



*North Carolina A&T State University
1601 E. Market Street
Greensboro, North Carolina 27411*

IMPORTANT BID ADDENDUM

FAILURE TO RETURN THIS BID ADDENDUM IN ACCORDANCE WITH INSTRUCTIONS MAY SUBJECT YOUR BID TO REJECTION ON THE AFFECTED ITEM(S).

BID Number:	59-P2383	SOLICITATION:	Dining Services Management
ADDENDUM Number:	#1	USING AGENCY:	North Carolina A&T State University
PURCHASER:	Martinique "Nikki" Williams	OPENING DATE/TIME:	April 28, 2024 @ 3:00 pm

INFORMATION

This **addendum** serves to provide a draft copy of the draft Master Services Agreement

See attached Copy of Draft MSA

Execute Addendum:

BIDDER: _____

ADDRESS (CITY & STATE): _____

AUTHORIZED SIGNATURE: _____ DATE: _____

NAME and TITLE (Typed): _____

**DINING SERVICES MANAGEMENT
MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is made by and between North Carolina Agricultural and Technical State University, a member of the University of North Carolina System, having its primary location at 1601 East Market Street, Greensboro, North Carolina 27411, herein referred to as "University", and _____ (SUPPLIER) having its primary location at ----- who both parties agree as follows:

1. INITIAL TERM

The term of this Agreement ("Agreement") shall be for a period commencing July 1, 2025 on and terminating on June 30, 2035, unless extended by both parties or earlier terminated per the Termination provisions set forth herein.

2. EXTENSION

At the end of the Agreement's initial term, the University shall have the option, in its sole discretion, to renew the Agreement on the same terms and conditions for up to five (5) additional one-year terms. The University will give the SUPPLIER written notice of its intent to exercise each option no later than ninety (90) days before the end of the Agreement's then-current term.

3. TERMINATION

- a) Either Party may terminate this Agreement for any reason, by providing at least (90) calendar days advance written notice to the other Party, with the termination day for scheduled Service for the then-current academic year unless otherwise mutually agreed by the Parties. Each academic year ends on June 30th. Supplier may not terminate this Agreement pursuant to this Section with an effective termination date earlier than July 1, 2027.
- b) If either Party breaches a provision of the Agreement (hereafter "Cause"), the non-breaching Party may give the other Party written notice of such Cause or breach. If the Cause or breach is fully cured within thirty (30) calendar days ("Cure Period"), the notice shall be null and void. If such Cause event is not fully cured within the Cure Period, the Party giving notice of Cause shall have the right to terminate this Agreement thereafter, by giving written notice to the other Party. Such notice will specify the termination date, which shall not be less than five (5) days from the date such notice is provided.
- c) University may terminate the Agreement, without providing any Cure Period in the event it has given SUPPLIER three written notices of breach within any consecutive two-year period of the Agreement.
- d) If at any time a voluntary petition in bankruptcy shall be filed against either Party and shall not be dismissed within thirty (30) days, or if either Party shall take advantage of any insolvency law, or if a receiver or trustee of any of a Parties' property shall be appointed and such appointment shall not be vacated within thirty (30) days, the other Party shall have the right, in addition to any other rights of whatsoever nature that it may have at law or in equity, to terminate this Agreement by giving thirty (30) days' notice in writing of such termination.
- e) In the event SUPPLIER has been identified as the proximate cause of a foodborne illness outbreak on the N.C. A&T campus, SUPPLIER shall pay the University the total amount of damages caused by the outbreak. Additionally, N.C. A&T shall have the right to issue notice of termination of this Agreement for convenience upon thirty (30) days' written notice.
- f) Except as otherwise agreed by N.C. A&T in writing, SUPPLIER's termination of a SOW will be considered SUPPLIER's termination of the Agreement in its entirety.
- g) If, after the execution of this Agreement, it is determined by the University's Division of Legal Affairs, Risk and Compliance that this Agreement or any of its provisions may violate or does any law, rule, or regulation, the Parties agree to renegotiate the provision(s) so that it (they), as well as the entire Agreement, complies with the law, rule or regulation. If the Parties are unable to come to an agreement within thirty (30) calendar days, the University may, upon sixty (60) days written notice to SUPPLIER, terminate this Agreement.
- h) Commencing with the date notice of termination is issued by either Party, and continuing through

SUPPLIER'S final day of operations, the following provisions shall apply:

- i. Upon the effective date of Notice of Termination for Cause, SUPPLIER shall cease all activity. SUPPLIER has ninety (90) days from the date of termination to submit final invoices for final satisfactory Services under the Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after ninety (90) days from the date of termination.
- ii. All undisputed outstanding invoices shall immediately become due and payable thirty (30) days after the date notice of Termination for Cause is issued. In the event an invoice is disputed, the Parties shall work in good faith to resolve such dispute within 30 days.
- iii. In the event this Agreement is Terminated for Cause or expires, unless otherwise mutually agreed to in writing by the Parties, SUPPLIER shall not be responsible for the provision of Services scheduled to occur after the date of Termination for Cause or the expiration date of this Agreement.
- iv. N.C. A&T shall fulfill or shall cause its successor supplier to fulfill, SUPPLIER'S obligations under any University approved third party contract engaged by SUPPLIER to provide services for Catering events occurring after the termination or expiration of this Agreement.

4. SCOPE

SUPPLIER shall manage and operate food and beverage services ("Dining Services" or "Services") on the N.C. A&T campus as outlined in one or more Scopes of Work ("SOW") attached as Exhibit A. In so doing, SUPPLIER agrees to comply with all provisions included in a SOW and its Attachments. Unless otherwise expressly stated herein, this Agreement does not confer on SUPPLIER the right to be the exclusive provider of the Services to N.C. A&T.

5. FINANCIAL TERMS AND CONDITIONS

Financial Terms and Conditions shall be attached as Exhibit _____ as the applicable SOW.

6. MODIFICATIONS OR AMENDMENTS

This Agreement shall not be modified, altered, or changed except by mutual written agreement duly executed by an authorized representative of each party to this Agreement.

7. INDEPENDENT CONTRACTOR

All SUPPLIER employees furnishing services to N.C. A&T shall be deemed employees solely of SUPPLIER and shall not be deemed for any purpose whatsoever employees or agents of, acting for or on behalf of N.C. A&T. SUPPLIER shall perform all services as an independent contractor and shall discharge all its obligations and liabilities as such. No acts performed, or representations, whether oral or written, made by SUPPLIER to third parties shall be binding upon N.C. A&T.

8. INDEMNIFICATION AND INSURANCE

- a) SUPPLIER shall indemnify, defend, and hold harmless N.C. A&T, the State of North Carolina, and the N.C. A&T Board of Trustees, and each of their respective trustees, directors, officers, employees, representatives, and volunteers (collectively "Parties") from and against any and all liability, damages, costs or losses, and from and against any and all claims for damages, including damages for bodily injury or death, sustained by any person, including the employees of SUPPLIER, and from and against any and all damages to property, including loss of use, and including property of N.C. A&T, caused by or arising out of or alleged or claimed to have been caused by or to have arisen out of the negligence or willful misconduct of SUPPLIER or its agents or employees in connection with SUPPLIER activities pursuant to this Agreement; or (b) the breach of or failure to perform any provision of this Agreement by SUPPLIER, its employees or agents.
- b) SUPPLIER shall at its own cost and expense defend any such claim, suit, action or proceeding, whether groundless or not, which may be commenced against the Parties by reason thereof, or in connection therewith, and SUPPLIER shall pay any and all judgments which may be recovered in any such claim, suit, action or proceeding, and defray any and all expenses, including costs and attorney's fees, which may be incurred in connection with or by reason of such claim, suit, action or proceeding.

- c) N.C. A&T shall indemnify, defend, and hold SUPPLIER harmless from and against all liability, damages or losses, and from and against any and all claims for damages, including for bodily injury or death, which may be sustained or claimed to be sustained by any person including the employees of N.C. A&T, and from and against any and all damages to property, including loss of use, and including property of the N.C. A&T, caused by or arising out of or claimed to have been caused by or to have arisen out of the negligence or willful misconduct of N.C. A&T or its agents or employees in connection with N.C. A&T's performance of this Agreement.
- d) The right of a Party (the "Indemnified Party") to indemnification under this Agreement shall be conditioned upon the following: prompt written notice to the Party obligated to provide indemnification (the "Indemnifying Party") of any claim, action or demand for which indemnity is claimed; control of the investigation, preparation, defense and settlement thereof by the Indemnifying Party; and reasonable cooperation by the Indemnified Party, at the Indemnifying Party's request and expense, in the defense of the claim. The Indemnified Party shall have the right to participate in the defense of a claim with counsel of Indemnifying Party's choice and at its expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), settle, compromise or consent to the entry of any judgment that imposes any liability upon, obligates in any way, or in any way disparages, the Indemnified Party.
- e) Consequential Damages. WITH THE EXCEPTION OF WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES (INCLUDING PUNITIVE DAMAGES AND LOST PROFITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9. INSURANCE

- a) SUPPLIER shall always maintain in force during the term of this Agreement the following insurance, it being understood that minimum required policy limits may be provided through a combination of primary and excess insurance:
 - i) Worker's Compensation: Statutory limits in accordance with the appropriate State of North Carolina, including Employer's liability (with minimum \$1,000,000 per accident for bodily injury or disease).
 - ii) Commercial General Liability Including Products and Completed Operations Liability: No less than \$2,000,000 combined single limit for bodily injury and property damage, per occurrence and \$5,000,000 in aggregate.
 - iii) Auto Liability: Coverage for owned, non-owned, and hired vehicles, \$1,000,000 per accident for bodily injury and property damage, for vehicles used on the N.C. A&T campus or otherwise in fulfillment of SUPPLIER'S obligations under this Agreement.
- b) Liquor Liability: SUPPLIER will be required to provide Liquor Liability insurance coverage in an amount equivalent to \$2,000,000 (USD or local equivalent) each common cause and \$6,000,000 aggregate.
- c) Except for Workers' Compensation, all insurance required herein shall include N.C. A&T, the Trustees, and the State of North Carolina as additional insureds. SUPPLIER shall provide a Certificate of Insurance to N.C. A&T evidencing the insurance coverage required upon execution of this Agreement, prior to the expiration date of any policy (showing renewal), and whenever requested by N.C. A&T. These coverages and limits are to be considered minimum requirements under this Agreement and shall in no way limit the liability or obligations of SUPPLIER under this Agreement.
- d) For any claims related to this Agreement, where N.C. A&T is included as an additional insured, SUPPLIER'S insurance coverage shall be primary insurance coverage. Any insurance or self-insurance maintained by N.C. A&T or any of the Indemnified Parties shall be excess of SUPPLIER'S insurance and shall not contributory to it.
- e) The required insurance must be in effect prior to commencement of the Agreement and it or a successor policy must be in effect for the duration of the Agreement. Maintenance of proper insurance coverage is a material element of the Agreement. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by N.C. A&T as a material breach of Agreement and subject the

Agreement to notice of breach.

- f) SUPPLIER or its insurer agrees to provide N.C. A&T with thirty (30) days prior written notice of cancellation of any of the above insurance. N.C. A&T shall have the right to issue notice of breach of this Agreement on account of any such termination.
 - l) If any of the required insurance is on a "claims made" basis and is cancelled during the term of this Agreement, SUPPLIER agrees to purchase full coverage or prior acts coverage so that such insurance is in *effect* from the date the Agreement is executed to three (3) years after its termination.
 - m) N.C. A&T shall maintain, or cause to be maintained, a system of coverage to keep the buildings and/or locations assigned for SUPPLIER'S use in performing its Services ("Premises"), and all N.C. A&T property contained therein insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance, to the extent permitted by law. The system of coverage may include purchased insurance, self-insurance, or a combination thereof.
 - n) The Parties waive all rights of recovery against each other and their subsidiaries, officers, directors, trustees, volunteers and employees, including subrogation rights, for such loss or damage to the waiving Party.
 - o) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES CONSTITUTING LOST PROFITS, SUFFERED BY EITHER PARTY UNDER THIS AGREEMENT.
- 2) PRESENCE ON N.C. A&T CAMPUS
- a) SUPPLIER agrees that all persons working for or on behalf of SUPPLIER whose duties bring them upon the Premises shall obey the rules and regulations that are established by N.C. A&T and shall comply with the reasonable directions of the institution's officers.
 - b) SUPPLIER shall be responsible for the acts of its employees and agents acting within the scope of their employment while on the Premises. Accordingly, SUPPLIER agrees to take necessary measures to prevent injury and loss to persons or property located on the Premises. SUPPLIER shall be responsible for all damages to persons or property caused by SUPPLIER or any of its agents or employees. SUPPLIER shall promptly repair, to its pre-existing condition (or otherwise, to the satisfaction of N.C. A&T), any damage that it, or its employees or agents, may cause to the Premises or equipment; on SUPPLIER'S failure to do so, N.C. A&T may repair such damage and have the option to deduct the cost thereof from amounts otherwise payable to SUPPLIER, or SUPPLIER shall reimburse N.C. A&T within ten (10) days of request by N.C. A&T for the cost of repair.
 - c) SUPPLIER shall perform the Services without unreasonably interfering in any way with the activities of N.C. A&T faculty, students, staff, or visitors.
 - d) SUPPLIER, its employees and vendors shall consistently comply with all N.C. A&T parking and traffic regulations.
- 3) USE OF N.C. A&T FACILITIES
- a) SUPPLIER and its employees or agents shall have the right to use only those N.C. A&T facilities that are necessary to perform services under this Agreement and shall have no right of access to any other N.C. A&T facilities except to the extent such facilities are otherwise open to the public.
 - b) SUPPLIER shall neither use nor allow its personnel to use any part of N.C. A&T Premises or property for any purpose other than the performance of the Services under this Agreement.
 - c) N.C. A&T may make reasonable regulations for use and occupancy of the Premises and shall give SUPPLIER written notice thereof. N.C. A&T's authorized representatives shall have access to the Premises at all times.

4) SURRENDER OF PREMISES AND EQUIPMENT

N.C. A&T/SUPPLIER Master Agreement

- a) Upon termination or expiration of this Agreement, SUPPLIER shall vacate all parts of the N.C. A&T Premises it occupies, remove its owned furniture, fixtures, equipment and supplies, and restore the building to a clean and well-repaired state, reasonable wear and tear excepted. Failure to do so may result in the condition being remedied by N.C. A&T at SUPPLIER'S expense.

5) HEALTH DEPARTMENT SHUTDOWN

- a) In the event of a health department shutdown that has been caused by SUPPLIER'S failure to fulfill its obligations under this Agreement, including, but not limited to Supplier being identified as the proximate cause of a foodborne illness on the N.C. A&T campus, then in addition to its other obligations under this Agreement, SUPPLIER shall develop a response plan within 12 hours in consultation with N.C. A&T and any other appropriate health experts and governmental authorities, which will include SUPPLIER'S engagement of its Quality Assurance Team and a third-party public relations firm at SUPPLIER'S cost.
- b) In the event of a health department shutdown that has been caused by N.C. A&T's failure to fulfill its obligations under this Agreement, N.C. A&T shall act immediately to remedy the conditions that resulted in the shutdown.
- c) N.C. A&T and SUPPLIER agree that if a health department shutdown has been caused by both N.C. A&T's and SUPPLIER'S failure to fulfill their obligations under this Agreement, the Parties will proactively work together to remedy the conditions that resulted in the shutdown and N.C. A&T may require SUPPLIER'S engagement of its Quality Assurance Team at SUPPLIER'S cost, and a third-party public relations firm, cost of which to be shared by N.C. A&T and SUPPLIER.

6) RESPONSIBILITY FOR PROPERTY AND ASSETS

- a) N.C. A&T shall bear no responsibility for the loss, theft, mysterious disappearance of, or damage to, regardless of the cause, merchandise, equipment, inventory, tools, materials, supplies, and all other personal property of SUPPLIER or its employees, subcontractors, or materialmen. SUPPLIER shall take reasonable precautions to protect its property and assets left on the Premises.

7) SECURITY

- a) No security staff may be employed by SUPPLIER without the prior consent of N.C. A&T.

8) UTILITY SERVICES

- a) N.C. A&T shall make electricity, HVAC, potable water, sewer drain, and natural gas available for SUPPLIER'S use in appropriate areas.
- b) N.C. A&T shall maintain utility services and make every reasonable effort to avoid their disruption. In the event any utility service must be interrupted for repair or modification, N.C. A&T shall provide SUPPLIER as much advance notice as possible. In the event of any such interruption or any disruption of utility services, N.C. A&T shall take reasonable steps to restore them promptly but shall not be responsible for any loss or delay sustained by SUPPLIER resulting from such interruptions regardless of the cause or time period involved, but shall remain responsible for utility disruptions resulting from the negligence of N.C. A&T or N.C. A&T.

9) RENOVATION AND CONSTRUCTION

- a) SUPPLIER agrees to abide by N.C. A&T's guidelines for renovation, construction and equipment installation, as may be modified, amended or replaced by N.C. A&T from time to time, Prior to the start of any SUPPLIER renovation, construction or equipment installation, the Parties shall meet to review and ensure compliance with N.C. A&T's most current guidelines.

10) LIENS

- a) SUPPLIER shall at all times keep the property of N.C. A&T free and clear from all liens asserted by any person, firm, or corporation for any reason whatsoever, arising from the furnishing of services (whether for services, work, or labor performed, or materials or equipment furnished) to SUPPLIER

pursuant to the terms of this Agreement. If any such lien shall at any time be filed against any such property, and SUPPLIER shall fail to cause such lien to be removed or discharged (by payment or bond or otherwise) within ten (10) days after being notified of the filing of such lien, N.C. A&T may, but shall not be obligated to, discharge the same and all costs and expenses (including attorney's fees) incurred by N.C. A&T in discharging the lien shall be paid by SUPPLIER directly to N.C. A&T within thirty (30) days.

11) SUPPLIER CONDUCT

- a) SUPPLIER shall adhere to the corporate Code of Conduct attached hereto as Exhibit C. The Parties will use reasonable efforts to notify each other when one party believes an update is appropriate. The parties will confer and reasonably agree on any updates, it being understood that such updates would modify this section of the Agreement but may not necessarily entail a change to the corporate code of conduct.
- b) SUPPLIER is committed to preserving the dignity, self-respect, and esteem of all students, faculty and staff members while on the N.C. A&T campus. Sexual harassment is illegal and a violation of State and Federal laws and specifically prohibited by N.C. A&T.
- c) To that end, any form of harassment which may cause a negative, intimidating, or hostile effect on any individual will not be tolerated. Harassing conduct may include, but shall not be limited to the following:
 - i) Sexual assault
 - ii) Unwanted advances
 - iii) Derogatory comments of a sexual nature
 - iv) Threatening comments or gestures
 - v) Non-business or personal conversations while conducting business
 - vi) Displaying sexually suggestive pictures or objects
 - vii) Graphic verbal commentaries about a person's body
 - viii) Impeding or blocking a person's movements
 - ix) Cat calls and objectionable language
 - x) Jokes or slurs of a sexual nature
 - xi) Suggestive gestures
 - xii) Unwelcome touching
 - xiii) Profanity
- d) As a material condition of this Agreement, SUPPLIER shall require its employees and Subcontractors while working on the N.C. A&T campus to refrain from participating in any of the above-listed or similar prohibited activities and to at all times conduct themselves in a dignified manner, as generally accepted by polite society, and shall enforce this commitment through effective discipline in accordance with its own corporate policies.

12) LABOR RELATIONS

- a) SUPPLIER agrees to take immediate and reasonable steps to maintain its provision of service under this Agreement in the event of any labor action involving its employees.

13) SUBCONTRACTORS

- a) No portion of SUPPLIER'S obligation to provide onsite food service under this Agreement may be sublet or subcontracted by SUPPLIER to third parties ("Subcontractors") without the prior written

consent of N.C. A&T. Where N.C. A&T directs SUPPLIER to enter into a subcontract in an applicable SOW, such direction shall serve as N.C. A&T's approval to contract with the identified Subcontractor.

- b) The following requirements shall pertain to all SUPPLIER'S Subcontractor contracts:
- i) Subcontractor(s) must have proper license(s) and registrations as necessary to perform the resulting contract in the State of _____
 - ii) SUPPLIER is required to assume full responsibility and liability for all project work and services performed by its Subcontractor(s).
 - iii) Subcontractor insurance requirements must comply with this Agreement except as otherwise agreed by N.C. A&T in writing.
 - iv) In all other respects, all contracts between SUPPLIER and its Subcontractors must comply with this Agreement. No conflicting terms and/or conditions will be allowed. SUPPLIER is required to ensure that Subcontractor(s) adhere(s) to all provisions and conditions of the Agreement.
 - v) SUPPLIER will review with N.C. A&T any business plans for subcontracting prior to finalization of any Subcontractor contract or conducting of business. N.C. A&T reserves the right to approve any Subcontractor business plan.
 - vi) N.C. A&T will not be a party to the terms of any contract between SUPPLIER and any Subcontractor but is an intended third-party beneficiary to the contract between SUPPLIER and any Subcontractor.
 - vii) In no case shall a SUPPLIER subcontract survive the termination of this Agreement.
 - viii) SUPPLIER shall furnish the University with copies of all executed subcontracts.

14) PUBLICITY

- a) SUPPLIER shall not use, in its external advertisement, marketing programs, or other promotional efforts, any data, pictures, or other representation of N.C. A&T except on the specific prior written authorization of N.C. A&T. However, nothing in this clause shall preclude SUPPLIER from including N.C. A&T on its list of locations or client list for matters of reference.
- b) SUPPLIER shall not install any signs or other displays anywhere on N.C. A&T facilities unless, in each instance, the prior written approval of N.C. A&T has been obtained.
- c) SUPPLIER shall limit and direct any of its advertising on N.C. A&T's Premises to the campus media.
- d) SUPPLIER is obligated to provide promotional efforts to maximize sales. All advertising requires the prior written approval of N.C. A&T.
- e) SUPPLIER may not under any circumstances use any N.C. A&T Trademark.

15) CONFIDENTIALITY

- a) Except as otherwise required by law, N.C. A&T and SUPPLIER shall treat this Agreement, and other trade secrets or other confidential or proprietary information and materials of the other Party, including menus, recipes, signage, food service surveys and studies, management guidelines, procedures, operating manuals and software, reports, and financial data as confidential property ("Confidential Information") and not disclose such information to others during or subsequent to the term of this Agreement, except as is necessary. SUPPLIER understands that N.C. A&T is subject to and must comply with the _____. Whenever this Agreement or other Confidential Information is within the scope of a public records request, N.C. A&T shall provide written notice to SUPPLIER prior to responding to such request, and shall reasonably cooperate with SUPPLIER in withholding or redacting records or portions thereof that are exempt from disclosure under applicable law, including providing SUPPLIER with reasonable notice prior to such disclosure so that SUPPLIER may reasonably cooperate with N.C. A&T in asserting applicable exemptions

from disclosure and to enable SUPPLIER to contest disclosure if allowable.

- b) Nothing in this Agreement shall in any way limit the ability of N.C. A&T to comply with any laws or legal process concerning disclosures by public bodies. N.C. A&T shall fully comply with any public records requests and, other than the aforementioned notification of the request to SUPPLIER and cooperation in protecting records that are exempt from disclosure as described in Section 20(a) above, N.C. A&T shall have no obligation to SUPPLIER to limit or delay its fulfillment of said requests.

16) **SOFTWARE, DATA AND PCI COMPLIANCE**

- a) In connection with the Services being provided hereunder, SUPPLIER may need to operate certain information technology systems not owned by N.C. A&T ("SUPPLIER Systems"), which may need to connect to or interface with N.C. A&T's internet access, networks, software, or information technology systems ("N.C. A&T Systems"). SUPPLIER will be solely responsible for all SUPPLIER Systems, and N.C. A&T will be solely responsible for all N.C. A&T Systems, including taking the necessary security and privacy protections that are reasonable under the circumstances. If SUPPLIER serves as the merchant-of-record for credit or debit card transactions in connection with the Services provided hereunder, then SUPPLIER will be responsible for complying with applicable laws, regulations and payment card industry data security standards related to the of cardholder data ("Data Protection Rules").
- b) All Supplier customer-facing technology and software, including mobile apps, are subject to N.C. A&T's IT Security prior review and approval.
- c) SUPPLIER'S software will not reside on N.C. A&T's servers/network except as specifically approved by N.C. A&T in writing.
- d) If SUPPLIER and N.C. A&T agree that SUPPLIER Systems will connect or interface with N.C. A&T Systems in order to perform the Services required by this Agreement, then N.C. A&T agrees to promptly implement upon request from SUPPLIER, at N.C. A&T's expense, the changes to the N.C. A&T Systems that SUPPLIER reasonably requests and believes are necessary or prudent to enable SUPPLIER to comply with the Data Protection Rules when interfacing with the N.C. A&T Systems.
- e) Each party will indemnify, defend, and hold the other party harmless from all claims, liabilities, damages, and costs (including reasonable legal fees) arising from the indemnifying party's failure to comply with its obligations in this Section 22).
- f) Either Parties' access to or use of the other Parties' leased or owned software systems shall not create any right, title, interest, or copyright in such software, and neither Party shall retain such software of the other Party beyond the termination of this Agreement unless otherwise agreed to in writing by the other Party.
- g) Data processed by SUPPLIER Systems shall remain the property of SUPPLIER; however, throughout the term of this Agreement and upon termination or expiration of this Agreement, N.C. A&T will have the right to receive all data relating to the Dining Services program, to include but not be limited to, data collected through point of sale systems, menu management systems, surveys, surveillance systems, predictive analytics applications and customer-facing technology. Supplier shall provide N.C. A&T with a copy of such data in a format to be mutually agreed upon by the Parties. In no event shall such data or information be required to include either proprietary information of Supplier or information that would violate PCI standards.
- h) All N.C. A&T System data that is required to be destroyed under PCI standards shall be destroyed by Supplier in accordance with the standards set forth by PCI for such data. In addition, after complying with the transition requirements of this paragraph, Supplier will destroy all N.C. A&T proprietary information in its possession.
- i) All data contained within N.C. A&T Systems shall be the property of N.C. A&T.
- j) The provisions set forth in this section shall survive termination or expiration of this Agreement. In the event of any breach of the provisions set forth herein, SUPPLIER and/or N.C. A&T shall be entitled to seek equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.

- k) Subject to the provisions of Section 22(a), SUPPLIER shall obtain, store, utilize, process and transmit data in accordance with all applicable laws and current Payment Card Industry Data Security Standards ("PCI Standards").
- l) Subject to the provisions of Section 22(a), SUPPLIER shall validate compliance with current PCI Standards by, annually providing N.C. A&T with a current Attestation of Compliance with current PCI Standards.
- m) SUPPLIER shall maintain security of the point of sale equipment and associated cardholder data environment and will implement reasonable security measures including network firewalls and anti-virus/anti-malware solutions in accordance with PCI standards.
- n) SUPPLIER shall deploy currently available Point-to-Point Encryption (P2PE) technologies.
- o) SUPPLIER shall adhere to N.C. A&T's Information Security Requirements provisions, which may be modified, amended or replaced from time to time.

17) ACCESS TO RECORDS AND AUDIT

- a) SUPPLIER is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. SUPPLIER shall maintain at its principal place of business full, accurate and complete books of account and records reflecting all activities and transactions subject to or covered by this Agreement, including but not limited to, records documenting any price, cost or budget computations required under the Agreement. Records shall be kept for six (6) years from the date incurred (or longer if required by law) or until the final disposal of any claims or litigation arising out of the performance of this Agreement, whichever is longer.
- b) SUPPLIER agrees that N.C. A&T or its duly authorized representative has the right to audit any books, documents, papers and records which are relevant to the terms set forth in an applicable SOW in Exhibit A. This right to audit shall also apply to Subcontractors engaged by SUPPLIER in fulfilling the Agreement. SUPPLIER shall make available to N.C. A&T or its agents all such records and documents for audit at SUPPLIER'S company premises located at _____, during regular and reasonable working hours within ten (10) business days of a written request for availability and, upon N.C. A&T's written request, provide N.C. A&T with copies of such records and documents. SUPPLIER shall cause its appropriate employees and agents to cooperate with N.C. A&T in connection with such inspections or audits.

Upon request of N.C. A&T, not more than once each contract year, and subject to the terms of this section, SUPPLIER will provide N.C. A&T with information regarding the aggregate amount of discounts, allowances and rebates ("Discounts") that SUPPLIER received from suppliers in connection with purchases of food and supplies for its account at N.C. A&T in the preceding year. N.C. A&T agrees that such information will be made available for its inspection at SUPPLIER'S premises, and that N.C. A&T will not be entitled to make or obtain copies or abstracts thereof, it being understood that this information is trade secret material and is highly confidential and proprietary to SUPPLIER. As a condition precedent to furnishing this information, N.C. A&T's Contract Administrator will be required to execute a non-disclosure agreement in form reasonably satisfactory to SUPPLIER. The Parties agree and acknowledge that no other provision of this Agreement or an applicable SOW shall require SUPPLIER to provide additional information, documentation or disclosure with respect to volume trade, or cash discounts.

- c) SUPPLIER further agrees to disclose within thirty (30) days of receipt any independent auditors' reports indicating findings that affect N.C. A&T.
- d) In the event N.C. A&T requests an independent audit of SUPPLIER'S books and records pursuant to this Agreement, all audit expenses shall be borne by N.C. A&T. However, should such audit reveal a deficiency in the payments paid by SUPPLIER of greater than three percent (3%) of the payments thereof, then SUPPLIER shall bear the cost of the audit with respect to the period in which such underpayment occurred and shall cure the deficiency by paying the deficiency to N.C. A&T within 15 business days.

18) PERMITS AND LICENSES

- a) SUPPLIER shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance under this Agreement, and shall post or display in a prominent place such permits and/or notices as are required by law.

19) TAXES

- a) Each Party shall collect and remit sales taxes, if applicable, on all meals and Services for which each respectively collects revenue from customers. The Parties understand and agree that, to the extent such sales are exempt from sales tax under applicable law, the intent is there will be no sales or use tax charged on food and beverage sales to students. However, there may be sales and/or use tax charged on food and beverage sales to non-students. In the case of meal plan sales to non-students, SUPPLIER shall gross up and include the amount of sales and use tax in the price for such plans and shall be responsible for the remittance of any such sales and use taxes.

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- b) Any change in sales tax rate is the responsibility of the Party collecting taxable revenue. N.C. A&T shall be responsible for possessory interest tax, if any.
- c) Subject to the provisions of Section 24)a), SUPPLIER shall:
 - i) pay when due all applicable taxes or assessments.
 - ii) comply with the provisions of the applicable statutes and the regulations of the applicable taxation authority.
 - iii) be responsible for all city, state or federal income or other applicable taxes including any tax burdens or benefits arising from its operations hereunder. This provision shall survive termination of this Agreement.
- d) N.C. A&T assumes no responsibility of interpretation or application of various tax laws such as, but not limited to, the collection of retail sales tax.

20) WARRANTIES AND REPRESENTATIONS

- a) SUPPLIER acknowledges that N.C. A&T is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which N.C. A&T would not have entered into this Agreement.
- b) SUPPLIER warrants that it, as well as its employees, agents, and subcontractors engaged to provide items or Services under this Agreement (collectively "SUPPLIER Personnel"), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure. The required qualifications, by way of example only and without limitation, shall expressly include all qualifications identified in an applicable SOW or its Attachments.
- c) SUPPLIER warrants that to the best of SUPPLIER'S knowledge, there exists no actual or potential conflict between SUPPLIER and N.C. A&T and its Services under this Agreement, and in the event of change in either SUPPLIER'S private interests or Services under this Agreement, SUPPLIER will inform N.C. A&T regarding possible conflict of interest which may arise as a result of the change. SUPPLIER also affirms that, to the best of SUPPLIER'S knowledge, there exists no actual or potential conflict between a N.C. A&T or University employee and SUPPLIER.
- d) N.C. A&T warrants that to the best of N.C. A&T's knowledge, there exists no actual or potential conflict between N.C. A&T and SUPPLIER and the obligations N.C. A&T will perform under this Agreement, and in the event of change in either N.C. A&T's private interests or its obligations under this Agreement, N.C. A&T will inform SUPPLIER regarding possible conflict of interest which may arise as a result of the change. N.C. A&T also affirms that, to the best of N.C. A&T's knowledge, there exists no actual or potential conflict between a N.C. A&T or University employee and SUPPLIER.
- e) Equal Opportunity and Affirmative Action Employer

In the performance of this Agreement, SUPPLIER, its employees, agents, Subcontractors, and licensees will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin or disability. SUPPLIER, its employees, agents, Subcontractors, and licensees will take affirmative action to ensure applicants for employment are employed, and its employees are treated during employment, in accordance with applicable legal requirements. Applicable legal requirements shall include, but not be limited to, those relating to: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. SUPPLIER, its employees, agents, Subcontractors, and licensees shall post in conspicuous places available to employees and applicants for employment, notices required by applicable law. All such parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a)

and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation,

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gender identity, national origin, protected veteran status or disability. Further, the parties agree to comply with 29 CFR Part 471, Appendix A to Subpart A.

SUPPLIER further agrees to comply with the Americans with Disabilities Act (ADA) of 1990, if that act is otherwise applicable, and the United States Fair Employment and Housing Act. The ADA prohibits discrimination on the basis of disability.

- f) SUPPLIER warrants that SUPPLIER is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of [REDACTED]. N.C. A&T warrants that N.C. A&T is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of [REDACTED].
- g) SUPPLIER warrants that SUPPLIER'S Services and/or N.C. A&T's use of products, processes, techniques and methodologies provided by SUPPLIER or developed by SUPPLIER shall not infringe upon the copyright, patent, or other proprietary rights of others. The foregoing shall not apply to patented, copyrighted or trademarked materials, equipment, devices, or processes furnished or modified by N.C. A&T.

21) ASSIGNMENT

- a) SUPPLIER may not assign, or transfer this Agreement or any interest or claim under this Agreement without prior written approval of N.C. A&T which shall be given or withheld in N.C. A&T's sole and absolute discretion, except SUPPLIER may assign this Agreement to an affiliated company or wholly owned subsidiary with N.C. A&T's reasonable prior approval and without being released from any of its responsibilities hereunder. Notwithstanding any consent by N.C. A&T to any assignment, SUPPLIER shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by N.C. A&T. SUPPLIER shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

22) MATERIAL CHANGES TO THIS AGREEMENT

- a) The Parties agree that the following circumstances constitute a Material Change to the Agreement ("Material Change Event").
 - i) N.C. A&T adds or removes one or more of SUPPLIER'S assigned service locations and/or service rights under this Agreement ("N.C. A&T Initiated Material Change").
 - ii) A negative variance of more than xx% in SUPPLIER'S Net Financial Return in comparison to SUPPLIER'S original Forecast and the variance is reasonably attributable to a change in the N.C. A&T Provided Assumptions underlying the financial arrangement in an applicable SOW. "N.C. A&T Provided Assumptions", SUPPLIER'S "Net Financial Return" and SUPPLIER'S "Forecast" shall be as defined and documented in the applicable SOW.
- b) A Material Change Event shall trigger the following process.
 - i) A Party may give notice to the other Party of a Material Change Event. The Parties will meet to identify mutually agreeable operational or service modifications to the Dining Services program to mitigate the adverse financial impact ("Remediation") within 10 days of receipt of notice of Material Change.
 - ii) If the Parties do not agree on Remediation, SUPPLIER may request a renegotiation of the financial terms of the SOW ("Financial Renegotiation").
 - iii) If the Parties do not agree on Financial Renegotiation within 20 days of notice of Material Change, either party may terminate the Agreement in its entirety upon not less than seventy-five (75) days written notice, and SUPPLIER further agrees that its termination date under this provision shall be limited to the close of business on the last Service day of an academic term, except as otherwise mutually agreed by the Parties, except to the extent that this right is

- specifically waived in an applicable SOW.
- c) In the event of a N.C. A&T Initiated Material Change that results in a positive variance in SUPPLIER'S Net Financial Return of greater than xx% in comparison to SUPPLIER'S Forecast, N.C. A&T reserves the

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right to renegotiate the financial terms of the SOW so that each Parties' financial return remains fair and equitable.

23) NOTICES

- a) Any notice required under this Agreement shall be in writing and may either be given by personal delivery, sent by Certified Mail or by overnight courier addressed as follows: If to SUPPLIER, at the address set forth in the heading of this agreement, with a copy to its General Counsel at the address indicated in this section; if to N.C. A&T, to the attention of _____ at the address set forth in the heading of this Agreement. Additional notice to SUPPLIER'S General Counsel shall be provided at the following address:

- b) The address to which mailings shall be made may be changed by either party from time to time by a notice mailed as set forth above. Notice shall be effective when received or on the date of personal or courier delivery or on the fifth day after deposit in the United States mail as provided above, whichever is earlier. Rejection or other refusal to accept such notice shall not affect the validity or effectiveness of the notice given.

24) MISCELLANEOUS PROVISIONS

- a) A waiver by either party of any of the terms or conditions, provisions, or covenants of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term, condition, provision, or covenant for the future, or of any subsequent breach of same. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and shall not be in limitation of any other right, remedy, undertaking, obligation, or agreement of either party.
- b) If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.
- c) This Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements or understandings, written or oral, prior to the signing of this document.

25) FORCE MAJEURE

- a) Either party shall notify the other party promptly of any material delay in performance of specified services and shall specify in writing to the other party the proposed revised performance dates as soon as practicable after notice of delay. Obligations not performed due to force majeure will be performed as soon as reasonably possible when the force majeure concludes.
- b) In the event that performance of any terms or provisions hereof (other than obligations to make payments that have become due and payable pursuant to this Agreement) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, Acts of God, pandemic, epidemic, or any other reason whatsoever which is not within the control of the Party whose performance is interfered with and which, by the exercise of reasonable diligence said Party is unable to prevent, the Party so suffering

may at its option suspend, without liability, the performance of its obligations here under during the period such cause continues. To the extent SUPPLIER'S performance is excused for any of these reasons, the Parties shall negotiate an appropriate financial revision to the economic terms of the Agreement.

26) SURVIVAL

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- a) The terms, conditions, representations, and warranties contained in this Agreement shall survive the termination or expiration of this Agreement.
- b) In the event any portion of this Agreement is declared invalid or unenforceable for any reason, such portion is deemed severable here from and the remainder of the Agreement shall be deemed and remain fully valid and enforceable.

27) LAWS

- a) This Agreement, and all matters or issues collateral to it, shall be governed by, and construed in accordance with, the law of the State of _____, without giving effect to its choice of law provisions.
- b) SUPPLIER shall assure compliance with all laws, rules, and regulations of duly constituted authorities having jurisdiction over its activities on the Premises. SUPPLIER shall be responsible for and bind all its Subcontractors to full compliance as well.

28) AUTHORITY

- a) Each individual executing this Agreement, on behalf of or as a representative of a Party, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such Party and that this Agreement is binding upon N.C. A&T and SUPPLIER in accordance with its terms.

29) COUNTERPARTS; PDF COPIES

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute one and the same Agreement. The Parties confirm and agree that N.C. A&T and SUPPLIER may execute separate counterparts of this Agreement, all with the same force and effect as through the same counterpart had been executed by both N.C. A&T and SUPPLIER. Signature pages may be scanned and delivered by electronic correspondence in .pdf or other comparable format or evidenced by facsimile signature or in an electronic form evidencing signatures of both parties hereto and, upon delivery of such signature page, such signature page shall be treated for all purposes as a true original signature page.

Accepted on behalf of:

N.C. A&T

Accepted on behalf of:

SUPPLIER

Name/Title

Name/Title

Date

Date

Exhibit A
Scope(s) of Work (SOW)

To be separately attached.

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**Exhibit B Supplemental
Provisions**

To be separately attached.

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Exhibit C
N.C. A&T Code of Conduct

To be separately attached.

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