

REQUEST FOR PROPOSAL

by

The University of Texas at El Paso

for

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

RFP No. 724-2113-JBT

Submittal Deadline: October 18, 2021

Issued: August 26, 2021

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of University

Founded in 1914, The University of Texas at El Paso (UTEP) is a vibrant top tier public research university of more than 25,000 students enrolled in 170 undergraduate and graduate degree programs. Set against the backdrop of the Franklin Mountains in the Chihuahuan Desert, UTEP is located at the heart of the U.S.-Mexico border in one of the largest binational communities in the world. UTEP maintains one of the lowest out-of-pocket costs of any doctoral research university in the U.S., underscoring its commitment to make education accessible to all. Rigorous program and research opportunities help prepare students to make significant contributions to their professions, their communities and the world. UTEP is designated as an R1 university (top tier doctoral university with very high research activity), one of only 130 in the country.

1.2 Background and Special Circumstances

The University of Texas at El Paso is seeking to contract with a qualified and experienced food service company to operate and manage the University's food services including case, catering, and concessions operations beginning on July 20, 2022. The following are the food services venues currently operating and their locations (collectively, the "Service Areas") as well as other spaces that will be used by Contractor to perform the Services and are included in the Floor Plans for Food Service Locations (ref. **APPENDIX NINE** of the RFP).

1.2.1	University Bookstore (lobby):	Einstein Brothers Bagels
1.2.2	El Paso Natural Gas Conference Center:	Chick-Fil-A El Sazon Minero
1.2.3	College of Business Administration, 3rd Floor	Miner Stop
1.2.4	College of Health Sciences (Basement):	Sandella's
1.2.5	Library (Lobby):	Texas Western Café/Starbucks (We Proudly Serve)
1.2.6	Union Building East (1st Floor):	Jamba Juice/Starbucks (We Proudly Serve)
1.2.7	Union Building East (2nd Floor):	El Sazon Minero Express Wicked Wings Simply to Go Convenience Foods Mein Bowl/Hissho Sushi Pizza Hut Pick 'N' Shovel
1.2.8	College of Education (2nd Floor):	Café-A-La-Cart

1.2.9	Chemistry and Computer Building (Lobby)	Starbucks
1.2.10	College of Engineering (1 st Floor):	Tech Café
1.2.11	Interdisciplinary Research Building (Buildout Pending)	Vacant
1.2.12	Campbell Building	Vacant

1.3 Objective of this Request for Proposal

The University of Texas at El Paso (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. 724-2113-JBT (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 Cash Plan, Short Term Meal Plan, Non-Traditional Board Plan, Catering Plan, and Concession Plan.

University anticipates that the term of the Agreement may be up to seven (7) years. University may elect to renew the Agreement for up to three (3) additional one (1) year options to extend.

1.5 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by §61.003, Education Code) to use the group purchasing procurement method (ref. §§51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the Successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (“UT System”), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **3:00 p.m., Mountain Standard Prevailing Time, October 18, 2021.**

Proposer must perform electronic submission and acknowledge the attributes (answer questions) for the documents requested in **Sections 3.4** (the “**Terms and Conditions**”) and **3.5** (the “**Submittal Checklist**”) of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>).

2.1.1 The following are the steps to perform when registering as a new vendor in Sourcing Manager:

- 2.1.1.1 Go to <https://adminapps.utep.edu/sourcing/>
- 2.1.1.2 Click ‘Supplier Registration’
- 2.1.1.3 Review the Terms and Conditions and either click Accept Terms & Conditions and move forward, or Cancel
- 2.1.1.4 Enter Supplier Information (*denotes required fields)
- 2.1.1.5 Select Special Classifications
- 2.1.1.6 Select Commodity Codes
 - 2.1.1.6.1 Click ‘Add or Remove Selections’
 - 2.1.1.6.2 Choose appropriate Commodities
 - 2.1.1.6.3 Click ‘Save Selection’
- 2.1.1.7 Setup Primary User Information
- 2.1.1.8 Additional User’s will be established after registration is complete
- 2.1.1.9 Confirm all information and click Submit

University will contact you when the registration review has been completed.

Submission instructions are referenced in **Section 3.2** of this RFP.

2.2 University Contact Person

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

The University of Texas at El Paso
 Purchasing & General Services
 Kelly Hall 3rd Floor
 500 W. University Ave.
 El Paso, TX 79968-0505
 Attn: James Trejo, Procurement Analyst
 Phone: 915-747-5488
 Fax: 915-747-5338
 Email: jbtrejo3@utep.edu
 (Email communications are preferred)

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 **2:00 PM MSPT on September 30, 2021**. 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 ("Successful Proposer") 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 alternatively referred to in this RFP as the "**Contractor**."

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) services to University, (2) total overall income to University, (3) total overall cost to University, and (4) project management expertise. 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 Scored Criteria

- | | | |
|---------|---|-----|
| 2.3.2.1 | the financial benefit to UT; | 30% |
| 2.3.2.2 | the pricing, cost and quality of the Proposer's goods or services; | 20% |
| 2.3.2.3 | the total long-term cost, revenue, capital improvement and other financial consideration to the University of acquiring the Proposer's goods or services; and | 20% |
| 2.3.2.4 | the reputation of the Proposer and of the Proposer's goods or services; | 10% |
| 2.3.2.5 | the extent to which the goods or services meet the University's needs; | 10% |
| 2.3.2.6 | the Proposer's past relationship with the University; | 5% |
| 2.3.2.7 | the Proposer's exceptions to the terms and conditions set forth in Section 4 of this RFP. | 5% |

2.4 Key Events Schedule

Date RFP Issued	August 26, 2021
In Person Pre-Proposal Conference (ref. Section 2.6) Site Visit to follow	September 15, 2021, 3:00 p.m. Mountain Standard Prevailing Time
Question Deadline (ref. Section 2.2)	September 30, 2021, 2:00 p.m. Mountain Standard Prevailing Time
Submittal Deadline (ref. Section 2.1)	October 18, 2021 3:00 p.m. Mountain Standard Prevailing Time

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*, §20.285, 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 §2161.252, Government Code.*

Questions regarding the HSP may be directed to:

*Contact: Benjamin Alvarez
Director, Purchasing & General Services*

HUB Coordinator
 Phone: 915-747-5456
 Email: baalvarez@utep.edu

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.

2.5.4 *At the same time Proposer submits its proposal (no later than the Submittal Deadline (ref. **Section 2.1**)), Proposer must submit the following HUB materials (HUB Materials):*

- (a) **One (1) complete original paper copy of Proposer's HSP, and**
- (b) **One (1) complete electronic copy of Proposer's HSP**

Proposer's HUB Materials must be submitted (as instructed in **Section 3.2**):

2.5.4.1 RFP No. and the Submittal Deadline (ref. **Section 2.1**)

2.5.4.2 Name and the return address of Proposer, and

2.5.4.3 Phrase "HUB Subcontracting Plan."

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP meeting the above requirements may be rejected by University and returned to Proposer unopened as non-responsive due to material failure to comply with advertised specifications.

University will open Proposer's HSP prior to opening the proposal to confirm Proposer submitted the HSP. Proposer's failure to submit the HSP will result in University's rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

NOTE: The requirement that Proposer provide 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 specified in **Section 3.1**.

2.6 Pre-Proposal Conference

University will hold a pre-proposal conference at 3:00 pm, Mountain Standard Prevailing Savings Time on **Wednesday September 15, 2021**. This conference will be held in person in Room 133, Physical Plant Complex at 3120 Sun Bowl Dr., El Paso, TX 79902 (ref. **APPENDIX FOUR**). –The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

Site visit to following the pre-proposal meeting.

SECTION 3

SUBMISSION OF PROPOSAL**3.1 Number of Copies**

Proposer must submit one (1) signed original copy. In addition, Proposer must submit one (1) electronic copy of its proposal using an MS Office application (Word, Excel, Access) or Adobe PDF format.

An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2 of APPENDIX ONE**) of the submitted proposal. The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

Proposers must acknowledge the attributes for the documents requested in **Section 3.5** (Submittal Checklist) of this RFP in Sourcing Manager. Proposers may review solicitation FAQ's at the Sourcing Manager Internet address at www.sourcingmanager.utep.edu.

3.2 Submission

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

3.2.1 Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1**) and delivered to:

Mail/Courier Delivery:

The University of Texas at El Paso
Purchasing & General Services
Kelly Hall, 3rd Floor
Attn: James B. Trejo
Procurement Analyst
500 W. University Ave.
El Paso, TX 79902

Hand Delivery:

The University of Texas at El Paso
Purchasing & General Services
Kelly Hall, 3rd Floor
Attn: James B. Trejo
Procurement Analyst
2101 Sun Bowl Drive
El Paso, TX 79902

AND

3.2.2 Electronic submission and acknowledgement of the attributes for the documents requested in **Sections 3.4** (the "**Terms and Conditions**") and **3.5** (the "**Submittal Checklist**") of this RFP in Sourcing Manager at the Sourcing Manager Internet address at (<https://adminapps.utep.edu/sourcing/>).

Submission requirements indicated in Section 3.2.1 and Section 3.2.2 of this RFP are required to be considered for this solicitation. Failure to comply with both hard copy and electronic submittal requirements will result in disqualification of submittal.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of three hundred and sixty five (365) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 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:

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

3.4.1.2. Agreement (ref. **APPENDIX TWO**);

3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);

3.4.1.4. Notice to Proposer (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:

Proposer will include the following documents in its proposal separated by tabs as set forth below:

- Tab 1: Introductory Cover Letter;
- Tab 2: Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- Tab 3: Signed and Completed Royalty Structure and Delivery Schedule (ref. **Section 6** of this RFP)
- Tab 4: Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- Tab 5: Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- Tab 6: Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP)
- Tab 7: Sample Reports;
- Tab 8: Technology/Software Capabilities;
- Tab 9: Miscellaneous
- Tab 10: References of no less than three (3) organizations for current 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 (i.e. other University Food Service Departments). Proposer shall provide to University all requested contact information (name, phone number, and email address) for each reference provided; Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).
- Tab 11:

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 agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal in accordance with **Section 5.3.2** of this RFP. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates Proposer's proposal.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS**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 also referred to as the “**Contractor.**”

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

- 5.2.1 A minimum of five (5) years in the business of providing university food services or similar scope and scale as requested in this RFP;
- 5.2.2 A minimum of three (3) current accounts with universities with a student population of at least 20,000 or similar organizations with a serving population of at least 20,000; and
- 5.2.3 A management and leadership team that has demonstrated the capability to provide superlative service to university customers that are similar in size and scope to The University of Texas at El Paso.

5.3 Additional Questions Specific to this RFP and Background Information and Specific Consideration

Proposer must submit the following information as part of Proposer’s proposal:

- 5.3.1 Proposer must submit the information required by Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, to the Agreement (ref. **APPENDIX TWO**) in the form of a completed copy of each Schedule.
- 5.3.2 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.3.3 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#) and [1 Texas Administration Code §§46.1 through 46.5](#)), as implemented by the Texas Ethics Commission (“**TEC**”), including, among other things, providing the TEC and University with the information required on the form promulgated by the TEC and set forth in **APPENDIX EIGHT**. *Proposers may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing §2252.908, Government Code, and information on the TEC website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.*
- 5.3.4 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. NOTE THAT A

GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

5.3.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (“EIR”) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.

5.3.6 Current Operations

The University currently contracts with Sodexo Services to operate and manage its food service venues for retail, catering, alcohol, and concession services. The Successful Proposer is expected to purchase usable inventory of food products, excluding those products in open or partial packages, boxes or containers.

The following is a summary of Annual Gross Sales for fiscal years 2017 through 2019, the figures for fiscal year 2020 are up to March 2020.

	FY17	FY18	FY19	FY20
Retail	\$3,262,372	\$3,152,995	\$3,531,332	\$2,666,120
Concessions	\$2,309,321	\$1,401,986	\$1,508,711	\$1,882,592
Catering	\$1,233,438	\$2,505,928	\$2,072,835	\$1,044,107
Total	\$6,805,131	\$7,060,909	\$7,112,878	\$3,978,908

The sales figures set forth in this section should be used for estimating purposes only. The University does not warrant or represent that these sales figures are indicative of future sales or that these sales figures will be achieved in future years and the University specifically disclaims any such warranties or representations. (Note: for FY20- due to Stay Home Work Safe order, information provided represents a seven month period.)

5.3.7 Franchise and Branded Concepts

The University expects that the food services be provided pursuant to any agreement or contractual arrangements resulting from this RFP will include some nationally franchised or branded food products, as well as local restaurant operations on the University’s campus.

5.3.8 Staffing and Personnel Plan

Proposer should submit personnel and staffing plans for local, regional, and national management of the University Food Services operation, including but not limited to organization charts.

5.3.9 Student Engagement

UTEP is committed to cultivating an on-campus student experience that is rooted in campus traditions, student engagement, connection, innovative programs and services and a strong sense of belonging. As an institution, we seek to provide students not solely a degree but a highly impactful college experience that

supports their future success as engaged community members and active alumni. Positive campus dining experiences contribute greatly to the campus culture and overall student recruitment and retention efforts. Dining services at UTEP is expected to play an integral role in the development of a vibrant campus community, including for those who reside on-campus, by offering diverse, innovative dining/hospitality experiences that encourage student engagement and promote student life.

5.3.10 Royalty and Capital Investment

The University is interested in contracting with a food service company that has the financial strength and capacity to develop a robust food service operation that provides an attractive royalty schedule, as well as capital outlay dollars (the "Capital Investment") for (1) renovation of food service facilities at the Union, El Paso Natural Gas Conference Center, and other University eateries, (2) establishment of additional food service locations, and (3) other uses deemed appropriate by the University (ref. **Section 5.6** of this RFP). The University will be responsible for the construction management of all construction or renovation projects unless otherwise agreed in writing.

5.3.11 Exclusive Pouring Rights

The University has entered into an exclusive contract with the Pepsi Bottling Group (the "Pepsi Contract") related to the dispensing, sale, and advertising and promotion of soft drinks at the University. The contract provides for both beverage vending and pouring rights on campus. Proposer will be required to comply with the requirements of the Pepsi Contract.

5.3.12 Current Retail Venues

The University provides retail food services operations at the Union East and El Paso Natural Gas Conference Center food courts, as well as other satellite venues located throughout campus, (This is only a partial list but collectively referred to as the "Service Areas") (ref. **Section 1.2** of this RFP). Proposers are encouraged to submit a proposal providing alternate venues offering a variety of menu items. The University will require that high quality food services meeting the needs of students, faculty, staff and administrators, to include healthy food options, vegetarian food options, salad bars, are provided at the Service Areas. The University will grant exclusive rights to retail venue operations at the Service Areas, except for snack vending machines, beverage pouring rights, University catering rights outside the Union as addressed in Section 5.3.13, exceptions as addressed in Section 5.3.17, and during the annual International Food Fair. The annual International Food Fair usually is held during the Fall Semester. Event is general held on a Monday and preparation take place the weekend preceding the event. The facilities used for the preparation is the Union and EPNG kitchens.

University is particularly interested in considering proposals with an expanded variety of choices, including healthy food options.

University has implemented and operates a declining balance debit card system (the "Miner Gold Card") as a form of payment for food purchases. The Successful Proposer will be required to accept the Miner Gold Card as a form of payment.

In addition to the Miner Gold Card, the Successful Proposer will be required to accept cash, debit, credit cards or other methods of payment.

5.3.13 Catering

The University will require high quality catering services that may range from box lunches to formal dinners on campus or off campus and may include University and non-University groups. The average catering revenue over the previous three years has been \$1,874,290, although this figure should be used for estimating purposes only. The University does not warrant or represent that this will be indicative of future catering revenues or that this average catering revenue figure will be achieved in future years, and the University specifically disclaims any such warranties or representations.

The catering program should address the diverse needs of students, faculty, staff and administrators. Proposer to provide cost effective options such as, but not limited to, discounted catering options and or menus for registered student organizations. The University expects the Successful Proposer to honor existing catering commitments for dates subsequent to commencement of services by the Successful Proposer.

Except during annual International Food Fair, Successful Proposer will be granted exclusive catering rights for catered events within the Union. For all other locations, catering exclusivity will be granted and shall be subject to the University's right to utilize other caterers (1) at the option and discretion of the University's Vice President for Business Affairs his or her designee, and (2) if required by agreements with event producers or promoters.

The University operates a dinner theatre at the Union. Catered meals purchased by the dinner theatre total approximately \$141,274.00 annually (based approximately 8,228 meals.) However, the University does not warrant or represent that this will be indicative of future dinner theatre catering revenues or that this represents dinner theatre catering revenues that will be achieved in future years, and the University specifically disclaims any such warranties or representations.

5.3.14 Snack Vending

Snack Vending machine sales are not covered by this RFP or any agreement or contract resulting from this RFP. The University's snack vending machine sales are covered under separate exclusive agreements.

5.3.15 Student Participation in Selection

Section 51.945, Texas Education Code, requires student participation in the award of food services contracts. The University is required to develop and implement policies to provide students with a reasonable opportunity to appear before any food service selection committee that is selecting a food service provider or deciding to retain a food services provider at the institution in order to discuss the performance of a food service provider and the students' recommendations for qualifications of food service providers. Any contract between the University and a food service provider must require the food service provider to periodically hold meetings or forums to provide the students at the institution with a reasonable opportunity to discuss the performance of the food service provider.

5.3.16 Use of Food Service Locations by University

In addition to the University's rights set forth under other provisions of this RFP (e.g., snack vending machines, beverage pouring rights, University catering rights outside the Union as addressed in Section 5.3.13, any exceptions as addressed in Section 5.3.17), the University shall have the right to use all food service locations at all times except during those hours University and the selected Contractor designate as operating hours in **Section 3.1.10** of the Agreement (ref. **APPENDIX TWO**).

Provided, however, the University shall have the right at any time to use all food service locations within the Union for purposes of the annual International Food Fair.

5.3.17 Competitive Products and Services

The 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 the Successful Proposer. This may include, but is not limited to, existing vending contracts for soft drinks and snacks, and the food products offered during the annual International Food Fair, as well as the sale of other similar products and the provision of similar services by the University in its facilities. Further exceptions to any exclusivity provided to the Successful Proposer under any Agreement resulting from this RFP will be granted on a case-by-case basis by the University.

5.3.18 Other Considerations

The University wishes to consider proposals that provide "Training Table" and other similar National Collegiate Athletic Association ("NCAA") compliant meal service programs for its student athletes. Participation in these programs will be optional and solely at the discretion of the University.

5.3.18.1 Approximate annual total of catered meals for the athletics' training table are as follows:

5.3.18.1.1 2019 Football training table 58 days/85 meals per day/4,930 total meals

5.3.18.1.2 Basketball training table days/12 meals per day/600 total meals

5.3.19 Transition Plan

As part of the proposal, the Contractor shall develop a detailed, proactive Transition Plan for assuming management of the Dining Services Program and for the successful transition/opening of the University's food service operations. The Transition Plan shall be implemented immediately upon execution of the contract. The Contractor shall provide all necessary professional coordination services for implementation of the Transition Plan at its own cost and expense. The Contractor shall attend meetings as required by University to ensure a smooth transition into both summer conference/camp support and food dining operations.

5.4 Scope of Work

Contractor will provide the Services more particularly described in the Agreement (ref. **APPENDIX TWO**) and as set forth in this RFP. In its proposal each Proposer must address all of this RFP's requirements for the Services.

5.4.1 Overview

Contractor shall furnish all management, operations, labor, equipment, goods, and supplies necessary to provide professional food service operations to University to include full-service food, alcoholic beverage, and non-alcoholic beverage services, including cash retail plans, catering plans, and concession plans, all in accordance with the terms of the Agreement (ref. **APPENDIX TWO**) and as more particularly described below (collectively, the "**Services**").

5.4.2 Retail Cash Plan

5.4.2.1 The Contractor will provide a cash plan that encompasses professional quality food at multiple locations on campus, for a price and value competitive with local food establishments with similar items. Contractor's cash plan must be capable of replacing and/or rotating food concepts in a timely, cost effective manner to ensure the food service is fresh, up to date, and accurately reflects customer preferences.

5.4.2.2 In its proposal Proposer must describe in detail the cash plan that Proposer proposes to offer the University, including without limitation (a) branded concepts and (b) a proposed menu including a comprehensive list of all menu items, portion sizes, raw food specifications, detailed nutritional information, and sales prices for all menu items, including menu items on the deli line and the salad bar. Proposer should also list all items to be baked or cooked on campus and any exceptions.

Alternatively, Proposer should provide the steps it intends to take and the timeline for completion for all menu items offered to determine the offerings it will recommend for the first year of the Services.

5.4.2.3 Proposer should describe the production forecasting techniques that it plans to utilize in its performance of the Services.

In addition, Proposer should include a minimum of fifteen (15) themed meals to be offered in connection with national holidays, special events and exam weeks, or offer an alternative to such minimum.

5.4.3 Catering Plan

5.4.3.1 Catering Services, Access and Order System. The Contractor must provide high quality catering services for a wide variety of University events. Contractor's catering services must include event planning and coordination, including a qualified Executive Chef with experience in offsite catering and a catering Director to assist with University's request. Events that the Contractor must provide Services for will range from VIP to internal meetings. Contractor will provide the Chef's offerings along with a variety of menu options. Contractor must provide competitive pricing for all catering services. The University will only grant Contractor with catering rights on a non-exclusive basis (ref. Sections 5.3.13 and 5.3.16 of this RFP); for example, notwithstanding any catering or other rights provided to the Contractor, the University's International Food Fair and international student organizations will be allowed access to the University "front" kitchens and other food service space as deemed appropriate by the University. Exceptions to any exclusivity provided to the Successful Proposer under any Agreement resulting from this RFP will be granted on a case by case basis by the University.

In its proposal each Proposer must identify how Proposer will provide a web based catering solution. This solution should include: quick order entry by the University customer or catering staff; University login and service access; email messaging, tracking and archival records of catering services; proposals, invoices, delivery pick lists; post-event satisfaction surveys; marketing tools; and sales and kitchen production reports. In addition to an online ordering service, Proposer must identify how, when operating as a caterer, Proposer will be willing and able to provide personalized service to work with customers' needs and budget.

In its proposal Proposer must describe in detail its proposed catering plan.

5.4.3.2 Alcoholic Beverage Service. The University will consider proposals that provide for limited and controlled alcoholic beverage service at the University locations in designated facilities where food, beverages and other amenities will be provided. The Contractor must obtain and maintain the necessary licenses and permits related to selling and serving alcoholic beverages by Contractor and its staff.

In its proposal Proposer must identify whether it agrees to and can perform the foregoing requirements, and/or whether Proposer offers an alternative method to perform such requirements. If Proposer offers an alternative method, Proposer must describe and substantiate that alternative method.

5.4.3.3 Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer can offer an alternative method, Proposer should describe and substantiate such alternative.

5.4.4 Concession Plan

5.4.4.1 The University desires that Contractor include concession operations at the Don Haskins Center, Sun Bowl Stadium, Helen of Troy Softball Complex, Magoffin Auditorium, UTEP Dinner Theatre in the Union West 2nd Floor,

Memorial Gym, Kidd Field and the UTEP Soccer Field at Charlie Davis Park.

5.4.4.2 Proposer should acknowledge whether it is capable of offering such concession plan, and describe the details of such plan, including the level of discount and cost of the plan. If Proposer can offer an alternative method, Proposer should describe and substantiate such alternative.

5.4.5 **Short Term Meal Plan**

5.4.5.1 Proposer to provide short term meal plan consisting of one to two months of meals.

5.4.6 **Non-Traditional Board Plan**

5.4.6.1 Proposer to provide non-traditional board plan(s).

5.4.7 **Marketing Analysis of Surrounding Food Service Operations**

Proposer to conduct a Marketing Analysis of food service operations of the surrounding area and submit with its response. Analysis should identify brand preferences and recommendations.

5.4.8 **Online Ordering Strategy**

Proposer to provide online ordering strategy such as a website, smart phone application, etc.

Online ordering and food delivery options should be made available on campus. Vendors should provide options for communal pick up locations in each major area of campus, i.e. Union, EPNGCC, residential housing, etc.

5.4.9 **Modification Requests under the Cash, Catering and Concessions Plans**

5.4.9.1 **Firm Proposal Pricing.** The University requires that prices reflected in the proposal remain firm during the first year of the Agreement, unless the University and Contractor specifically agree otherwise in writing at a later date.

5.4.9.2 **Adjustments to Cash, Catering & Concession Plans.** The University anticipates that any modifications or price changes related to Contractor's cash plans, catering plans, or concessions plan will be subject to review and possible adjustment once per year. Any such requests for modifications or price changes must be submitted to University in detail and describe the specific basis for the requested change. The University will review such requested modifications to ensure that prices are consistent with providing quality services to the University community at competitive prices. All such, requests will be subject to the prior written approval of University, in its sole discretion. Such approval, however, will not be unreasonably withheld.

5.4.9.3 **Date for Requested Adjustments.** The University desires that Contractor submit any requested modifications related to its cash plans,

catering plans, or concession plans to the University no later than July 1 for the upcoming academic year.

- 5.4.9.4 **Sample Request for Adjustments.** Proposer should provide a sample proposal request for approval of price adjustments, including supporting information and statement of rationale. Such sample proposal should include a proposal timeline for submitting any request for a change in pricing.

5.4.10 **Beverages**

The University maintains exclusive contracts with beverage providers related to the dispensing, sale, advertising, and promotion of soft drinks and related beverages at the University. The University's current beverage contract is with PepsiCo, Inc., which expires in 2025. Contractor will be required to comply with the requirements of University's beverage and pouring rights contracts.

5.4.11 **Proposed Facilities & Renovation of Existing Facilities**

- 5.4.11.1 **Facility Description.** Proposer must include a description of each facility it plans to open in the first contract year, including an evaluation of each unit, Proposer's capability to provide the desired services, and Proposer's resources required to efficiently handle a food service operation of the size and scope requested herein.
- 5.4.11.2 **Strategies for Renovations.** The University desires that the Contractor state recommendations, or a strategy for reaching recommendations, for any changes. The proposal should include the Proposer's concept of facility improvements for the dining operations. The Contractor should submit any suggested changes in existing building décor and desirable equipment additions. Proposer should describe and substantiate any proposals it may have for such renovations. Proposer's concepts, comments, or suggestions made in the proposal will become property of the University. The University understands that these will be initial concepts and ideas based on limited exposure to the University campus.
- 5.4.11.3 **University approval and Project Management.** Contractor will not modify, alter or repair any University facilities without the prior written approval of University. In addition, all structural modifications to University will require oversight and project management by University. Should the Contractor desire any such additions, alterations or improvements, it may submit a written request to the University outlining the need and desire for such changes.
- 5.4.11.4 **Cost of Renovations & Improvements.** If approved by the University, the cost of any additions, alterations or improvements will be borne by the Contractor unless otherwise agreed and evidenced in writing. All additions, alterations and improvements authorized by the University and made by Contractor will immediately become the property of the University. The University can, at its option, require the Contractor to remove at its cost and expense, any such additions, alterations, or improvements at the end of the contract term or any termination of the contract.

5.4.11.5 The University desires the Contractor invest and expend an annual refresh fund to upgrade, refurbish or improve existing food services locations (collectively, the “Refresh Fund”). University will determine how Contractor will expend the Refresh Fund after discussion and collaboration with the Contractor.

5.4.11.6 Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer is offering an alternative method. If Proposer can offer an alternate method, Proposer should describe and substantiate such alternative.

5.4.12 Contingency Fund for Equipment Maintenance and Repairs

The University desires that the Contractor pay the University an annual contingency fee for maintenance, repair, and replacement, including preventative maintenance, of equipment directly related to the Services (collectively, the “**Contingency Fund**”). If the cost of such equipment maintenance, repair, or replacement exceeds the amount of the Contingency Fund during any contract year, the University anticipates that the University and Contractor will evenly split the cost of such additional repairs (“**Shared Maintenance Cost**”). The University will maintain records of all costs associated with the Contingency Funds and Shared Maintenance Costs and Shared Maintenance Costs will only be incurred with the prior written approval of the University. The University desires that Contractor propose a Contingency Fund that will represent and cover a substantial portion of such annual maintenance and repair costs. The current costs of maintenance and repairs ranges from \$25,000 to \$30,000 per year.

Contractor’s payment of the Contingency Fund would not apply to, and would not limit, Contractor’s repair and replacement responsibilities related to University Owned Equipment that is damaged or lost by Contractor as set forth in **Section 4.3.17** of the Agreement (ref. **APPENDIX TWO**). Further Contractor’s payment of the Contingency Fund will not limit Contractor’s responsibility to utilize all reasonable efforts to minimize the costs associated with repair or replacement of equipment.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.13 Housekeeping, Sanitation, and General Cleanliness

5.4.13.1 General Standards. The University requires that the Contractor provide daily housekeeping, cleaning, sanitation service, janitorial equipment and all needed cleaning and maintenance supplies for all food service facilities and equipment used by the Contractor.

These duties performed by Contractor will include all services necessary to approximately maintain the food service locations including but not limited to receiving and storage areas, kitchens, refrigerators, freezers, seating and service areas, offices, hallways, trash and garbage areas, windows and doors (inside and outside) and all outside stairs, ramps and entrances for a distance of approximately ten (10) feet from all food service areas.

The University has a current contract for waste collection and disposal services and is willing to extend the contract rates to the Contractor.

- 5.4.13.2 Contractor must place the utmost importance on proper sanitation standards. Contractor must maintain National Sanitation Foundation (NSF) standards (<http://www.nsf.org/>) for food service establishments. In addition, Contractor must achieve a health department Grade “A” rating at all times.

Contractor must maintain all kitchens in immaculate condition and keep all food service areas clean throughout the day. This includes no accumulation of trash (cardboard boxes, towels, etc.) anywhere in the food service areas. Contractor shall assure that employees will have quick and easy access to cleaning supplies such as mops, brooms, dustpans, cleaning and disinfecting liquids, etc. at each venue.

Contractor must assure that the pot room and dish room will be clean and sanitized, with little or no excess water spills on the floor. Contractor shall assure that all trash cans in the kitchens will be covered and properly lined with the correct plastic trash liner. The Contractor must assure that the trash cans are properly emptied and do not overflow.

The University requires that Contractor maintain the receiving docks in a clean condition. The receiving docks should be free of any trash and kept in such a condition as to not attract insects and should not smell unsanitary.

- 5.4.13.3 Sanitation Plan. Proposer should describe its plan to maintain effective sanitation practices in all areas of the dining service operation. This plan should address standards for maintaining a clean and sanitary facility. The plan should include, but not be limited to (a) a program for continuous training of personnel especially in personal hygiene, food handling and preparation, proper washing of silverware and dishes, and cleaning of equipment; and (b) a schedule for insuring that all assigned equipment and premises are kept clean and neat in appearance.

- 5.4.13.4 Food Handlers. The University desires that Contractor examine all food handlers visually, at least daily, to ensure that they are following established hygiene practices in the handling of food. Contractor’s employees that come into contact with food must be properly certified. These hygiene practices include, but are not limited to the following.

5.4.13.4.1 Bathing daily;

5.4.13.4.2 Wearing clean outer clothing;

5.4.13.4.3 Keeping fingernails short and clean;

5.4.13.4.4 Using hair nets, caps or lacquer spray when hair is longer than six (6) inches (applies to both male and female employees);

5.4.13.4.5 Removing wristwatches and rings, except plain wedding bands, during the preparation and service of food;

- 5.4.13.4.6 Washing hands with warm water and soap upon reporting for duty, after each visit to the restroom, and after handling raw meat, fish or fowl;
- 5.4.13.4.7 Reporting symptoms of infectious diseases, including colds to medical authorities.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

- 5.4.13.5 Restroom Facilities. The University is responsible for providing custodial services to the restrooms in the Union Building East 2nd floor and El Paso Natural Gas Conference Center where the University's two main dining facilities are located. Therefore the University does not request that the Proposer provide these services, only that an immediate request for service is provided to the University.
- 5.4.13.6 Food Wrapped in Refrigerators and Freezers. The University desires that the Contractor cover all food in walk-in refrigerators with plastic wrap, aluminum foil or an otherwise appropriate wrapping or protector.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

- 5.4.13.7 Floors, Walls, Ducts, Griddles, Grinders, & Similar Areas & Equipment. The University desires that the Contractor assure that all walls, ceilings, windows, ducts, fan blades, and screens will be kept clean and free from dirt, dust and grease.

The University desires that Contractor clean all floors in all food service areas by vacuuming, washing, and/or mopping. Food service area tile floors must be spray waxed and buffed as necessary to maintain their appearance. The University desires that the Contractor, at least semi-annually, thoroughly strip and wax all tile floors and shampoo all carpeted areas.

- 5.4.13.8 The University desires that Contractor will clean steam tables, coffee urns, griddles, condiment containers and dining tables, etc., at minimum on a daily basis.

The University desires that Contractor clean and sanitize kitchen tables, meat grinders, knives, etc., after each use.

The University desires that Contractor continually maintain and keep clean throughout each meal period all dining room tables, beverage counters, and salad bars that are located inside and outside of all food service venues. The University desires a diligent and consistent wipe down of all the above mentioned dining tables, beverage counters, and salad bars.

The University desires that Contractor clean cooking surfaces of grills, griddles and any other similar cooking devices at least once a day during the time that the venue is operational. The University desires that the Contractor keep these cooking devices free from encrusted grease deposits and other debris.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.14 Reports

5.4.14.1 **General Operational & Financial Reports.** The University will utilize reports provided by the Contractor to determine effectiveness of the contract. The Contractor must identify its measurement tools, processes and reports related to performance standards, including but not limited to the following areas: Inventory of equipment and food product, gross sales/net sales, food production cycles, expenses verses revenues, sanitation, customer service, personnel training, selection of food product and variety, serving turns per hour, marketing materials and effectiveness, hours of operation, use/waste of product, quality of food product, food inspection standards, pricing of product related to industry pricing, customer service wait time for action stations and check out, commission rates, and supervisory/administrative performance. All reports will be in a form acceptable to the University and will specify the contract requirements that the report is intended to address.

Proposer should describe the types of reports or other written documents that Proposer will provide to University, and the frequency of such reporting. Proposer should provide samples of each proposed report form with its response to this RFP.

Proposer should specifically include in its response, in a form Contractor would propose to submit to University, a sample of the required reports described below.

5.4.14.1.1 Annual operating budget as stipulated in **Section 5.4.3** of the Agreement (**ref. APPENDIX TWO**); and

5.4.14.1.2 Monthly financial statement as stipulated in **Section 5.4.1** of the Agreement (**ref. APPENDIX TWO**).

5.4.14.2 **Monthly Client Report.** The University desires that the Contractor forward a "Monthly Client Report" to the University within 15 days of the close of each month. This report should include financial information, any changes in organization structure and personnel, as well as other general information such as complaints, accolades, special achievements, special projects, etc. Contractor should submit a sample form of such report with its response.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer

is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.15 Computer Technology Access

University requires Contractor to comply with all University regulations, including regulations concerning connections to the University's computing systems. Contractor shall be responsible for all costs and charges related to telecommunication services provided by University to Contractor.

Contractor may request that the University acquire certain computers solely for Contractor's use in providing the Services, and University may, in its sole discretion, acquire such computers, provided that such computers are (i) purchased at Contractor's expense; and (ii) remain the property of the University. Notwithstanding anything to the contrary, however, Contractor shall not connect any technology equipment to University's computer network and information resources system with the prior written consent of the University Representative.

Subject to the prior written approval of the University Representative and other appropriate University personnel, Contractor may be permitted limited use of University's computer network and information resources solely for Contractor's direct performance of the Services. In that event, Contractor shall execute and deliver to University the User Acknowledgment attached to The University of Texas System Information Resources Use and Security Policy number UTS165 (located at <https://www.utsystem.edu/sites/policy-library/policies/uts-165-information-resources-use-and-security-policy>) In conjunction with appropriate University personnel, Contractor shall determine what access, if any, shall be necessary to link Contractor to University's Internet for communication and electronic mail purposes.

5.4.16 Inventory of Equipment

5.4.16.1 University Owned Equipment. A listing of University-owned equipment related to the Services is set forth in Schedule 11 of the Agreement (**ref. APPENDIX TWO**). The University desires that Contractor provide, within sixty (60) days after the effective date of the Agreement, an evaluation of each unit to be operated at the University with respect to the University-owned equipment provided. If University is required to purchase any additional equipment to provide the Services, the equipment will be titled to the University.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.16.2 Equipment and Preventative Maintenance Plan. The University desires that Contractor provide and maintain a preventative maintenance plan, to be implemented by the Contractor, for all University owned equipment that will be utilized by the Contractor (list standard company policy or practice).

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer

is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.16.3 Disposition of Surplus Capital. The disposition or declaration as surplus of any and all capital equipment owned by the University shall only be conducted by the University.

5.4.16.4 Contractor Equipment. The University desires that Contractor provide adequate initial inventory level of expendable equipment items such as china, silverware, glassware, serving trays, salt and pepper shakers, pots, pans, kitchenware and linen items such as towels, pot holders, tablecloths, napkins, aprons, and smocks, etc. and at Contractor's expense, maintain at least the initial inventory levels for a period of time to be mutually agreed upon by both parties. The University desires that Contractor agree to take steps that may be reasonably required by the University for protection against loss due to pilferage or destruction.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

5.4.16.5 Listing of Initial Equipment. Proposer's response must include a listing of all Proposer-owned equipment to be initially used on campus. Proposer must list any additional equipment necessary to provide the services specified in this RFP.

5.4.17 Marketing

The University desires that Contractor be responsible for the marketing of food services on University's campus (ref. **Section 1.2** of this RFP). These marketing services are to include, but not limited to, advertising food items, types of dining services offered, dietary health care specials, and information about Contractor's key personnel.

The University desires that Contractor bear all costs associated with design, development, and printing of promotional brochures, banners, signs, etc., except as may specifically be agreed upon in advance by the University representative.

The University desires that Contractor develop and publish (electronic, print), no later than the end of June and November each year, a student information brochure available for distribution to students enrolled for the fall and spring semesters.

The University desires that Contractor develop, print and distribute a monthly food services calendar identifying special events, food specials, and any other promotional dining services.

The University desires that Contractor develop, print, and distribute a quarterly newsletter containing food service information for students that contains articles about new food offerings, changes in policy, recent news in the food service industry, dietary health information, and items of interest about the Contractor's personnel.

The University desires that Contractor's Marketing Manager be available to coordinate and/or assist with joint promotion of products and services.

During the term of the Agreement, the University desires an update of the marketing plan at the beginning of the fall and spring semesters.

Proposer must describe the proposed method of marketing of meals, retail venues, and catering. Please provide a sample marketing plan with the proposal, to include suggested specials and samples of marketing aids to include but not be limited to online applications, residential life brochures, social media (e.g., Snapchat, Facebook, Twitter, Instagram, etc.), mobile applications, and tools.”.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer can offer an alternative method, Proposer should describe and substantiate such alternative.

All marketing will comply with Series 80103 of the University of Texas System Regents' Rules and Regulations, and the requirements specified in **Section 3.2.8** of the Agreement (ref. **APPENDIX TWO**).

5.4.18 Personnel

The University is interested in the Personnel Policies and Performance Levels for all employees. The University desires to review Proposer's Personnel Policies/Procedures. Proposer is requested to provide a brief outline of its standard employee policies and procedures.

The University strongly encourages Proposer to give hiring preference to University's students when choosing employees.

Proposer should provide the methods it will use for assuring that employees maintain satisfactory performance levels. In addition, Proposer should provide its policies for hiring, promotion, termination and any other pertinent personnel policies, most notably, the procedures and capacities for replacing local personnel at the management level in completion of the Services.

The University requires information regarding Proposer's Employee Training Programs. Proposer should attach a detailed outline of the training program to be used for hourly and supervisory/management personnel, including the length and frequency of training, sites of training, and procedures used for employee evaluations. This plan should also include information about the staff that will conduct the training, their background and qualifications, and the training resources that will be made available during the program. In addition, please describe training programs and management opportunities available to students interested in a food service career.

The University requires that Contractor's training programs include safety and accident prevention.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative

5.4.19 **Internal Accounting and Auditing System**

The University requires that the Contractor present as part of its response to this RFP the following information.

Proposer should provide its method for handling cash, to include procedures for holding funds overnight, transporting funds to the bank, and any recording, checking and reporting of cash and sales. In addition, Proposer should include any forms used in the completion of the above mentioned services.

Proposer should provide a description of accounting, audit and control systems and procedures, including any forms to be used. Procedures must address, but not be limited to, cash accountability, purchasing, receiving, storage and inventory control.

Proposer should provide definition of company's fiscal year and accounting periods.

Proposer should provide definition of internal controls for inventory.

Proposer should be aware that the University will require the Contractor to provide copies of audit reports.

5.4.20 **Board Plans in Emergency or Displacement Situations.**

The University desires that the Contractor provide food to board plan holders, at no additional cost, should they have to be housed off campus due to a disaster or displacement for unforeseen reasons.

Proposer should acknowledge whether it agrees to the foregoing, and/or whether Proposer can offer an alternative method. If Proposer is offering an alternative method, Proposer should describe and substantiate such alternative.

5.5 **Specific Objectives and Requirements Related to Dining Facilities and Operations**

5.5.1 **Branded Concepts**

The University requires that each Proposer provide a listing of national branded (franchised) concepts for which your company owns a franchise. Also, attach a list of company-owned branded concepts offered by your company.

5.5.2 **Innovative Concepts**

The University requires that each Proposer provide a proposed list of three to five innovative or new concepts that could be implemented to maximize customer participation.

5.5.3 **Hours of Operation for all Facilities**

The University requires that each Proposer provide recommendations regarding serving hours for all food service operations (including catering). Proposer's proposal for operating hours should address meal services during break periods, minimesters, academic holidays, periods of administrative closing, and closing due to inclement weather. Currently all retail food service operations close during

break periods and academic holidays, except for the following locations. Catering and concession services continue operation as needed.

- 5.5.3.1 Union Food Court
- 5.5.3.2 University Bookstore - Einstein Brothers Bagels
- 5.5.3.3 Library - Texas Western Café
- 5.5.3.4 El Paso Natural Gas Conference Center – Chick-Fil-A; El Sazon Minero

5.5.4 **Forecasting, Merchandising, Production and Quality Control**

The University requires that each Proposer describe forecasting, merchandising, production, and quality control techniques that will be used. These techniques include taste-testing, temperature testing, sample recipes, utilization of leftovers, etc.

5.5.5 **Nutritional Practices**

The University requires that each Proposer describe the nutritional practices that will be used in purchase and preparation of food.

5.5.6 **Nutritional Awareness**

The University requires that each Proposer describe programs for promoting nutrition awareness which meet or exceed RFP specifications.

5.5.7 **Customer Satisfaction and Complaint Resolution**

The University requires that each Proposer describe its proposed system(s) for monitoring customer satisfaction in the meal plans and retail operations (including catering), to include methods of self evaluation and determining customer satisfaction relating to dining services, food quality, variety and temperature, hours of operation, dining and service area ambiance, employee dress and customer assistance, sanitation, etc. Proposer should also describe frequency of such self evaluation and customer satisfaction surveys. In addition, Proposer should include provisions for customer complaints or requests.

In its response to this Proposal, Contractor should include its analysis of campus feeding in general, including techniques for preventing common problems and coping with such problems if they do arise. The Contractor should explain and include examples of systems used to determine customer tastes and satisfaction.

5.5.8 **Point of Sale System**

The University requires that the Contractor include a Point of Sale system to include card readers for all retail food service and concession locations with the equipment that will be provided to the University. Contractor's Point of Sales system should be able to utilize the latest technology, including high speed registers, credit card, and campus debit system delivered through touch screen operated registers. This system would allow the Contractor to view up to the minute sales figures, past sales history, and create reports. The University requires that the Contractor pay for of the yearly software license ("POS License Fee") of this system based upon the number of POS stations and licenses required for Food Service Operations.

5.5.9 Recycling Program

The University requires that each Contractor provide a description of the recycling program which will be used to minimize disposal costs, including all paper, plastic, cooking oils, and other disposable items. The University strives for a more eco-friendly approach and the University expects that all reasonable measures that can be implemented to further increase campus recycling efforts and energy savings will be implemented by Contractor. Contractor is obligated to coordinate their recycling efforts with the University for all categories of recyclables with the exception of cooking oils, where the Contractor is expected to make their own arrangements.

5.5.10 Logistics and Planning Personnel Available

The University requires that each Proposer describe the company's capacity to provide logistics and planning personnel to assist in short and long range planning of facilities and services. Indicate the scope of such consultancy that will be available to the University at no charge. Proposer should describe any special additional personnel, if any, available to provide consulting services to local staff and to the University and include a proposed planning strategy.

Any rates for logistics and planning personnel work that will be available at a cost to the University should be included in the Financial Offer and Delivery Schedule (ref. **Section 6 of this RFP**).

5.5.11 Cost Savings Programs

The University requires that each Proposer describe any cost saving programs which have been successfully implemented by Proposer that might be effective at the University.

5.5.12 Continuous Improvement Programs

Proposer must develop and implement a continuous improvement program to ensure that costs are improved, and efficiencies are maximized semester to semester, and year to year. The Contractor will be required to provide a strategy on how this will be accomplished within the proposal.

5.5.13 Administrative Space Requirements

The University will make reasonable efforts to provide Contractor necessary administrative office space. Space will be provided for the General Manager, Retail Manager, and Catering Manager and others, as necessary and appropriate. The University requires that each Proposer state the amount of overall space that will be required.

5.5.14 Ten-Year Projection

Proposer should submit a detailed plan of Proposer's "vision" for the Services in the next ten (10) years and a timetable for attaining that vision. Proposer's "vision plan" should be comprehensive, and should include a financial plan that details how it will enable the University and the company to attain the desired vision for the University Dining Services. The financial plan should clearly delineate between investment by the Proposer, commission to the University based upon a

percentage of sales revenues and minimum annual guarantee commission to the University.

5.5.15 Food Insecurity/Scarcity Programs

Proposer should propose a plan(s) to support students in need, as well as the student food pantry, on each campus. Proposals that include community involvement, participation and/or donations are encouraged.

5.5.16 Sustainability Program

Sustainability and environmental awareness are critically important to the University. Explain in detail how the University environmental and sustainability program will be adhered to, how you will contribute to enhancing the University's sustainability efforts and what metrics will be used to demonstrate annual improvement in Green Initiatives. For additional consideration, but not limited to:

- Dedicated sustainability staff
- Composting
- Re-usable containers
- Food waste training systems
- Reduction of food waste
- Biodegradable wares and containers
- 100% recycled napkins
- 100% recycling of cardboard boxes, packaging and metal
- Technical innovation and human

5.5.17 Services Included

The University requires that each Proposer provide a complete description of all services, systems, etc. that will be made available to the University, at no additional cost.

5.5.18 Additional Information

Proposers are encouraged to provide additional non-financial information that they may deem useful to the University in evaluating Proposer's capability to provide the Services.

5.6 Financial Proposal Requirements

In its response to **Section 6** of this RFP, Proposers must submit a Financial Proposal (ref. **Section 1.4.5 & Section 6** of this RFP) as described below. The following items must be included in the Financial Offering (ref. **Section 6** of this RFP).

5.6.1 Royalty

Proposer shall propose a percentage commission on adjusted gross revenue (the "Royalty") to be paid to University. The term "adjusted gross revenue," as used in this RFP, shall have the meaning specified in **Section 5.1.1** of the Agreement (ref. **APPENDIX TWO**). Contractor shall pay the Royalty to University in accordance with **Section 5.1.2** of the Agreement (ref. **APPENDIX TWO**).

5.6.2 **Guaranteed Financial Commitment**

Proposer shall propose a financial commitment to be paid by Contractor to University in consideration of the rights to be granted to Contractor under the Agreement. University will invest the Financial Commitment, in its sole discretion, for renovation and future improvements to existing Food Service Locations, establishment of additional food service locations and other uses related to food service operations.

5.6.3 **Annual Contingency Fund**

Proposer should state whether Proposer agrees to the payment of the Contingency Fund as described above in **Section 5.4.13**, and if so, Proposer should provide such financial figure(s).

5.6.4 **POS License Fee**

Proposer to pay for the POS License Fee described above in **Section 5.5.8** of this RFP.

5.6.5 **Logistics and Planning Personnel Work**

Proposers should provide details related to facility planning and consulting work (**ref. 5.5.10** of this RFP) available to University at no charge, as well as the rates for such consulting work that will be available at a cost to the University.

5.6.6 **Sign-On Bonus**

Describe any sign-on bonus or cash contributions the Proposer would pay University upon execution of the agreement.

5.6.7 **Scholarship Fee**

Describe an annual scholarship fee that the Proposer will make available to University as additional consideration.

5.6.8 **Facility and Capital Improvement Contributions**

Indicate whether Proposer would be willing to contribute funds towards an annual facility and capital improvement contribution ("Facility and Capital Improvement Contribution").

5.6.9 **Refresh Fund**

Proposer should state whether Proposer agrees to the payment of the Refresh Fund as described above in **Section 5.4.11.5** of this RFP, and if so, Proposer should provide such financial figure(s). The University will determine how Contractor will expend the Refresh Fund after discussion and collaboration with the Contractor. Contractor may not make expenditures from the Refresh Fund without prior approval of the University. Any amount not expended in a contract year will be added to the Refresh Fund, but will be paid to the University within thirty (30) days after the end of the fiscal year, for disbursement in subsequent contract year once agreed to by both parties. Any amount of the Refresh Fund remaining at expiration or termination of this Agreement will be paid to the University within (30)

days after expiration or termination, any amount previously retained will remain the University at the end of the agreement.

5.6.10 Other Monetary Compensation

Other than above.

5.6.11 Other Non-Monetary Compensation

Other than above.

5.6.12 Additional Financial Considerations

Proposers shall define any other additional financial considerations to be offered to University, for investment purposes or otherwise, and provide an amortization schedule that reflects such investment if applicable

5.7 Additional Related Services

Additional related services as may be requested by University in writing from time to time.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas at El Paso

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

RFP No.: 724-2113-JBT

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 Financial Offering

6.1.1 Financial Commitment and Capital Investment(s) to be provided by Proposer

Proposer's proposed Financial Commitment should include the amount offered, amortized schedules proposed, delivered dates, any proposed requirements or restrictions, and any other information relevant to the Financial Commitment. Successful Proposer will be expected to pay off the University's unamortized balance (\$778,116) remaining from the existing Food Services Contract.

6.1.2 Commission Schedule- Royalty

____% of gross income from the retail/cash sales, including catering

____% of gross income from concessions

____% of gross income from any other source relating to services provided under the Agreement

The University expects that the success of the food services program at the University will financially benefit both the University and Contractor.

Above what amount of total gross income from the Agreement in any year will Proposer increase the commissions payable to the University and by what amount?

Gross Income: _____

Increase in commissions: _____%

- 6.1.3 **Guaranteed Financial Commitment**
- 6.1.4 **Annual Contingency Fund**
- 6.1.5 **POS License Fee**
- 6.1.6 **Logistics and Planning Personnel Work**
- 6.1.7 **Sign-On Bonus**
- 6.1.8 **Scholarship Fee**
- 6.1.9 **Refresh Fund**
- 6.1.10 **Other Monetary Compensation**
- 6.1.11 **Other Non-Monetary Compensation**
- 6.1.12 **Additional Financial Consideration**

Proposer must submit the information required by Schedules 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 to the Agreement (ref. **APPENDIX TWO**) in the form of a completed copy of each Schedule.

Schedules 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 to the Agreement (ref. **APPENDIX TWO**) are attached and incorporated by reference for all purposes.

6.2 **Fees or Long-Term Costs**

Proposer should describe in detail any fees or long-term costs that Proposer projects may be borne by the University in completion of the Services.

6.3 **Delivery Schedule of Events and Time Periods**

Schedule 2 Contractor's Preparation Activities to the Agreement (ref. **APPENDIX TWO**) is attached and incorporated by reference for all purposes.

6.4 **University's Payment Terms**

University's standard payment terms for services are "Net 30 days." Proposer agrees that University will be entitled to withhold _____ percent (_____%) of the total payment due under the Agreement until after University's acceptance of the final work product. Indicate below the prompt payment discount that Proposer will provide to University:

Prompt Payment Discount: _____% _____days/net 30 days.

Contractor understands and agrees that payments under this Agreement may be subject to the withholding requirements of §3402(t) of the Internal Revenue Code.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION**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.

Proposers are also required to acknowledge the Addenda documents in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.

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* (Chapter 552, *Government Code*). 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 §§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). 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.

Proposer must acknowledge the attributes for the documents requested in **Sections 3.4** (Terms and Conditions) and **3.5** (Submittal Checklist) of this RFP in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.

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.

Proposer shall also enter pricing information in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit

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 as instructed in **Section 3**. RFP No. (ref. Title Page) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.

Proposers are required to acknowledge the attributes for the documents requested in **Sections 3.4** (Terms and Conditions) and **3.5** (Submittal Checklist), as well as supply pricing for this RFP in Sourcing Manager located at <https://adminapps.utep.edu/sourcing/>.

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 THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
 - 2.1.5 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 relating to performance of Work.
 - 2.1.6 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.
 - 2.1.7 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.
 - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. 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.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT 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.
 - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement 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.
 - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's 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. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's 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.
 - 2.1.13 Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#))*, Proposer verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

- 2.1.16 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer 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 proposal. Failure to sign this [Execution of Offer](#), or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or 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 Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§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.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- 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 member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§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 any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer 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.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this [Execution of Offer](#). All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.

- Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
- Proposer has disclosed any personnel who are related to any current or former employees of University.
- Proposer has not given, 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 an officer or employee of University in connection with this RFP.

213 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.: 724-2113-JBT

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 §§[552.021](#) AND [552.023](#), *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§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 §§552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER §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 §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 El Paso

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

RFP No.: 724-2113-JBT

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

This **Food Service Agreement** (this "**Agreement**") is executed by and between **THE UNIVERSITY OF TEXAS AT EL PASO**, 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 July 19, 2029, unless earlier terminated in accordance with the terms of this Agreement.

Upon expiration of the Initial Term, the parties may extend the term of this Agreement for three (3) one (1) year extension after the contract year (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 retail food rules in 25 Texas Administrative Code ("**TAC**") Chapter 228 ("**Retail Food Rules**"), and (b) the *Rules and Regulations* (the "**Regents' Rules**") promulgated by the Board of Regents of The University of Texas System ("**Board**"), as well as with those of any other body or authority having jurisdiction (collectively, the "**Applicable Laws**"). Contractor also will obtain any and all approvals, licenses, filings, registrations and permits required by federal, state or local law for the performance of the Services or Contractor's other duties and obligations under the terms of this Agreement, including all necessary Texas Alcoholic Beverage Commission ("**TABC**") permits for the service and sale of alcoholic beverages. Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services. Upon University's request, Contractor will submit to University satisfactory evidence of Contractor's compliance with this Section. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for such firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 3.1.2 Sanitation, Health and Safety. Contractor will maintain clean, orderly and sanitary conditions (satisfactory to University in all respects) in all kitchens, food preparation areas, service areas, dining areas, loading docks, hoods and grease filters and for all equipment, floors and dining room chairs and tables associated with certain University cafeterias, snack bars, restaurants, and other locations more particularly identified in **Schedule 3** attached and incorporated for all purposes, or used by Contractor in the performance of the Services (collectively, the "**Space**"). In accordance with the Applicable Laws, including the Retail Food Rules, Contractor will obtain all necessary food handler's permits (collectively, the "**Permit**") from appropriate governmental entities. Upon receipt of written notice of suspension of the Permit, Contractor will immediately (1) provide written notice of same to University, and (2) cease performance of the Services and all other food handling operations *until written notice that the Permit is reinstated has been received by Contractor and University.*

In the event University reasonably believes that Contractor is not in compliance with Applicable Laws (ref. **Section 3.1.1.**) and reasonably determines that the violation of the Applicable Laws creates an imminent health hazard or immediate threat to the health and safety of University's campus community or the public, University may immediately (a) perform any cleaning or other services deemed necessary by University (Contractor will reimburse University for all reasonable costs, including overtime costs.), (b) report Contractor's non-compliance with Applicable Laws to any governmental body or authority, and (c) *at University's option*, (i) require Contractor to cure within a timeframe that is acceptable to University, or (ii) suspend Contractor's performance of the Services, and/or (iii) terminate this Agreement *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 Vice President of Business Affairs or his/her delegate ("**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 §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 the following Retail locations; Union Bldg. East, Union Bldg. West (Dinner Theatre seasons), EPNGCC, College of Health Sciences and Nursing Bldg., Library Bldg. (3rd and 6th floor), Chemistry and Computer Science Bldg., Don Haskins Center, Magoffin Auditorium, Larry K. Durham Center, Captains Club (now called Hunt Sky Lounge), Kidd Field (Football season tailgates) locations: as requested (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 "Miner Gold Card" (the "**Card System**") as a form of payment by Customers for, among other things, the Services. In addition to cash payments, Contractor will accept the Card System as payment for the Cash Plan. 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 in accordance with the terms set forth in **Schedule 7** attached and incorporated for all purposes.
- 3.2.5 Non-Traditional Meal Plan. Contractor will provide the Non-Traditional meal Plan in accordance with the terms set forth in **Schedule 8** attached and incorporated for all purposes.
- 3.2.6 Catering Plan. Upon University's request, Contractor will provide the Catering Plan in accordance with the terms set forth in **Schedule 9** attached and incorporated for all purposes, at parties, banquets, teas, coffees, receptions, dinners and other special events (collectively, "**Special Events**") held by University and non-University groups and organizations, in locations designated by University. The locations may be on or off University's premises.
- 3.2.7 Concession Plan. Contractor will provide the Concession Plan in accordance with the terms set forth in **Schedule 10** attached and incorporated for all purposes.
- 3.2.8 Marketing. Contractor will actively and aggressively market the Services to be provided by Contractor under this Agreement at each Food Service Location. All marketing will comply with the Regents' Rules, including Rule 80103, and will be based on University preferences and needs identified by Customer feedback. Contractor is prohibited from advertising to the general public the location of Contractor's operations on University's premises; however, Contractor is not prohibited from advertising in the student newspaper and in other publications published primarily for distribution to students, faculty, and staff and are approved by University for distribution on University's premises. Contractor will not be entitled to distribute advertising or marketing literature on University's premises or to display posters or post commercial messages on public bulletin boards on University's premises, except in accordance with the Regents' Rules and University policies and procedures, and after written approval by University in each instance. Contractor will not communicate any messages that advertise, promote, or market Contractor's services by means of University's mail or email system unless prior to the communication University determines that the communication complies with the Regents' Rules and University's policies and procedures, and approves the communication in writing. Contractor may install and display signs, advertising and other marketing materials in the Food Service Locations; however, the form and size of any signs, advertising and marketing materials must be approved in writing in advance by University. Contractor's requests for approvals under this Section will be delivered to University's Representative.
- 3.2.9 Parking. Contractor's officers, employees, invitees and subcontractors must comply with University parking requirements and traffic regulations, as stipulated by Parking & Transportation Services (website: <https://www.utep.edu/parking-and-transportation/>). This includes parking permit requirements to park on Campus. Contractor is responsible for any parking or traffic citations issued by Parking & Transportation Services or UTEP Police Department for any violation of such regulations by their employees, invitees, or subcontractors.

3.2.9.1 Obtaining Parking Permits. Contractor's officers, employees, invitees and subcontractors may utilize designated parking areas on the Campus upon obtaining the appropriate parking permit at (915) 747-5724 or at parking@utep.edu.

3.2.9.2 Charges for Parking. All charges for parking, if any, in effect from time to time under the University's parking regulations, are the sole responsibility of Contractor during the term of this agreement, and are subject to an annual account review by the UTEP Parking and Transportation Services Department.

Charges for Parking. All charges for parking, if any, in effect from time to time under the University's parking regulations are the sole responsibility of Contractor during the term of this agreement.

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 Concession Plan. Contractor will provide the Concession Plan in accordance with the terms set forth in **Schedule 10** attached and incorporated for all purposes.
- 4.1.3 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.
- 4.1.4 Concession Plan. The Concession Plan is more particularly described in **Section 3.2.7**. The price charged for each menu item sold by Contractor pursuant to the Concession Plan and the portion size for each menu item offered under the Concession Plan will be designated by Contractor in writing and will be competitive with the prices of local concession operations for similar items. All aspects of the Concession Plan and any changes to the Concession Plan will be subject to the prior written approval of University's Representative. Approval will not be unreasonably withheld.
- 4.1.5 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 menu item sold by Contractor pursuant to the Short Term Meal 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 Short Term Meal Plan will be subject to the prior written approval of University's Representative. Approval will not be unreasonably withheld.
- 4.1.6 The Non-Traditional Board Plan is more particularly described in **Section 3.2.5**. The price to be charged for each menu item sold by Contractor pursuant to the Non-Traditional Board

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 Non-Traditional Board Plan and any changes to the Non-Traditional Board Plan will be subject to the prior written approval of University's Representative. Approval will not be unreasonably withheld.

4.2 Adjustments to Price or Portion Size.

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

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; provide all Card System compatible point-of-sale cash registers and appropriate accessories, that are necessary for the performance of the Services and Contractor's other duties and obligations under the terms of this Agreement. Contractor will provide a point-of-sale system on all cash registers. Contractor agrees to provide a technology team to evaluate all systems on campus and develop a "Technology Roadmap" to strategically align their technology services with the University's campus technology plan. Contractor agrees to conduct an annual payment card industry (PCI) review to verify the proper handling of customer credit card data. This review will encompass POS security, network security and physical card handling procedures. Contractor agrees to continue to conduct quarterly vulnerability scans, through a subcontractor (Vendor Safe Technologies), on POS environments to ensure that they are secure. Contractor agrees to provide Contractor's management team and frontline employees proper credit card handling procedures, which will be documented requiring all employees to complete and sign a training acknowledgement, which is placed in each employees personnel file. A comprehensive inventory of University Owned Equipment is attached as **Schedule 11** and incorporated for all purposes;
- 4.3.16 maintain all University Owned Equipment in good working order;
- 4.3.17 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.
- 4.3.18 provide for the removal and proper disposal of all wet garbage from the Space and related areas;
- 4.3.19 provide for the removal and proper disposal of all dry garbage from the Space and related areas;
- 4.3.20 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;
- 4.3.21 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 <https://www.utep.edu/compliance/> 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
- 4.3.22 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, Catering Plan and Concession Plan, all as more particularly provided in Schedule 12 attached and incorporated for all purposes. The term “adjusted gross revenue” will mean gross food, 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 2251, Texas Government Code](#). Contractor will invoice University for the Services provided under the Catering Plan within twenty-one (21) days after the Catered Event. University will, within twenty-one (21) days from the date it receives the invoice and applicable supporting documentation for payment, approve or disapprove the amount reflected in the invoice and if University approves the amount or any portion of the amount, University will pay to Contractor within thirty (30) days after the later of receipt of the invoice or complete performance of the Services, the amount so approved, provided Contractor is not in breach of or in default under this Agreement. If University disapproves any amount requested by Contractor, University will give Contractor specific reasons for its disapproval in writing.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with [§151.309, Texas Tax Code](#), and [34 TAC §3.322](#).

[Section 51.012, Texas Education Code](#), authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). 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) Catering Plan and Concession Plan revenue; (b) a statement of gross and net sales and disbursements reported on a Food Service Location basis; (c) a consolidated statement of total food service operations covered by this Agreement, reported on an Accounting Period basis and year-to-date basis and (d) in accordance with [§2252.063, Texas Government Code](#), payment statements derived from sales tax reports (ref. **Section 4.3.1**).
- 5.4.2 Statement Based on Sales Tax Reports. In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University’s Representative, no later than the 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 May 1 of each contract year of this Agreement, Contractor will prepare and submit for University’s review and approval, two (2) copies of Contractor’s proposed budget for the performance of the Services at all Food Service Locations, including detailed revenue projections by location and by revenue source, as well as costs and other information reasonably requested by University.

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

5.5 Inventory.

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

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

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

5.6.4 Employee Training and Professional Development. Contractor agrees to provide the University with a commitment to establish a plan for ongoing employee training for its frontline staff and professional development for its management team. Frontline staff will receive the following regularly scheduled training opportunities, which: catering customer service training (for example table setting and serving etiquette), concessions customer service training, retail customer service training. These training opportunities will also be

provided to the Contractor's subcontractor and subcontractor's employees. Contractor's management team will receive regularly scheduled professional development opportunities: Leadership training, in-unit management training. Contractor agrees to submit its written plan to the University annually in March for each year of the duration of the contract. This documented training should be ongoing as employee turnover occurs. Each employee should have a minimum 10 hours of documented training annually in their respective areas of expertise with training in personnel appearance and professionalism as well.

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. Contractor agrees to clear the University's unamortized balance (\$778,116), remaining from the existing Food Services Contract

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 1**.

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

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

- 6.2.13 Undocumented Workers. The *Immigration and Nationality Act* ([8 United States Code 1324a](#)) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form](#) ("**I-9 Form**") as the document to be used for employment eligibility verification ([8 Code of Federal Regulations 274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual;

(3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor is in compliance with and will remain in compliance with the provisions of the Immigration Act.

6.3 Insurance, Bond, Indemnification, and Liability.

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

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

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

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

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

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

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

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

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 \$500,000 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.
- 6.3.1.9 Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:
- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third Party Business Interruption Loss resulting from a network security failure;
 - Liability for technological products and services;
 - Costs of restoring, updating or replacing data; and
 - Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

6.3.2 Contractor will deliver to University:

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

6.3.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and 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 6**.

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.

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 [§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 Approval for Off-Campus Caterer.** University will not permit any caterer other than Contractor to cater Special Events held on University premises without the prior written approval of Contractor; provided, however, if Contractor is unable to provide a particular menu item or service requested by the sponsor of the Special Event at a competitive price, then University may authorize another caterer to cater that particular Special Event without Contractor's written approval.
- 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 pay for utility service (including water, gas, and electric service, but specifically excluding telecommunication services (ref. **Section 4.3.14**)) necessary for performance of the Services. University will not be responsible for interruptions in water, gas, electric, telecommunication or other utility services. However, University will exercise reasonable diligence in pursuing the restoration of interrupted utility services;
 - 7.3.3 clean exterior walls and windows of the Space;
 - 7.3.4 provide external maintenance on buildings where the Space is situated; and
 - 7.3.5 provide routine cleaning of all grease traps, duct work, plenum chambers and roof fans within the Space.

Section 8.

Termination

- 8.1 Termination Without Cause.** This Agreement may be terminated by University *without cause* by giving Contractor not less than 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 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, and 9.19.**

Section 9.

Miscellaneous

- 9.1 Assignment and Subcontracting.** Except as specifically provided in **Schedule 15**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including [Chapter 2161, Texas Government Code](#), and 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The benefits and burdens of this Agreement are assignable by University.
- 9.2 Historically Underutilized Business Subcontracting Plan.** Contractor will use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. **Schedule 15**). Contractor will maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for payments by University under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the SPSS in accordance with 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also revoke this Agreement for breach and make a claim against Contractor.
- 9.2.1 Changes to the HSP. If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 9.6** to replace the HSP with the revised subcontracting plan.
- 9.2.2 Expansion of the Services. If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](#) before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Texas law including [Chapter 2161, Texas Government Code](#) and [34 TAC §20.285](#). University may report nonperformance under this Agreement to SPSS in accordance with 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#).
- 9.3 Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 9.4 Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#) ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that

Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

- 9.5 Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 9.6 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.
- 9.7 Force Majeure.** Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.
- 9.8 Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 9.9 Venue; Governing Law.** El Paso County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
- 9.10 Waiver.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 9.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** 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 the security controls, including 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 proportionate to the University’s risk under the Agreement based on the sensitivity of University’s Records, and no less rigorous than the standards by which Contractor protects its own confidential information, and periodically provide to University evidence that Contractor meets the security controls required under the Agreement; (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 [§552.002](#) of TPIA and [§2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 9.11.6 **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 mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: _____

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 [§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 2260](#), 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 §§[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**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants 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. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).
- 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 Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <https://www.utep.edu/compliance/conflicts-of-interest/index.html>, University's Standards of Conduct Guide available at <https://www.utep.edu/compliance/>, and applicable state ethics laws and rules available at <https://www.utsystem.edu/offices/systemwide-compliance/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.
- Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.
- 9.23 Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 9.24 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 9.25 External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement ("**External Terms**"). The External Terms are null and void and will

have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

- 9.26 EIR Environment Specifications.** Appendix A, Environment Specifications, establishes specifications, representations, warranties and agreements related to the environment specifications of EIR that Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Appendix A, Environment Specifications, are binding on Contractor. Contractor agrees to perform Services in compliance with Appendix A, Environment Specifications.
- 9.27 Security Characteristics and Functionality of Contractor's Information Resources.** Appendix B, Security Characteristics and Functionality of Contractor's Information Resources, establishes specifications, representations, warranties and agreements related to the products and services Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Appendix B, Security Characteristics and Functionality of Contractor's Information Resources, are binding on Contractor. Contractor agrees to perform Services in compliance with Appendix B, Security Characteristics and Functionality of Contractor's Information Resources.
- 9.28 Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to [Section 2054.5192, Texas Government Code](#), Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under [Section 2054.519, Texas Government Code](#) and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.
- 9.29 Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations.** Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#))*, Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 9.30 Contractor Verification Regarding Boycotting Energy Companies.** Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#))*, Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 9.31 Contractor Certification Regarding COVID-19 Vaccination.** Pursuant to Section 161.0085, *Texas Health and Safety Code (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#))*, Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

CONTRACTOR:

UNIVERSITY:

The University of Texas at El Paso

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACH:

Schedule 1 – Services

Schedule 2 – Preparation Activities and Schedule

Schedule 3 – Food Service Locations and Other Space

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

Schedule 5 – Customer Satisfaction Policy/Complaint Resolution Procedures

Schedule 6 – Cash Plan Terms

Schedule 7 – Short Term Meal Plan

Schedule 8 – Non-Traditional Board Plan

Schedule 9 – Catering Plan Terms

Schedule 10 – Concession Plan Terms

Schedule 11 – University Owned Equipment and Smallwares Inventory

Schedule 12 – Royalty Schedule

Schedule 13 – Revenue Collection Procedures

Schedule 14 – Installment and Amortization Schedule for Financial Commitment

Schedule 15 – HUB Subcontracting Plan

Appendix A- EIR Environment Specifications

Appendix B- Security Characteristics and Functionality of Contractor’s Information Resources

SCHEDULE 1

Services

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

SCHEDULE 2

Preparation Activities and Schedule

SCHEDULE 3

Food Service Locations and Other Space

1. The current Food Service Locations are as follows:

1.1	University Bookstore (Lobby):	Einstein Brothers Bagels
1.2	El Paso Natural Gas Conference Center:	Chick-Fil-A El Sazon Minero
1.3	College of Business Administration (3rd Floor):	Miner Stop
1.4	College of Health Sciences (Basement):	Sandella's
1.5	Library (Lobby):	Texas Western Café (We Proudly serve Starbucks)
1.6	Union Building East (1st Floor):	Jamba Juice/ (We Proudly serve Starbucks)
1.7	Union Building East (2nd Floor):	El Sazon Minero Express Wicked Wings Simply to Go Convenience to Go Mein Bowl/Hissho Sushi Pizza Hut Pick 'N' Shovel
1.8	College of Education (2nd Floor):	Café-a-la-Carte
1.9	Chemistry and Computer Building (Lobby):	Starbucks
2.0	College of Engineering (1st Floor):	Tech Café
2.1	Interdisciplinary Research Building (Buildout pending)	Vacant
2.2	Campbell Building	Vacant

2. Other Space – Licensed Space:

The Licensed Space consists of approximately 1,468 square feet of total floor space located at 1601 Hawthorne Street, El Paso, Texas 79902.

3. Licensed Space Square Footage:

First Floor:	Room 100 – 277 square feet
	Room 101 – 133 square feet
	Room 101A – 35 square feet
	Room 102 – 159 square feet
	Room 103 – 170 square feet
	Room 104 – 133 square feet
	Room 105 – 133 square feet
	Storage areas – 9, 9, 6, 34, 62, 20 square feet
	Basement – 288 square feet

4. Licensed Space Floor Plan:



Contractor agrees that changes will be made to the existing venues and menu choices to include alternate venues offering a variety of menu items will be made to be agreed upon by the University.

SCHEDULE 4

Rule 50303 of the Regents' Rules, Debts of Students

1. Title

Debts of Students

2. Rule and Regulation

Sec. 1 Student Responsibilities. The University of Texas System is not responsible for debts contracted by individual students or by student organizations. However, students and student organizations are expected to conduct themselves honorably in all commercial transactions. The U. T. System will not assume the role of a collection agency except for monies owed to the System, nor will the System adjudicate disputes between students and creditors over the existence or the amounts of debts.

Sec. 2 Penalties for Nonpayment. In the event of nonpayment to the U. T. System, one or more of the following actions may be taken: (a) a bar against readmission for the student; (b) withholding of the student's grades and official transcript; (c) withholding of a degree to which the student otherwise would be entitled.

3. Definitions

None

4. Relevant Federal and State Statutes

None

5. Relevant System Policies, Procedures, and Forms

None

6. Who Should Know

Administrators

Students

7. System Administration Office(s) Responsible for Rule

Office of Academic Affairs

Office of Health Affairs

8. Dates Approved or Amended

December 10, 2004

9. Contact Information

Questions or comments regarding this rule should be directed to: bor@utsystem.edu

SCHEDULE 5

Customer Satisfaction Policy/Complaint Resolution Procedures

SCHEDULE 6

Cash Plan Terms

The Cash Plan shall be finalized by Contractor and shall be acceptable to University in all respects.

SCHEDULE 7

Short Term Meal Plan

The Short Term Meal Plan shall be finalized by Contractor and shall be acceptable to University in all respects.

SCHEDULE 8

Non-Traditional Board Plan

The Non-Traditional Board Plan shall be finalized by Contractor and shall be acceptable to University in all respects.

SCHEDULE 9

Catering Plan Terms

SCHEDULE 10

Concession Plan Terms

SCHEDULE 11

University Owned Equipment and Smallwares Inventory

UNION BUILDING			
Item Description	QTY	UTEP TAG	Serial Number
1/1 x 6 in aluminum containers	9		
1/2 x 4 in plastic container			
1/4 serving pans			
12-Qt Plastic containers	5		
8 Qt- plastic containers			
Cambro adjustable shelves			
Beverage air freezer			
BKI food heater			Serial # 137225
BKI food warmer			Serial # 137280
Bowls			
Circular frying basket	5		
Circular tray			
Cleveland steamcraft power10		No.106769	
Convection express			
Crock pot			
Cutters (1 Rizza)			
Food warming			Serial # 08163251
Food warming			Serial # 121370
Food warming			Serial # 121371
Four inch serving pans			
Frying baskets	2		
Global carts and food equipment dog wagon			
Hatco Pizza warmer			Serial # 930583001
Hatco pizza warmer			Serial # 8238780128
Hobart refrigerator			
Humi-temp humified heat system			
Ice machine			
Large stainless steel mixing bowl with wheels			
Electric lemon squeezers			
Refrigerator			
Small tables	1		
Snorkel stainless steel oven			
Stainless steel 1/4 serving pans			
Stainless steel bowls			
Stainless steel grater			
Stainless steel circular serving pans			
Stainless steel colander			
Stainless steel colander with handles			
Stainless steel container wheeled cart			
Stainless steel cooking pots (different sizes)			
Stainless steel forked poker	1		
Stainless steel large stirring pot			
Stainless steel serving spoons			
Stainless steel serving tongs			
Stainless steel table w/ bottom shelf	1		
Stainless steel table w/ wooden countertop and stainless steel shelf			
Stainless steel Traulsen refrigerator			
Stainless steel victory refrigerator			
Stainless steel victory v. line with cutting board			
Stainless steel Victory warmer			
Stainless Steel Vollrath warmer			
Stainless steel fryers			
Stainless steel whisks			
Steel colanders (various sizes)			
Table with storage			
Tables			
Tables with drawers			
Stainless steel tables			
Two inch serving pans			
Two inch serving pans with holes			
Stainless steel stove			

CATERING - UNION BUILDING			
Item Description	QTY	UTEP TAG	Serial Number
Coffee cup	347		
Plastic pitcher			
Brown drink dispenser			
Boullion	320		
Homer laughlin china bowl	140		
Homer laughlin china butter plate			
Homer laughlin china saucer plate	540		
Stainless steel serving spoon			
Stainless steel tong			
Stainless steel ice scoop	7		
TEXAS WESTERN CAFE - LIBRARY			
Item Description	QTY	UTEP TAG	Serial Number
Double Door Small Fridge Model UCR48A			Serial # 6409833
Small Single Door Fridge BKB Model UCR20			Serial # 6408179
BUNN Coffee Brewer PN23400.0041			
Schaerer Espresso Machine Ambrenete			
SANDELLA'S - COLLEGE OF HEALTH SCIENCES AND SCHOOL OF NURSING BUILDING			
Item Description	QTY	UTEP TAG	Serial Number
Open Air Cooler Federal Model RSSM360SC-3			Serial # 11081566799
Turbochef Model NGCD6			Serial # NGCD6D10384
Delfield Model 18660BST			Serial # 1107150001132
Beverage-Air Model SPED60-16-2			Serial # 10001622
Beverage-Air Model SPED60-16-2			Serial No. 10001659
True refrigerator Model T-49 Unit NAK6212Z			Serial No. 7039318
Small Stainless steel table with can opener attached to it			
MINER STOP - COLLEGE OF BUSINESS ADMINISTRATION			
Item Description	QTY	UTEP TAG	Serial Number
Master Bilt-Open air cooler			Serial # PT455230
STARBUCKS - CHEMISTRY AND COMPUTER SCIENCES BUILDING			
Item Description	QTY	UTEP TAG	Serial Number
Grab&Go Cooler- Display Structural Concepts Model SB5754.3924			Serial # 587812J0232217
Grindmaster Model P-400EST			Serial # A172991
Microwave Freq Turbo Chef			Serial # NGODO3289
Delfield Model UC4048-Star			Serial # 1110152000908
Delfield Model UC4048-Star			Serial # 1110152000864
Espresso Machine Turbo Plan Mastrena Model CS2			Serial # 40-062852
Mastrena Model CS2			Serial # 40062851
True refrigerator Model TG2R-2S			Serial # 7181742
EINSTEIN'S BAGELS - UNIVERSITY BOOKSTORE			
Item Description		UTEP TAG	Serial Number
Grab&Go Cooler Model RSSN478SC-3			Serial # 09050754556
Beverage Air Model UCR34			Serial # 29308.33903
Turbo Chef Tornado			Serial # INGCO6D0472
Panasonic - Model ne - 1757R			Serial # 6A68160143
Quarts- Conventional System /Model QCS-3-95OH			Serial # TQ395010980033
Precision Brew Model PB-430			Serial # A167007P
Delfield - Specification Line Model SMF2-S			Serial #0906152001049
Delfield Specification Line Model SMRS-S			Serial # 0904152000342
Hoshizaki America Model #B-300PF			Serial # 358873M
Schaerer Espresso Machine Ambrente			
Doyon Einsteins Oven Model JA12SL			
Blendtec Smoother Model Q Series			Serial # 1CB3

EL PASO NATURAL GAS CONFERENCE CENTER KITCHEN AREA			
Item Description	QTY	UTEP TAG	Serial Number
Plastic Shelves total			
Stainless Steel Shelves Total			
Metal Cabinet			
Blodgett Zephaire Oven			Serial # 110196YA057T
Blodgett Zephaire Oven			Serial # 091097YA009T
Blodgett Zephaire Oven			Serial # 091007YA010B
Blodgett Zephaire Oven			Serial # 110196YA059B
Warmer model FEW – TS-1826-18			Serial #02046423
Speed rack			
Large stainless steel tables			
Medium stainless steel tables			
Small stainless steel tables			
Small metal shelf			
Hobart Small Mixer model A200			serial # 11-254-863
Hobart Large Mixer Model H-600			Serial #1542989
EL SAZON MINERO - EL PASO NATURAL GAS CONFERENCE CENTER			
Item Description	QTY	UTEP TAG	Serial Number
Sandwich table mega top unit Model MST-48-18			
Fyer Anets Silverline Model SLG40			
Griddle Heavy Duty 36" Model C836-1			
Heated cabinet Metro C569-NFS-U			
Tortilla dough press Model DoughXpress TXM-20			
Decorative heated lamp Model Hatco DL-400-RL			
Stainless steel table 72" Model T3072SE			
Stainless steel table 96" Model T3072SE			
Plastic Shelving units Cambro CBU246072V4580			
Countertop Griddle Vulcan VCRG48-T			
Stainless steel equipment stand Model Eagle T2448SGS			
Food processor Model Robot Coupe R2 Dice Ultra			
CHICK-FIL-A - EL PASO NATURAL GAS CONFERENCE CENTER			
Item Description	QTY	UTEP TAG	Serial Number
Single door fridge Traulsen T41761J18			RLT132WUT-FHS
Fridge Traulsen T47519L18			UHT60-LR
Salad fridge Traulsen T39280118			TSD66HT
Ice Maker Follet K66865			0D15215N
Fridge double door Traulsen T88662G08			RE232N-ZCF01
Fryer Henny Penny 500C			AA1810102
Fryer Garland Commercial CXPB12			1908100102553
Range Top Oven BYCF			RT301018A0052
Tomato Slicer			29419774449
Coffee Maker Curtis TP2S-10A3140			13862819
Tea Brewer TCTT10040			13888670
Milk Shake Maker KanPak CDG211			21105-01417
Ice Cream Machine		163004	
Lemonade Machine			
Open Waffle Fryer Henny Penny 0E-100			GC011JJ
Open Waffle Fryer OFE-32			BA1807006
STORAGE - EL PASO NATURAL GAS CONFERENCE CENTER			
Item Description		UTEP TAG	Serial Number
BIB Metal Stand			
Bread Cabinet			
TRUE Prep Line –Model QA-60-24M-B /double door fridge			Serial # 3384470
TRUE Prep Line – Model QA-48-18M-D double door fridge			Serial # 3536136
Exhaust Extractor over the Toaster oven			
Small Warmer American Panamaric Ware Company Model W-3V			Serial # 0502D06720
Amana Microwave Model RCS10D			Serial # 11186581CP
Holman Oven Model QT14			Serial #13521609-0803
Mr. Induction Electric Stove Model SR-1151B-1W			Serial # 03051924
Stainless Steel Tables			
Stainless Steel Racks			
Blodgett Pizza Oven Model 1060B-S			Serial #091097TA011T
Delfield Single Door Fridge Model 6025-S			Serial 118079-T
TRUE Prep Line Double Door Model TSSU-60-24m			Serial # 117986
Small Stainless Steel Table			
Stainless Steel Rack			

SCHEDULE 12

Royalty Schedule

SCHEDULE 13

Revenue Collection Procedures

With the exception of the Retail Plan, Contractor will process all cash sales through Contractor's POS.

Contractor will process all Retail Plan Cash sales through Contractor's POS.

Contract will provide all declining balance sales through the Card System utilizing the University POS.

Contractor will account for all Retail Plan, Catering Plan, Short Term Meal Plan, non-traditional board plan, credit card, and other credit sales in a manner acceptable to University and consistent with generally accepted account principles.

Contract will adhere to appropriate cash handling procedures consistent with The University Texas System policy UTS166 located at: <https://www.utsystem.edu/sites/policy-library/policies/uts-166-cash-management-and-cash-handling-policy>

SCHEDULE 14

Installment and Amortization Schedule for Financial Commitment

Vendors to provide amortization for their capital investment in their proposal

SCHEDULE 15

HUB Subcontracting Plan

Appendix A
EIR Environment Specifications

Appendix B

Security Characteristics and Functionality of Contractor's Information Resources

APPENDIX THREE

HUB SUBCONTRACTING PLAN

Proposer must submit a completed HUB Subcontracting Plan with its proposal in accordance with Section 2.5 of the RFP.

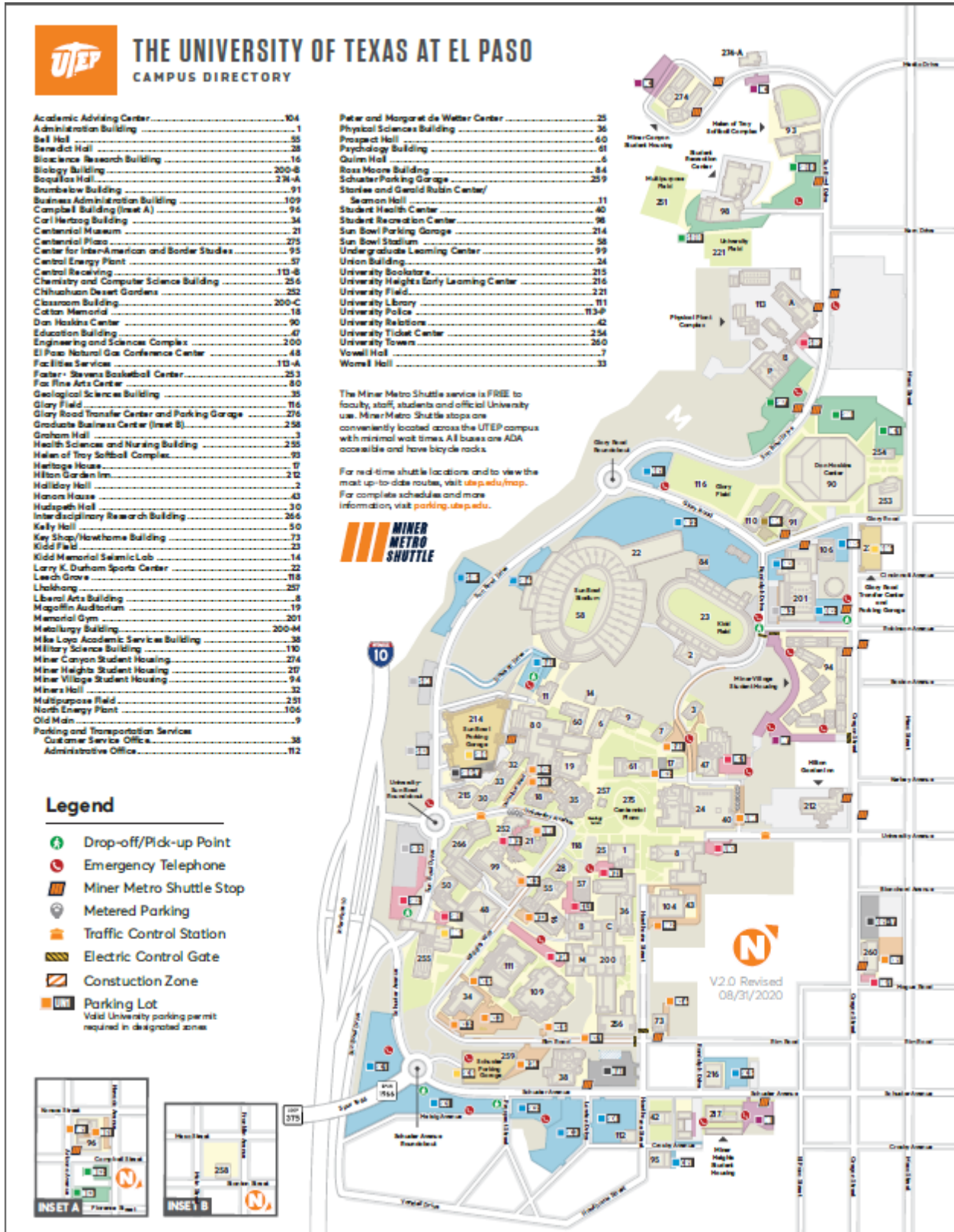
The HUB Subcontracting Plan is provided in Sourcing Manager, University's electronic procurement system, at <https://adminapps.utep.edu/sourcing/>.

For more information about Sourcing Manager, Proposer may review FAQ's and the Solicitation Manual at www.sourcingmanager.utep.edu.

APPENDIX FOUR

CAMPUS MAP

<https://www.utep.edu/map/>



APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities. Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants 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. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).

APPENDIX SIX

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

University is primarily a **Microsoft** products environment.

Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).
 - A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
 - B. Operating System and Version:
 - C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
 - D. Application Server:
 - E. Database:
 - F. Other Requirements: Are any other hardware or software components required?
 - G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
 - H. Storage: What are the space/storage requirements of this implementation?
 - I. Users: What is the maximum number of users this configuration will support?
 - J. Clustering: How does the EIR handle clustering over multiple servers?
 - K. Virtual Server Environment: Can the EIR be run in a virtual server environment?
2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:
 - A. Describe the audit standards of the physical security of the facility; and
 - B. Indicate whether Proposer is willing to allow an audit by University or its representative.
3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?
4. If the EIR requires special client software, what are the environment requirements for that client software?
5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.
6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?

3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

Accessibility Information

Proposer must provide the following, as required by [1 TAC §213.38\(b\)](#):

1. Accessibility information for the electronic and information resources (**EIR**)¹ products or services proposed by Proposer, where applicable, through one of the following methods:
 - A. URL to completed Voluntary Product Accessibility Templates (**VPATs**)² or equivalent reporting templates;
 - B. accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
 - C. URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

¹ Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(6\)](#).

² Voluntary Product Accessibility Templates are defined in [1 TAC §213.1 \(19\)](#). For further information, see this <https://www.itic.org/policy/accessibility/vpat> provided by the Information Technology Industry Council.

APPENDIX SEVEN

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SEVEN** will be incorporated into the Agreement.

"Information Resources" means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

"University Records" means records or record systems that Proposer (1) creates, (2) receives from or on behalf of University, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information (**PHI**) subject to Health Insurance Portability and Accountability Act (**HIPAA**) of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act (**FERPA**)).

General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4**) to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

Complete the following additional questions if the Information Resources will be hosted by Proposer:

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?
7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?

12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

Access Control

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.
5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Complete the following additional questions if Information Resources will be hosted by Proposer:

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?
8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Use of Data

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?
2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records?
3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?
4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

Data Transmission

1. Do Information Resources encrypt all University Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard University Records in transit and at rest?

Complete the following additional questions if Information Resources will be hosted by Proposer:

2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.
3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

Notification of Security Incidents

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.
2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.
3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

Compliance with Applicable Legal & Regulatory Requirements

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.
2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.
3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

APPENDIX EIGHT

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample of the Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](#), Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	Must file online at www.ethics.state.tx.us/File
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is no Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.

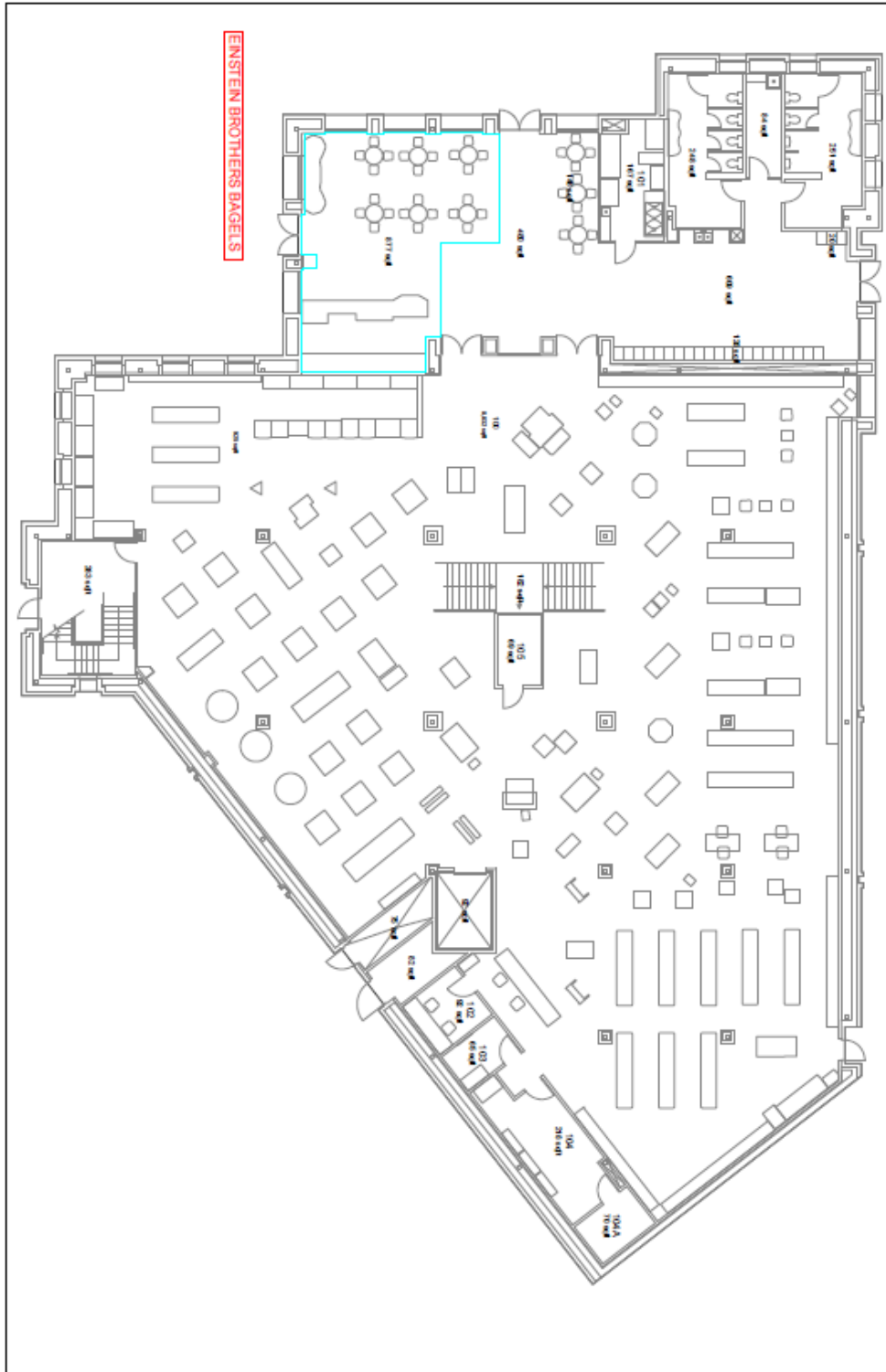
Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

APPENDIX NINE

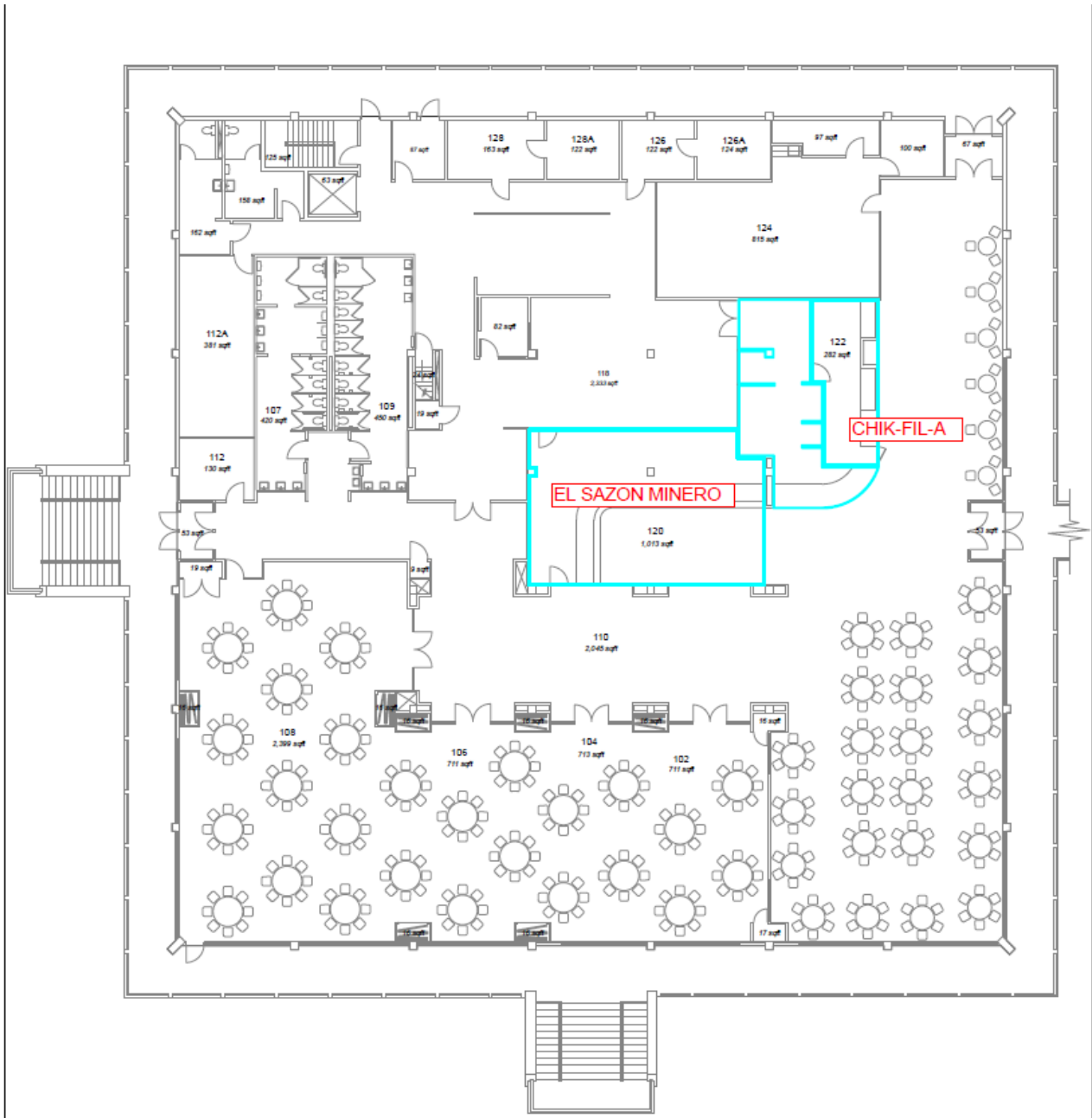
FLOOR PLANS FOR FOOD SERVICE LOCATIONS

University Bookstore (Lobby)
Einstein Brothers Bagels

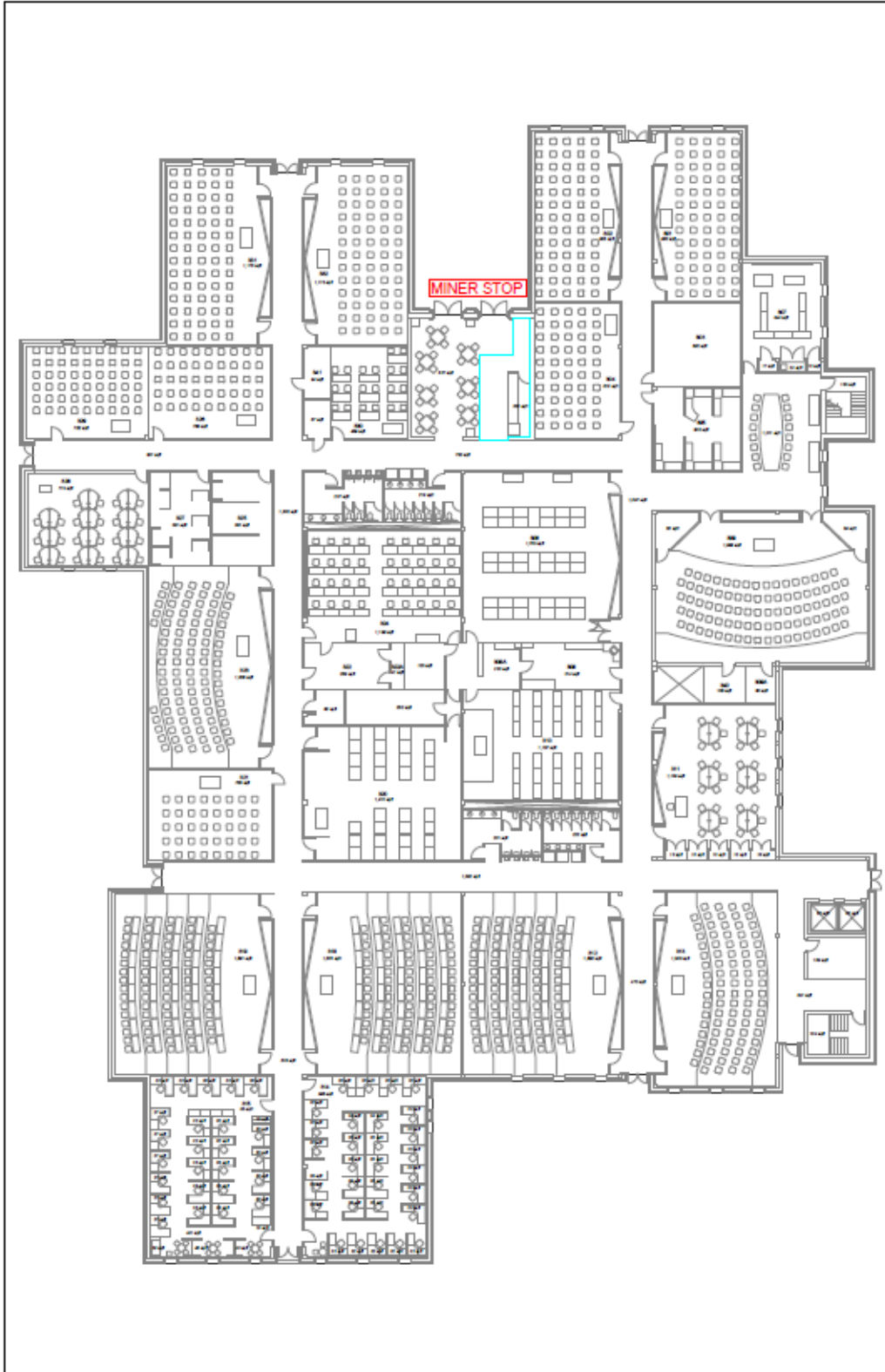


(01_) First Level
University Bookstore

El Paso Natural Gas Conference Center
Chick-Fil-A/ El Sazon Minero

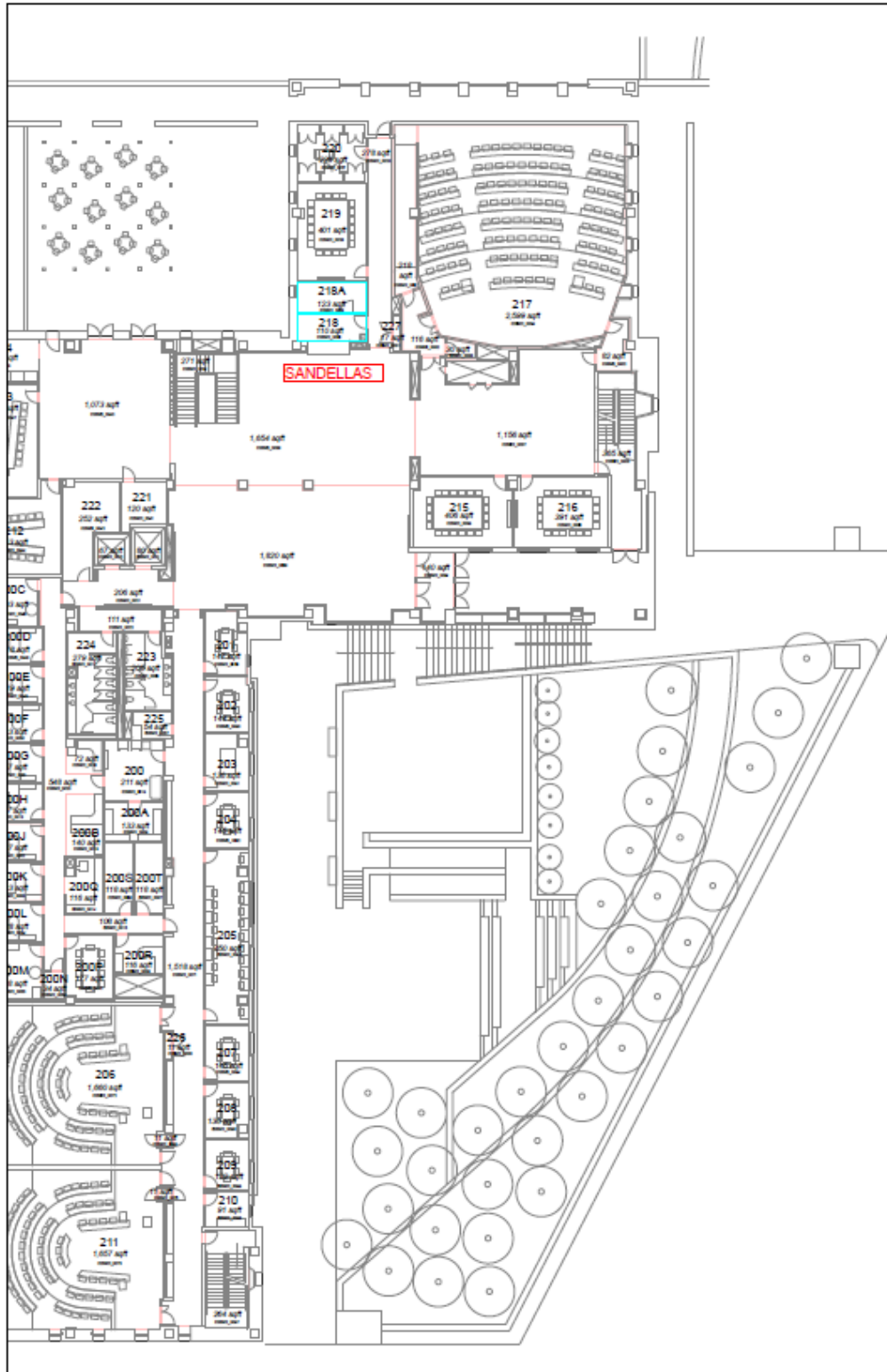


College of Business Administration (3rd Floor)
Miner Stop To Go



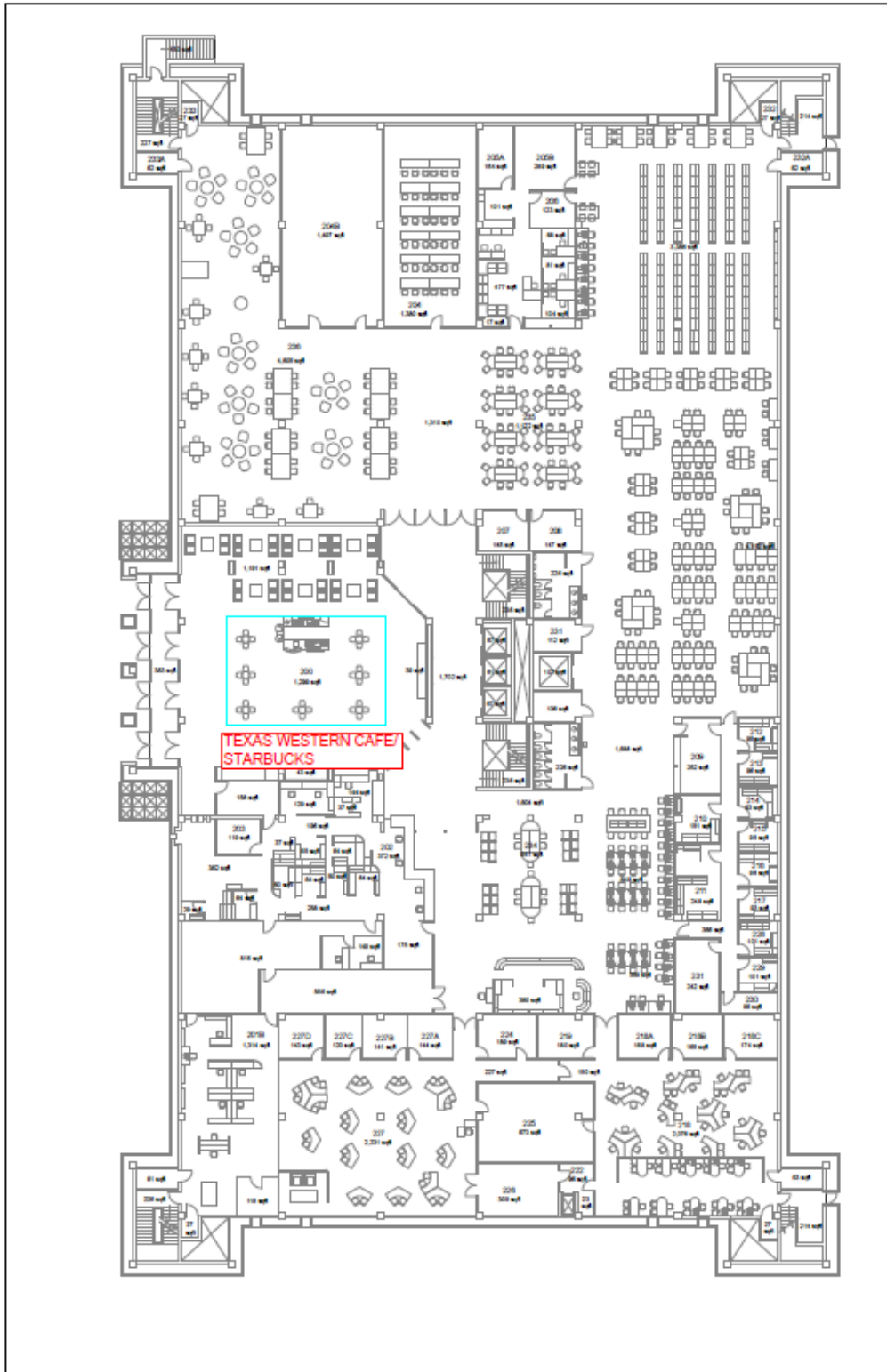
(03_) Third Level
Business Administration Building

College of Health Sciences (Basement)
Sandella's



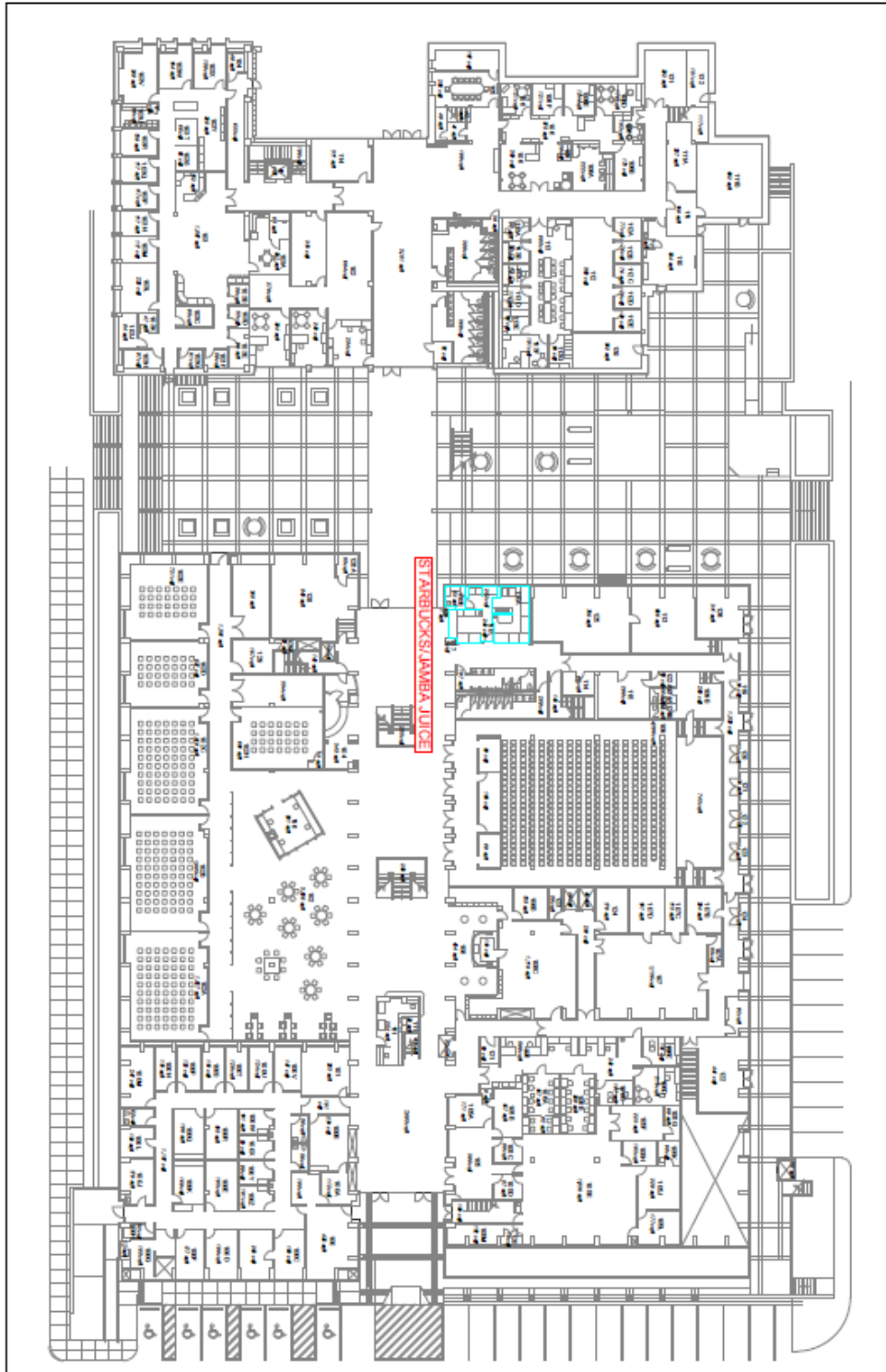
(02_) Second Level
Health Sciences & Nursing Building

Library (Lobby)
Texas Western Café/Starbucks (We Proudly Serve)



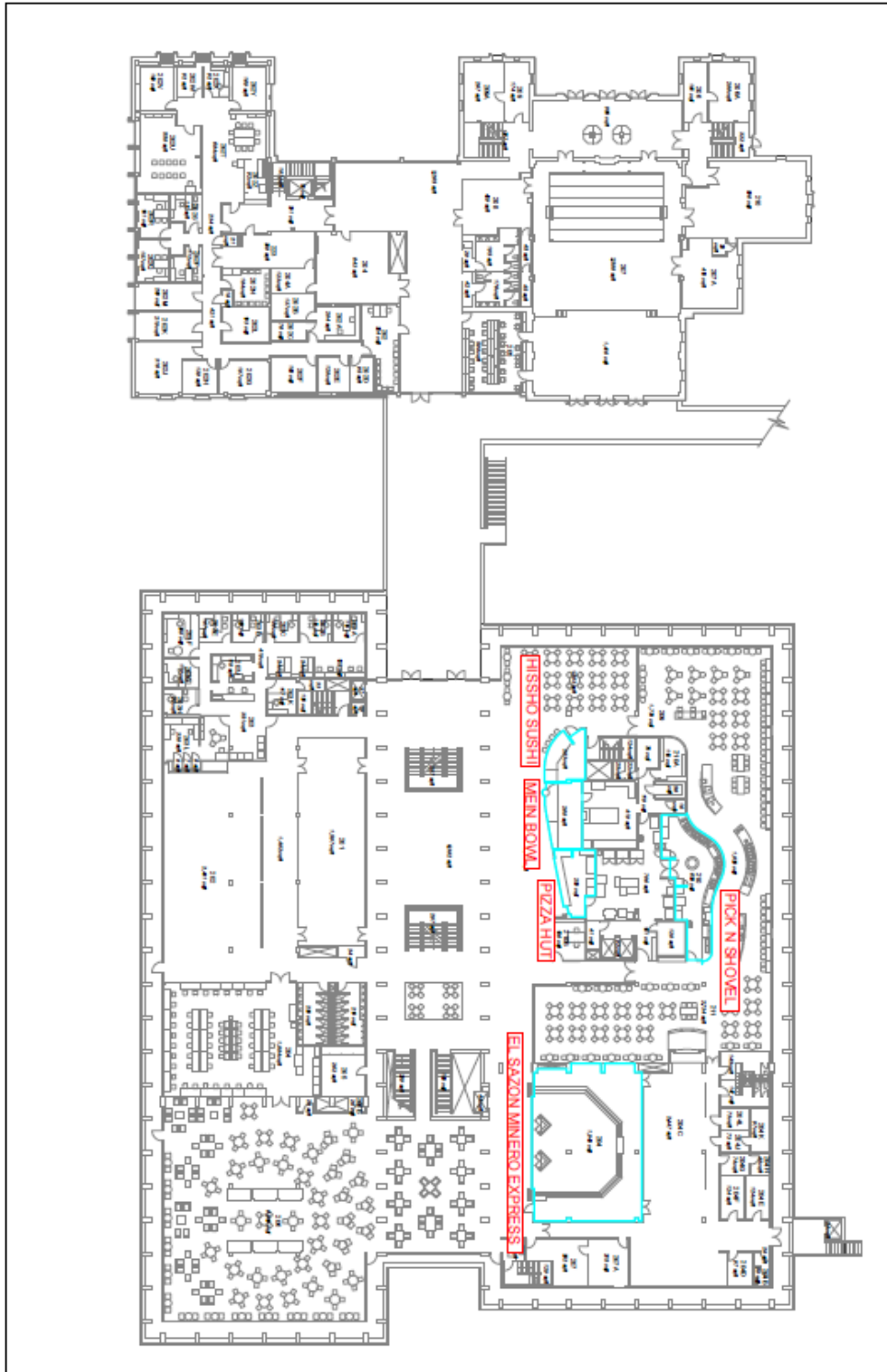
(02_) Second Level
Library

Union Building East (1st Floor)
Jamba Juice/Starbucks (We Proudly Serve)



(01_) First Level
Union Complex

Union Building East (2nd Floor)
EI Sazon Minero Express/Wicked Wings/Simply to Go/Mein Bowl/Hissho Sushi/Pizza Hut/Pick N Shovel



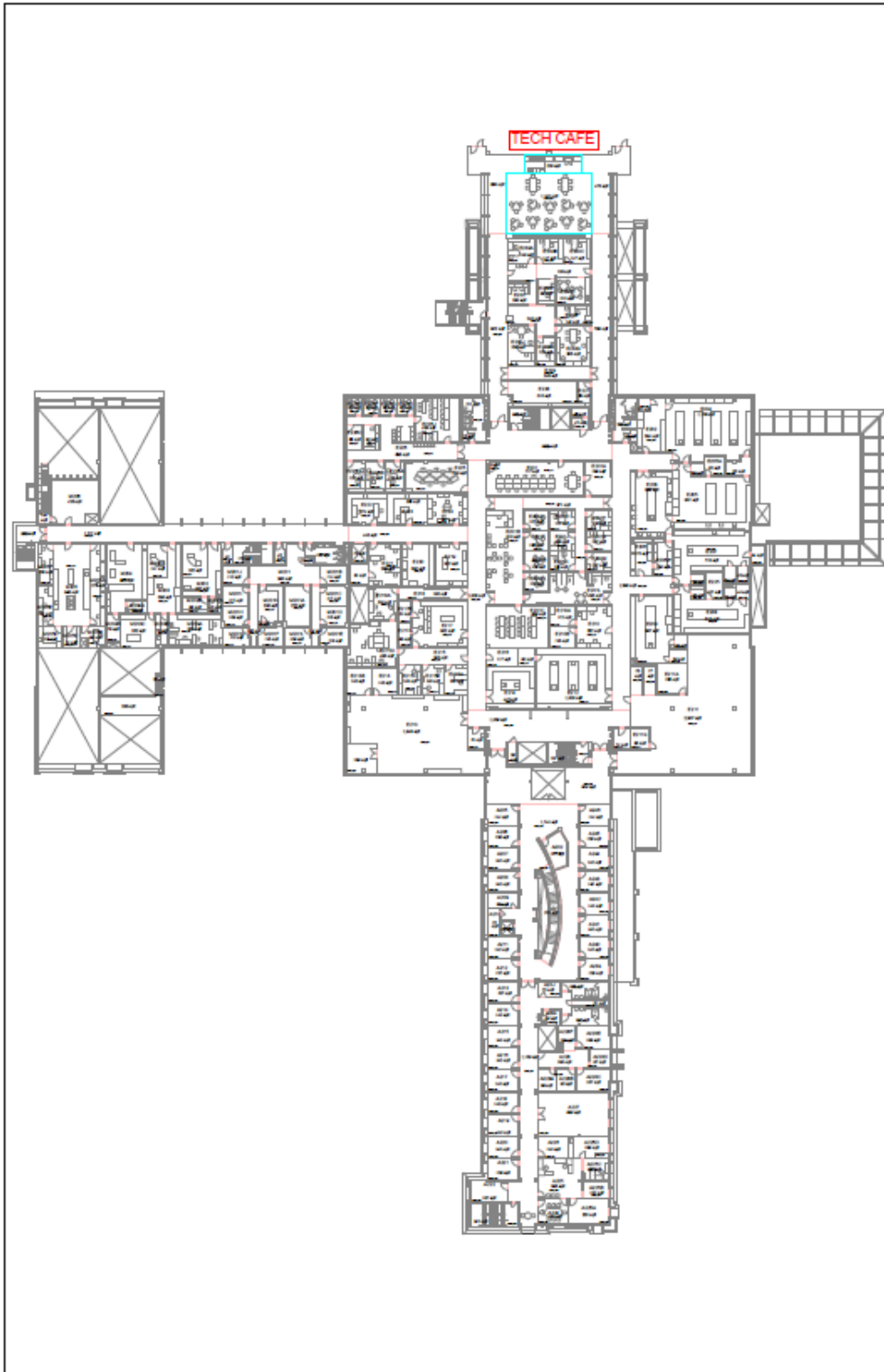
(02_) Second Level
Union Complex

College of Education (2nd Floor)
Café a la Carte



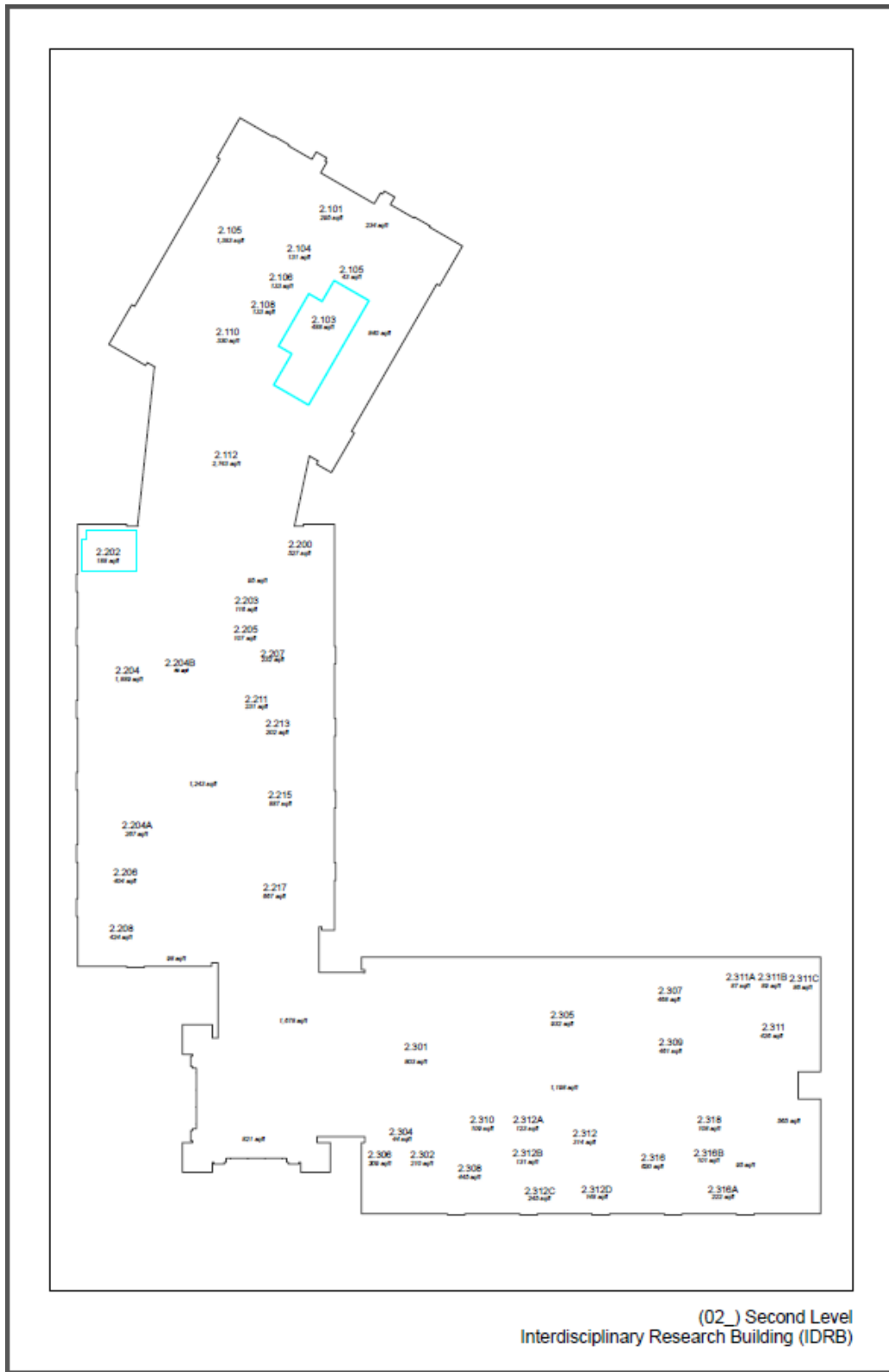
(02_) Second Level
Education Building (0047)

College of Engineering (1st Floor)
Tech Cafe



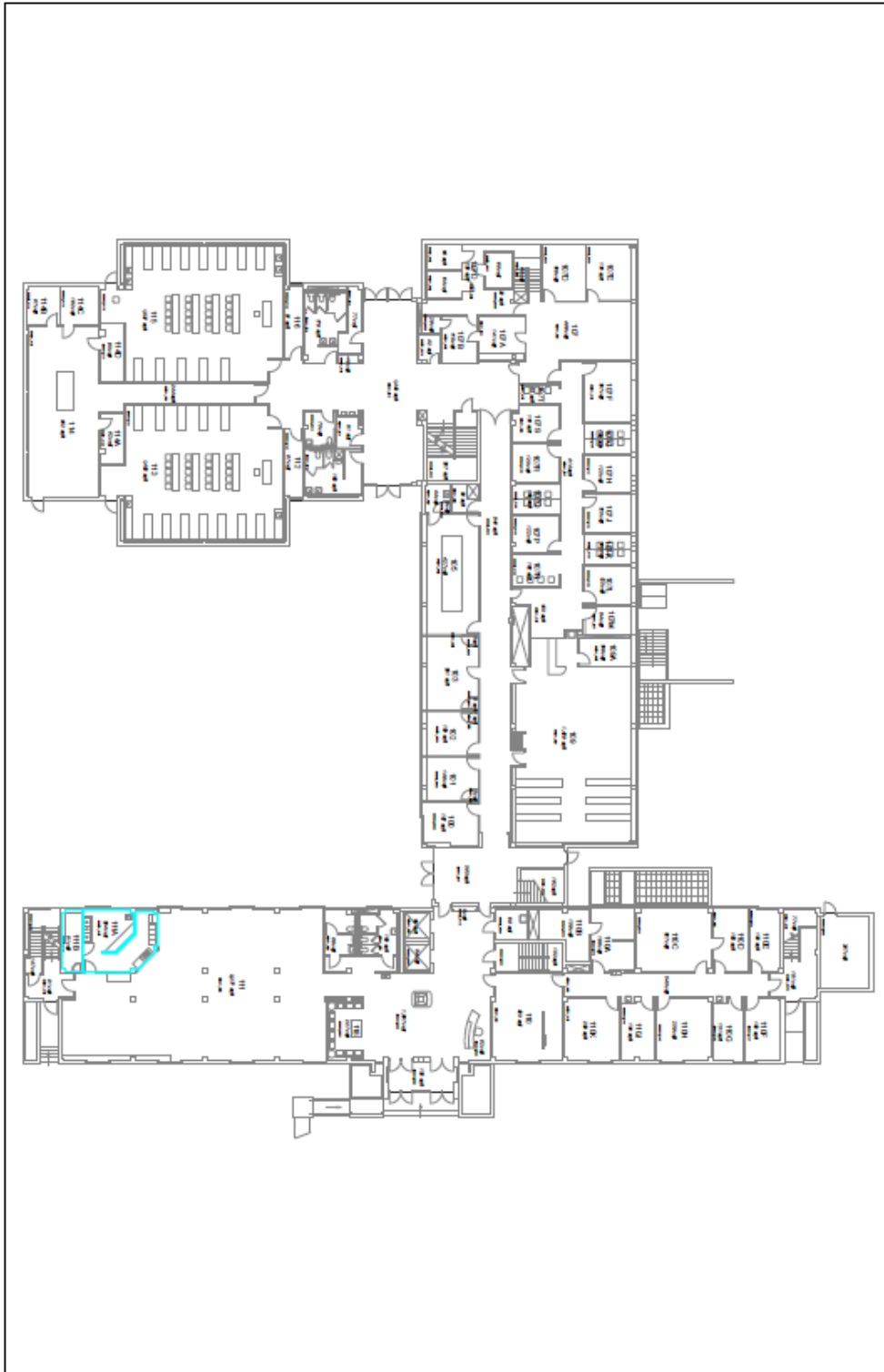
(02_) Second Level
Engineering Building

**Interdisciplinary Research Building
(Buildout Pending-Vacant)**



(02_) Second Level
Interdisciplinary Research Building (IDRB)

**Campbell Building
(Vacant)**



(01_) First Level
Campbell Building

APPENDIX TEN

UNIVERSITY FOOD SERVICE SURVEY

Food Services Survey distributed to students, faculty and staff in the fall of 2020

Survey Facts

- 6,050 responses received
 - 4,826 – Students
 - 84.29% of Proposers are full time students
 - 1,224 – Faculty and Staff

Survey Responses Breakdown

- **Type of Food Venue** (3,792 responses)
 - Quick-Service Food Venue 17.47%
 - Food Court/Market-Style Dining 14.54%
- **On-Campus Food Purchase** (5,249 responses)
 - 1-3 times a week 62.53%
- **Venue Preferences on Campus** (4,162 responses)
 - Chick-Fil-A 9.83%
 - Panda Express 9.72%
- **Food Type** (5,249 responses)
 - Smoothies 8.84 %
 - Mexican 8.46%
- **Offer Extended Hours of Operation** (Beyond 5:00 p.m.)
 - Extremely Important 34.29%
- **Meal Plan**
 - Student Responses -Consider Purchasing a Meal Plan (5,389 responses)
 - Maybe 39.84%
 - Yes 23.08%
 - Type of Meal Plan (3,359 responses)
 - Block of 25 meals 84.85%
 - Reside on Campus if Required to Purchase Meal Plan (171 student responses)
 - Maybe 40.94%
- **Wide Variety of Food Offerings at One Location** (5,145 responses)
 - Extremely important 40.25%
 - Very important 30.11%
- **Sustainability** (4,933 responses)

- Recycling, Alternative Fuel 51.12%
- Energy Conservation 42.92%
- Green Building/LEED Certification 42.66%