9)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

4.10% for heavy constructions other than building contracts
24.45% for building construction, including general contractors and operative builders contracts
41.88% for special trade construction contracts
24.63% for professional services contracts
13.84% for other services contracts
20.41% for commodities contracts

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: ________________________________

   Point of Contact: ________________________________

   E-mail Address: ________________________________

b. Is your company a State of Texas certified HUB? □ - Yes □ - No

c. Requisition #: ________________________________

   Bid Open Date: __________/____/____

   State of Texas VID #: ________________________________

   Phone #: ________________________________

   Fax #: ________________________________

1
## SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 24 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
- Yes, I will be subcontracting portions of the contract. (If Yes, complete item b, of this SECTION and continue to item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

<table>
<thead>
<tr>
<th>Item #</th>
<th>Subcontracting Opportunity Description</th>
<th>HUBs</th>
<th>Non-HUBs</th>
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<tbody>
<tr>
<td></td>
<td>Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.</td>
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<td>15</td>
<td>Aggregate percentages of the contract expected to be subcontracted:</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at [http://window.state.tx.us/procurement/proc/hub/hub-subcontracting-plan/](http://window.state.tx.us/procurement/proc/hub/hub-subcontracting-plan/))

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, item b.
- Yes (if Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (if No, continue to item d of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".
- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.
**SECTION-2 SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)**

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

<table>
<thead>
<tr>
<th>Item #</th>
<th>Subcontracting Opportunity Description</th>
<th>HUBs</th>
<th>Non-HUBs</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
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<tr>
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</tbody>
</table>

Aggregate percentages of the contract expected to be subcontracted:

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*Continuous Contract*: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.
SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report - PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at http://www.window.state.tx.us/procurement/proc/hub/hub-forms/progressassessmentrpt.xls).

- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.

- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work site where services are being performed and must provide documentation regarding staffing and other resources.

Signature  
Printed Name  
Title  
Date (mm/dd/yyyy)

Reminder:

➤ If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

➤ If you responded "No" to SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: ____________________________ Requisition #: ____________________________

**IMPORTANT:** If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at [http://window.state.tx.us/procurement/prop/hub/hub-forms/hub-short-plan-qfo-a.pdf](http://window.state.tx.us/procurement/prop/hub/hub-forms/hub-short-plan-qfo-a.pdf).

**SECTION A-1: SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number:_______ Description:________________________

**SECTION A-2: SUBCONTRACTOR SELECTION**

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Texas certified HUB</th>
<th>VID Number (Required if Texas certified HUB)</th>
<th>Approximate Dollar Amount</th>
<th>Expected Percentage of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Yes □ No</td>
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**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: ___________________________ Requisition #: ___________________________

IMPORTANT: If you responded 'Yes' to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at http://www.state.tx.us/purchase/proc/hub/hub-forms/hub-sicost-plan-gfe-achm-b.pdf.

SECTION B-1 SUBCONTRACTING OPPORTUNITY
Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: ___________________________ Description: ___________________________

SECTION B-2 MENTOR PROTEGE PROGRAM
If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (if Yes, to continue to SECTION B-4.)
☑ - No I Not Applicable (if No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY
When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person.

When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at http://www.window.state.tx.us/procurement/proc/hub/hub-subcontracting-plan.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive offices. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be 'day zero' and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at http://mycpa.state.tx.us/basscmbs/search/index.jsp. HUB Status code "A" signifies that the company is a Texas certified HUB.

b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>VID Number</th>
<th>Date Notice Sent (mm/dd/yyyy)</th>
<th>Did the HUB Respond?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>□ - Yes □ - No</td>
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</tr>
</tbody>
</table>

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at http://www.window.state.tx.us/procurement/proc/hub/met-links-1/.

d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

<table>
<thead>
<tr>
<th>Trade Organizations or Development Centers</th>
<th>Date Notice Sent (mm/dd/yyyy)</th>
<th>Was the Notice Accepted?</th>
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</tbody>
</table>

Page 1 of 2
(Attachment B)
HSP Good Faith Effort - Method B (Attachment B) Cont.

SECTION B-4 SUBCONTRACTOR SELECTION
Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.
   Item Number: 
   Description:

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Texas certified HUB</th>
<th>VID Number (Required if Texas certified HUB)</th>
<th>Approximate Dollar Amount</th>
<th>Expected Percentage of Contract</th>
</tr>
</thead>
<tbody>
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If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

Page 2 of 2
(Attachment B)
HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency has determined that subcontracting opportunities are probable under the regulation to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION: A PRIME CONTRACTOR'S INFORMATION

<table>
<thead>
<tr>
<th>Company Name:</th>
<th>State of Texas VID #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point-of-Contact:</td>
<td>Phone #:</td>
</tr>
<tr>
<td>E-mail Address:</td>
<td>Fax #:</td>
</tr>
</tbody>
</table>

SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

<table>
<thead>
<tr>
<th>Agency Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Point-of-Contact:</td>
<td>Phone #:</td>
</tr>
<tr>
<td>Requisition #:</td>
<td>Bid Open Date:</td>
</tr>
</tbody>
</table>

SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select on Central Time Date (mm/dd/yyyy).

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable
APPENDIX FOUR

CAMPUS MAP
EXHIBIT A – SALES HISTORY

The figures below represent the most recent years’ sales figures. These are not a guarantee or indication of future sales. The figures, however, will be used for financial comparison of each proposal.

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Plans</td>
<td>$4,405,476</td>
</tr>
<tr>
<td>Catering</td>
<td>$1,431,366</td>
</tr>
<tr>
<td>Sushi (8% on 25% of sales)</td>
<td>$64,174</td>
</tr>
<tr>
<td>Plaza/Cash/Einstein's</td>
<td>$3,413,463</td>
</tr>
<tr>
<td>Markets</td>
<td>$1,088,734</td>
</tr>
<tr>
<td>We Proudly Brew</td>
<td>$237,676</td>
</tr>
<tr>
<td>Starbucks</td>
<td>$649,672</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$11,290,561.00</strong></td>
</tr>
</tbody>
</table>
EXHIBIT B – FOOD SERVICE LOCATIONS