

# **FOOD SERVICE AGREEMENT**

**BY AND BETWEEN**

**The State of Minnesota, acting through its  
Board of Trustees of the Minnesota State  
Colleges and Universities, on behalf of**

**MINNESOTA STATE COMMUNITY  
AND TECHNICAL COLLEGE**

**AND**

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# FOOD SERVICE AGREEMENT

This Food Service Agreement ("Agreement") and amendments and supplements thereto, is made and entered into between the State of Minnesota, acting through its Board of Trustees of the Minnesota State College and Universities, on behalf of Minnesota State Community and Technical College (hereinafter MinnState), and \_\_\_\_\_ an independent contractor, not an employee of the State of Minnesota (hereinafter CONTRACTOR), having its principal place of business at \_\_\_\_\_, who agree as follows:

## WITNESSETH:

WHEREAS, MinnState, pursuant to Minnesota Statutes, Chapter 136F, is empowered to procure from time to time certain professional/technical services; and

WHEREAS, MinnState sought to enter into a Food Service Agreement and issued a Request for Proposals seeking a contractor to provide cafeteria and catering services on the MinnState Fergus Falls Campus known as Minnesota State Community and Technical College, Minnesota State Community and, Minnesota; and

WHEREAS, CONTRACTOR represents it is duly qualified and willing to perform the services set forth in this Agreement; and

WHEREAS, in response to the Request for Proposals, the above designated CONTRACTOR has been selected;

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties under this Agreement, the parties enter into this Agreement, effective as of \_\_\_\_\_ on the following terms and conditions:

## ARTICLE I

### PURPOSE OF THIS AGREEMENT; CONTRACTOR'S DUTIES

- 1.1 Purpose of Agreement. This Agreement, sets forth the terms and conditions upon which MinnState agrees that CONTRACTOR shall manage and operate the Food Service at MinnState, specifically at the Fergus Falls campus of Minnesota State Community and Technical College, for MinnState's students, faculty, staff, visitors, and invited
- 1.2 Relationship; Contractor's Duties. CONTRACTOR is an independent contractor and agrees to operate and manage the Food Service operations of MinnState at MinnState as provided herein. Pursuant to the terms of this Agreement, MinnState has the authority to make, and shall make, available portions of its facilities and the Premises to CONTRACTOR for CONTRACTOR's daily operation of the Food Service.

## ARTICLE II

### DEFINITIONS

- 2.1 Academic Term. A semester.
- 2.2 Academic Year. Late August through Late July.

- 2.3 Accounting Period. One calendar month.
- 2.4 Board. The Board of Trustees of the Minnesota State Colleges and Universities.
- 2.5 Capital Equipment. Equipment, fixture and furnishings that have a normal useful life of two (2) or more years and an individual acquisition cost of \$10,000 or more (e.g. ovens, fryers, freezers, dish machines, etc.).
- 2.6 Contract Administrator. MinnState's or CONTRACTOR's authorized representative responsible for day-to-day management and administration of the Agreement.
- 2.7 Expendable Equipment. Items that may be expended in two (2) years or less and have an individual cost of zero to \$49 (e.g. dishes, glassware, flatware, etc.).
- 2.8 External Catering. Catering services provided by Contractor pursuant to a private contract between CONTRACTOR and a third party not associated or affiliated with MinnState and may include the provision of food, beverages, flowers, equipment, linens, personnel, and similar items and services.
- 2.9 FF&E. Furniture, fixtures and equipment includes all of the furniture, fixtures (improvements to the space such as light fixtures) and equipment within the areas assigned to CONTRACTOR.
- 2.10 Food Service. The preparation, service, and sale of food, beverages, and other items on the Premises, as provided by this Agreement. Food Service shall include the following: cafeteria and on-campus catering service.
- 2.11 Fiscal Year. MinnState's fiscal year, which is a period of twelve (12) consecutive months from July 1 through June 30.
- 2.12 Gross Sales or Gross Revenue. All moneys received for sales or services provided under this Agreement rendered at or from the Premises.
- 2.13 Inventory of Equipment. The Inventory of Equipment referenced in Article VI, section 6.4.2. The Inventory of Equipment shall be amended after, if any, additional construction or renovations designated by MinnState in the future.
- 2.14 Licenses/Permits. Federal, state, and municipal licenses in connection with this Agreement, including any special permits or inspection fees.
- 2.15 Mutual Agreement. Means joint agreement between MinnState and CONTRACTOR as to the particular question involved.
- 2.16 Net Sales. Collected gross receipts after reductions for (a) retail sales taxes and other direct taxes imposed upon the receipts collected from customers for services pursuant to applicable laws, (b) refunds for services paid by CONTRACTOR to a customer, (c) uncollected amounts, (d) credit card company charges imposed and collected by third party credit card companies with respect to sales by CONTRACTOR to customers for goods and/or services, (e) interchange and/or swipe fees collected and retained by CONTRACTOR with respect to sales to customers for goods and/or services (f) also excluding the following categories of Gross Receipts: (i) MinnState employee, staff and volunteer discounted meals provided by CONTRACTOR, (ii) non-food and non-beverage services provided in connection with catering services and (iii) advance deposits for catering services (it being acknowledged that deposits become part of Gross Receipts at the time of invoicing of catering services).

- 2.17 **Non-expendable Equipment.** Items that have a normal useful life of two (2) or more years and have an individual acquisition cost greater than Fifty Dollars (\$50.00) and less than Ten Thousand Dollars (\$10,000.00) (e.g., pots and pans, microwave ovens, coffee machines).
- 2.18 **Official MinnState Function.** An official MinnState function is: (i) an event preapproved by the President of Minnesota State Community and Technical College or their designee, or (ii) an event initiated and organized by the President of Minnesota State Community and Technical College or their designee, where food and/or beverages are served and paid for by the college pursuant to college and MinnState policies and procedures.
- 2.19 **Payroll Tax & Benefits.** Includes all payroll taxes (FICA, FUTA, State Unemployment and State Health Insurance), social insurance (i.e. workers' compensation insurance, welfare or pension plan payments), accident and health insurance premiums and the cost of employee instruction and education, employees' parties, and employee meals.
- 2.20 **Premises.** All areas on the campus of Minnesota State Community and Technical College designated by MinnState for CONTRACTOR's use in the preparation, sale, service and storage of food and food-related products. The Premises, for purposes of this Agreement, are MinnState's food service facility.
- 2.21 **Service wares and Small Expendable Equipment.** Items used in the serving of food and beverages such as chinaware, glassware and flatware and items used in the preparation of food such as pots, pans and kitchen utensils.
- 2.22 **Shall.** Shall and will are used interchangeably meaning an obligation to perform.
- 2.23 **State.** The State of Minnesota.
- 2.24 **MinnState.** All references to "MinnState" shall encompass the college administration and MinnState's designated Contract Administrator.
- 2.25 **Utilities.** All costs of electricity, fuel, water, ice and refrigeration supplies, and removal of waste.
- 2.26 **Year.** A year is defined as one (1) twelve (12) consecutive month period.
- 2.27 **The College.** Minnesota State Community and Technical College.

## ARTICLE III TERM AND TERMINATION

- 3.1 **Term and Termination.**
- 3.1.1 The term of this Agreement commences on the Effective Date of July 1, 2019 and continues through \_\_\_\_\_.
- 3.1.2 Notwithstanding any term, condition or requirement of this Agreement, at any time during this Agreement, including the Initial Term or any renewal term, either party may terminate this Agreement for its convenience, or for no reason or any reason, without cause, by notifying the other party in writing at least thirty (30) calendar days prior to the intended termination date.

- 3.1.3 If either party breaches a provision of this Agreement (hereinafter "Cause"), the non-breaching party shall give the other party notice of such Cause or breach. If the Cause or breach is remedied to the satisfaction of the non-breaching party within ten (10) business days in the case of failure to make payment when due, or within thirty (30) business days in the case of any other Cause, the notice shall be null and void. If such Cause is not remedied to the satisfaction of the non-breaching party within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period noted in this subparagraph. If CONTRACTOR breaches the Agreement, MinnState gives notice to terminate the Agreement, and CONTRACTOR does not remedy the breach to MinnState's satisfaction during the applicable remedy period, then MinnState may declare the term ended, enter into and upon the Premises or any part of the Premises, either with or without process of law, and expel CONTRACTOR or any person occupying the same in or upon the Premises, using such force as may be necessary to do so, and repossess and enjoy the Premises as in MinnState's former estate. If any breach shall occur other than in the payment of money, which cannot with due diligence be cured within thirty (30) business days, and CONTRACTOR, prior to the expiration of thirty (30) business days from and after the giving of notice commences, in good faith and as expeditiously as possible, to eliminate the cause of such breach, then MinnState shall not have the right to declare the term ended by reason of such breach, provided that CONTRACTOR continues to use due diligence to remedy the breach within a reasonable period of time.
- 3.1.4 Notwithstanding any other provisions of this paragraph to the contrary, either party shall be under a duty to immediately remedy a breach of this Agreement that poses a health or safety issue. If either party determines that a breach is a danger to the health and safety of any of the parties or their employees, customers, or invitees, it shall so notify the breaching party in writing and the breaching party shall respond immediately, which shall mean that the party must use all diligence reasonably possible under the circumstances. If the breaching party does not respond promptly and appropriately to the written demand, the demanding party may take immediate action to remedy the problem and submit the cost to resolve the problem to the breaching party for reimbursement within fourteen (14) calendar days. If the breaching party fails to make the reimbursement to the demanding party, the demanding party may proceed to terminate this Agreement for Cause as provided for in this Section.
- 3.1.5 If this Agreement is terminated by either party, all outstanding amounts owed CONTRACTOR by MinnState, or MinnState by CONTRACTOR, shall become due and payable within thirty (30) calendar days of the termination date. In the event of such a cancellation, MinnState shall be only entitled to payment for the commissions due it from Net Sales generated prior to the date of termination.

## ARTICLE IV GENERAL CONDITIONS OF OPERATION

- 4.1 MinnState will provide CONTRACTOR with reasonable and required utility services for the efficient performance of the Agreement per 6.3 of this agreement.
- 4.2 The hours of operation for the cafeteria service during the academic year shall cover the core hours of breakfast, lunch, and dinner during the below time periods:

A minimum of 8:00 am through 7:00 pm serving:

- Breakfast from 8:00 am – 10:00 am

- Lunch from 10:30 am – 1:30 pm
- Dinner from 5:00 pm – 7:00 pm
- Grab and go items will be available throughout the open hours

Hours of operation shall be approved by MinnState and posted by CONTRACTOR. Additional hours may be provided for special functions upon the mutual agreement of MinnState and CONTRACTOR.

- 4.3 CONTRACTOR and MinnState may negotiate limited summer semester hours and menu selections.
- 4.4 Food Service will operate with the official college calendar/academic year and will be open every day MinnState has classes and/or exams. There will be weekend meal options offered by the CONTRACTOR that would best accommodate the needs of the College Board students. In addition Operator will be required to provide at least one meal per day during the football and volleyball camps, which starts three (3) weeks immediately prior to the start of school. The football and volleyball programs are responsible for paying the costs of this meal service to the food service operator.
- 4.5 As part of the cafeteria and catering services, CONTRACTOR shall be responsible for providing MinnState with the following:
  1. Proximity of CONTRACTOR location to campus in order to effectively operate food service and supervise work-study students.
  2. During cafeteria hours of operation, CONTRACTOR must be able to provide on-site staff presence within 30 minutes of food service request.
  3. Respond within 48 hours of all other food service requests or inquiries. In emergency situations, the contractor shall respond immediately.
  4. Provide contact information and phone numbers of on-site managers and district manager to MinnState staff.
  5. Furnish all food supplies, paper supplies and products, that are necessary for the efficient and effective operation of areas mentioned in this contract.
  6. Collecting proceeds of all sales and services.
  7. Monthly and annual cafeteria and catering sales reports.
  8. Monthly detailed report of vendor labor costs incurred and gross revenue earned.
  9. Monthly commission payable, in the amount of \_\_\_\_\_ percent of net retail and net External Catering sales, to MinnState is due within thirty (30) days of the end of each month.
  10. Conducting an annual survey of cafeteria and catering services, with assistance from MinnState.
  11. CONTRACTOR will invest up to \_\_\_\_\_ on upgrades, marketing and promotional materials.
- 4.6 CONTRACTOR shall not use any vending machines to provide the Food Service covered by this Agreement.
- 4.7 Multiple methods of payment must be offered in the cafeteria. The methods must include accepting cash, checks, and credit cards. CONTRACTOR shall work with MinnState to provide a pre-paid card or gift card system.
- 4.8 The CONTRACTOR will meet with the College administration and designated student representatives once per semester.

## ARTICLE V

## FOOD SERVICE STANDARDS & MARKETING

### 5.1 Food Service – Cafeteria & Catering

- 5.1.1 Food presentation shall be aesthetically pleasing, and “extras” such as condiments, eating and serving utensils, etc. should be conveniently located to traffic flow and accessible to wheelchairs.
- 5.1.2 Weekly menus shall be e-mailed to the a designated MinnState representative for dissemination to appropriate MinnState staff and faculty and posted outside the food service counter three (3) days in advance. Breakfast menus will be available from 8:00 am until 10:00 am each day the food service cafeteria line is open.
- 5.1.3 A complete catering guide to menus, prices, portion servings, catering policies, minimums, additional charges, etc., shall be submitted to MinnState for review and approval prior to distribution. Copies of the catering guide shall be printed in sufficient number and distributed to campus constituents between summer and fall term. CONTRACTOR shall be responsible for the cost, production, and distribution of the catering guide.
- 5.1.4 Food and beverage catering services for select on-campus and outside group-sponsored functions such as banquets, receptions, conferences and/or other special events shall be provided by CONTRACTOR upon receipt of MinnState Purchase Order and catering form signed by department supervisor and approved by MinnState Purchasing Department. Events not sponsored by the college shall be mutually agreed upon by the CONTRACTOR and the sponsor of the event.
- 5.1.5 Unless a catering event is administered by MinnState, CONTRACTOR shall provide a sufficient number of qualified and trained staff to service the events, take and process catering orders, respond to inquiries, and handle all aspects of a quality catering program.
- 5.1.6 The food service cafeteria line should include, but not limited to:
  - 1. One entrée per meal;
  - 2. a variety of breakfast, lunch, and dinner selections;
  - 3. low-fat and healthy food choices;
  - 4. deli-sandwiches and/or wraps;
  - 5. seasonal foods/beverages, e.g. ice cream cones, soups, hot chocolate;
  - 6. coffee, gourmet coffee, tea, smoothies, etc.;
  - 7. vegetarian, gluten free, and fruit options;
  - 8. snacks.
- 5.1.7 CONTRACTOR is permitted to prepare and sell food, snack, and beverage selections in the Food Service area located on the Campus. Catering service requests within the campus shall be reviewed and approved through the college’s building use permit process, which review and approval shall not be unreasonably withheld or delayed.

### Standards of Quality

- 5.2 All food should be of a quality comparable to other college/university food service programs and must meet all applicable government regulations
  - 5.2.1 The following are the standards of quality that must be observed:

- Canned Foods - USDA Grade "A" Fancy, except Choice may be used for cooking purposes; fruits shall be packed in light syrups.
- Government Grade "A" - Frozen Vegetables and Fruit
- Government Grade "A" - Eggs and Poultry
- Government Grade "A" - Dairy Products

If the CONTRACTOR'S menu includes beef, veal, pork, lamb, fresh produce or ground beef, the following standards of quality shall be followed:

- Beef and Veal - USDA Choice, except for meat used in extended dishes that may be USDA Standard.
- Pork and Lamb - USDA Grade A (#1)
- Fresh Produce - USDA #1 Quality
- Ground Beef - USDA Standard or better, ground beef and beef patties shall be 100% all beef
- Processed lunch meats such as bologna and salami shall be a quality "all beef" or turkey product.

5.2.2 Fish and seafood may only be used if they are purchased from government inspected suppliers.

5.2.3 Government Regulations/Grading. Purchase of food, supplies and equipment shall meet all requirements of the United States Department of Agriculture (USDA). In the absence of grade labeling, CONTRACTOR shall provide MinnState with package labeling codes or industry accepted grade equivalent standard to verify the minimum grades specified are being provided.

5.2.4 Temperature. Hot foods shall be served hot (above 135 degrees Fahrenheit) and cold foods shall be served cold (below 41 degrees Fahrenheit).

5.2.5 Food Freshness. Any food appearing discolored, unappealing or not in a proper state of freshness shall not be served. CONTRACTOR shall adhere to the general food service industry guide: if you are not willing to purchase or consume the product yourself, it should not be displayed.

5.2.6 Accompaniments/Condiments. Certain food accompaniments shall automatically be served with some dishes and placed in the condiment section. Other accompaniments such as sauces, sugar and cream, ice and butter shall be placed as close to corresponding food or beverage as possible.

### 5.3 Menu Selections & Pricing.

5.3.1 CONTRACTOR shall recommend food selections, portions, and prices for cafeteria and catering services. For the initial menu creation, the CONTRACTOR shall follow the sample menu provided in CONTRACTOR'S Response to MinnState's Request for Proposals as follows:

5.3.1.1 Beverages. Coffee, tea, juice, water – available at all times, cost per serving will be comparable to those of a market basket survey of the surrounding area, depending on serving size.

5.3.1.2 Breakfast. Scones, rolls, bagels, breakfast pizza, toast, breakfast sandwiches, waffles, oatmeal and cold cereal shall be priced a comparable price to those of a market basket survey of the surrounding area.



5.3.1.3 Lunch, Dinner & Entree. Soup, sandwiches, pizza, tacos, stuffed pretzels, salads.

5.3.1.4 Snacks Items. CONTRACTOR will select an array of snack items, such as yogurt, fruit, and desserts.

5.3.1.5 Pricing. Prices stated in the CONTRACTOR's Response to MinnState's Request for Proposals shall be in effect for at least the first ninety (90) days of the Term of this Agreement. CONTRACTOR must allow for the inflationary factor, etc, and should not expect MinnState approval to increase prices during the first ninety (90) days of the Agreement. Thereafter, every sixty (60) days, CONTRACTOR may review its prices and negotiate for future price increases and menu selections with MinnState. Under no circumstances, however, shall price changes be put into effect by CONTRACTOR without having first obtained the written consent of MinnState. Upon mutual consent MinnState and CONTRACTOR may negotiate specific prices adjustments where circumstances beyond the control of either party required said adjustments.

#### 5.4 Marketing

5.4.1 Food Service Marketing. CONTRACTOR shall aggressively market and promote MinnState's Food Service to all segments of the campus population. MinnState shall cooperate with CONTRACTOR in promoting food services.

5.4.2 Retail Marketing Efforts. CONTRACTOR shall continually initiate ideas for varied methods of service, merchandising, public relations, promotion and menu presentation in all operations to increase usage, improve service and products, and maximize potential revenues. Such endeavors shall be implemented in a manner typical of successful commercial operations. MinnState shall approve all marketing efforts before CONTRACTOR initiates.

5.4.3 College Events/Holidays. CONTRACTOR shall participate in major MinnState events and holidays by offering appropriate dining service specials that complement these events, including dining room and service area decorations.

#### 5.5 College Meal Plans

5.5.1 Meal Plan Fees. The college will collect meal plan fees each semester from students and will submit full payment to operator by October 1<sup>st</sup> and March 1<sup>st</sup>. The college housing director will notify the operator of all students participating in the meal plan and keep them apprised of any changes, which are allowed the first ten days of classes each semester.

5.5.2 Declining Balance Cards. Each housing student will be required to purchase a declining balance meal plan card of \$600 - \$900.00 - \$1,200, which can be added to if the student should deplete the balance prior to the end of the semester. Students will not pay sales tax on food purchases using a meal plan debit card.

5.5.3 CONTRACTOR CARD. CONTRACTOR will offer a purchase application or loadable card which may be loaded at the café or online through the CONTRACTOR web site to all individuals. A \_\_\_ percent (\_\_\_%) discount will be applied to any purchase at the point of sale.

## ARTICLE VI

### PREMISES, EQUIPMENT, SUPPLIES, & LICENSES

- 6.1 MinnState shall furnish at its expense, the Premises and Capital Equipment including, but not limited to, kitchen equipment, refrigeration, and fire extinguishing equipment. Premises and equipment provided by MinnState for use in the Food Service operation shall be in good condition and maintained by MinnState to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health including, without limitation, OSHA regulations. MinnState agrees to be responsible for any liability or assessment, including related interest and penalties, arising solely from MinnState's breach of the aforementioned obligations. MinnState further agrees that any modifications or alterations to the workplace or Premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of MinnState and shall be at MinnState's expense. This Section shall survive termination of this Agreement.
- 6.2 MinnState shall control the space commitment and scheduling of authorized MinnState catered events.
- 6.3 Utilities. MinnState shall provide electricity, gas, sewer, water, fire extinguishing equipment, and trash removal from building dumpsters for Premises. CONTRACTOR shall supply their own telephone and internet service and networking equipment at their own expense.
- 6.3.1 Utility Service Interruptions. MinnState shall not guarantee an uninterrupted supply of water, steam, electricity, gas, and heat or air conditioning. MinnState shall not be held responsible for any disruption of utility services due to circumstances beyond MinnState's control including, but not limited to, Acts of God, accidents, or repairs. However, MinnState shall be diligent in restoring service following an interruption. MinnState shall not be liable for any product loss which may result from the interruption or failure of any such utility services unless such interruption or failure is due to MinnState's negligence.
- 6.4 Equipment & Supplies.
- 6.4.1 MinnState shall provide an inventory list of MinnState-owned major equipment and furnishings within thirty (30) days of execution of this Agreement and prior to the commencement of each contract year. CONTRACTOR shall promptly confirm in writing that the inventory is complete and accurate.
- 6.4.2 Initial Equipment Inventory. MinnState shall provide adequate equipment for the cafeteria food service line and kitchen preparation areas. The food service area is equipped with the following equipment listed in Exhibit A.
- 6.4.3 MinnState retains ownership of its equipment and has the authority to allow other entities to use said equipment.
- 6.4.4 Daily Use and Care of Equipment. CONTRACTOR shall be responsible for performing the proper use and care for the equipment (in accordance with manufacturer's instructions) and facilities it is assigned and/or uses in the performance of its daily duties. CONTRACTOR shall be responsible for performing first level (operator) preventative maintenance on equipment.
- 6.4.5 Equipment Repairs. MinnState shall be responsible for the maintenance and repair of MinnState-owned food service equipment including the exhaust systems. Detailed

records of repairs are to be kept by the CONTRACTOR and submitted to MinnState promptly. MinnState shall have the final decision regarding the repair and replacement of MinnState-owned pieces of equipment.

- 6.4.6 New and Replacement Inventory. Replacement of existing MinnState-owned equipment shall be the responsibility of MinnState.
- 6.4.7 Equipment Warranties. With respect to the equipment provided by MinnState, MinnState makes no implied or express warranties, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. However, CONTRACTOR shall have the benefit of any warranty or guarantee given MinnState by the manufacturer or the seller of the equipment.
- 6.4.8 Excess Capital, Expendable and Non-Expendable Equipment. MinnState shall declare as surplus and dispose of any surplus property after consultation with CONTRACTOR regarding the disposition and use of excess capital, non-expendable, or expendable dining service equipment owned by MinnState.
- 6.4.9 Surrender of Equipment at Contract Termination. On termination or expiration of the Agreement, MinnState shall conduct a physical inventory of all non-expendable supplies and capital equipment. At that time, CONTRACTOR shall surrender the facilities and equipment to MinnState in as good condition as at the start of the Agreement, ordinary wear and tear and loss or damage by fire, flood and other casualty excepted.
- 6.4.10 Operating Supplies. CONTRACTOR shall be responsible for all costs for required paper, office, and general cleaning supplies for the operation of all assigned Food Service areas. MinnState will purchase janitorial supplies for the food service.

Supply Inventory at Termination of Contract. On expiration or termination of this Agreement, inventories of food, expendable equipment, and expendable supplies of CONTRACTOR shall remain those of CONTRACTOR. Cleaning supplies purchased by MinnState shall remain the property of MinnState. Final payments to be made to CONTRACTOR by MinnState, if any, shall be withheld until all transactions or arrangements for the inventory removal have been completed to the satisfaction of MinnState.

- 6.4.1 Contractor-Owned Equipment. CONTRACTOR cannot furnish CONTRACTOR-owned equipment without prior approval of MinnState's Administrator. CONTRACTOR will provide its own telephone and internet service and networking equipment. CONTRACTOR assumes the risk for any loss of and to any of its equipment, money, and products from whatever cause, including, but not limited to vandalism. CONTRACTOR is responsible for all maintenance and repair of all of CONTRACTOR-owned equipment. CONTRACTOR is solely responsible for any and all damages sustained by anyone as a result of an injury that is attributable to CONTRACTOR'S equipment.

## 6.5 Licenses & Inspections.

- 6.5.1 Permits and Licenses. CONTRACTOR will secure the approval of the local health department in addition to all other governmental agencies having applicable jurisdiction. In addition, CONTRACTOR shall possess all Federal, State, and local licenses required for said operation. CONTRACTOR shall procure and keep current all permits and licenses, pay promptly all charges and fees, and give all notices necessary and incidental to the due and lawful operation of the food services at MinnState. CONTRACTOR shall notify MinnState in writing in the event

CONTRACTOR becomes aware of any lapse of any required permit or license that falls under the responsibility of MinnState.

- 6.5.2 **Right of Inspection.** MinnState retains the right to inspect, evaluate, and request changes in the operation and condition of the Food Service and facilities at any time with respect to quality, quantity, and production of all food items, hours of meal service, prices, safety, sanitation, and maintenance of the facilities and equipment to bring them to levels satisfactory to MinnState. Inspections and evaluations shall be conducted so as not to interfere with the normal operations of Food Service functions. MinnState reserves the right to periodically conduct an unannounced inspection with or without CONTRACTOR's representatives being present. Inspectors from all state and local authorities and from MinnState shall have complete cooperation from CONTRACTOR. When state and local authorities arrive for inspection, MinnState shall be notified by CONTRACTOR and, whenever practical, MinnState's Contract Administrator shall be present for the inspection. A copy of the state or the local authority's inspection report shall be transmitted to CONTRACTOR by MinnState within five (5) calendar days of receipt by MinnState. Within ten (10) calendar days of said report being transmitted by MinnState, CONTRACTOR shall provide MinnState with a written report of corrective action. In the event that corrective action is a joint responsibility, CONTRACTOR shall notify MinnState of its responsibility in the matter and shall work with MinnState in the implementation of such action.

## ARTICLE VII EXCEPTIONS & EXCUSED PERFORMANCE

### 7.1 **Exceptions.**

- 7.1.1 CONTRACTOR shall have exclusive rights to operate the Food Service as defined herein. The parties may revise the scope of CONTRACTOR exclusivity upon mutual written agreement. Upon mutual written agreement with MinnState, CONTRACTOR may relinquish its exclusive rights for a specific, pre-identified event. Exceptions to the exclusive right provisions are as follows:
- 7.1.1.1 CONTRACTOR may be asked, but does not have the exclusive right, to provide catering services for off-campus events.
  - 7.1.1.2 The exclusive rights granted to the CONTRACTOR to conduct the cafeteria and catering food service on campus shall not prevent concession sales by student clubs or others designated by MinnState. Furthermore, upon prior notification to CONTRACTOR, for special circumstances, limited specialized food service may be provided by MinnState or others. Student clubs may purchase food and beverages from a source other than CONTRACTOR if the purchase cost is lower than CONTRACTOR'S charge. Such purchases may then be re-sold by student clubs to third parties. Groups having approval from MinnState Administrator to sell food and beverages shall be encouraged to consider purchasing products from CONTRACTOR.
  - 7.1.1.3 It is understood and agreed to that the MinnState bookstores reserve the right to sell candy, gum, snacks, and beverages of their choice, in their sole discretion, that the vending machine service at MinnState is not subject to this Agreement, and that this Agreement does not confer any rights to the Contractor to sell food or beverages in the bookstores or in the vending machines located at MinnState.

7.1.1.4 Upon mutual written agreement between MinnState Administrator and CONTRACTOR, outside vendor catering services during summer hours of operation can be solicited and contracted for by MinnState without breaching this Agreement if CONTRACTOR is not able to provide the services MinnState desires. CONTRACTOR's and MinnState's Administrator must sign a written agreement and release form before any outside vendor catering services are solicited or provided.

7.1.1.5 CONTRACTOR shall not allow use of MinnState cafeteria, kitchen, or equipment for purposes other than food service and catering operations related to this agreement. Use of the facility and equipment by CONTRACTOR, employee of CONTRACTOR, or other parties for personal or other reasons not related to this contract is prohibited.

## 7.2 Excused Performance.

7.2.1 If, because of riots, war, public emergency or calamity, fire, flood, earthquake, act of God, government restriction, labor disturbance or strike, business operations at the state are interrupted or stopped, performance of this contract, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence.

7.2.2 CONTRACTOR assumes all risk of loss due to temporary suspensions of operation regardless of cause in all or any locations. Such suspensions may be due to, but not limited to the following: failure of equipment, power, weather conditions, strikes, wars, acts of God or MinnState decisions to temporarily suspend operations when it is deemed to be in the best interest of MinnState to do so. This includes the closing of a building or reduction in building population while remodeling or other work affecting a building is in process. MinnState assumes no risk of loss or liability to CONTRACTOR as a result of any such interruption in operation.

## ARTICLE VIII SANITATION & MAINTENANCE

8.1 CONTRACTOR has the responsibility for keeping the dining area tables clean and cleared during the hours that the food service cafeteria line is open. CONTRACTOR will also have the responsibility for keeping the floor area clean and cleared during the hours that the food service cafeteria line is open. The floor area is defined as the area in which food is prepared, served, dispensed, and/or purchased.

8.2 CONTRACTOR will also be responsible for collection and properly disposing of all refuse from the food preparation and dining area. Refuse will be disposed of at a minimum of one (1) time each day, or when garbage containers are full, whichever occurs earlier. CONTRACTOR will be responsible for moving all refuse to the disposal area.

8.3 The cleaning of the food service area, including preparation, storage, and service areas, will be the responsibility of the CONTRACTOR. If another entity authorized by MinnState uses the food service area, the outside entity will be responsible for cleaning the food service area and equipment and disposing of all refuse related to its services.

- 8.4 MinnState will be responsible for cleaning the dining room floor and tables during the times the food service cafeteria line is not open except when scheduled CONTRACTOR catering services are provided.
- 8.5 The maintenance and repair of the dining room furniture will be the responsibility of MinnState.
- 8.6 CONTRACTOR shall include any company-developed sanitation manuals, training, or other information that indicates concerns regarding the following of recognized sanitation principles. If no materials have been developed, provide information that indicates concerns regarding sanitation, training procedures to be utilized, and supervision techniques to ensure that sanitary food-handling practices will be utilized.
- 8.7 Food service microwaves and condiment stands will be maintained and cleaned daily by CONTRACTOR.
- 8.8 CONTRACTOR shall, to the extent possible, set up catered events within the hour prior to the scheduled function.
- 8.9 CONTRACTOR shall, to the extent possible, clean up catered events within two hours after the scheduled function.
- 8.10 CONTRACTOR shall comply with all applicable health and sanitation laws.
- 8.11 If requested, the CONTRACTOR shall furnish copies of the Material Safety Data Sheets to the MinnState's physical plant director.
- 8.12 MinnState shall be responsible for all costs and maintenance of insect and pest control in all assigned areas for production, service and storage. A schedule of frequency of service shall be maintained by MinnState.
- 8.13 MinnState shall be responsible for any costs involved in setting up and cleaning the Premises for functions not managed by CONTRACTOR.

## **ARTICLE IX INSURANCE REQUIREMENTS**

- 9.1 CONTRACTOR will be required to submit a certificate of insurance for each type of insurance required below to MinnState's authorized agent prior to commencement of any work under this contract.
- 9.2 CONTRACTOR will be required to maintain and furnish satisfactory evidence of the following insurance policies:
- 9.2.1 Loss by any means, of all data furnished to the CONTRACTOR by MinnState, and for partially completed data for which MinnState has made payment.
- 9.2.2 Workers' Compensation Insurance. CONTRACTOR must provide workers' compensation insurance for all its employees and, in case any work is subcontracted, CONTRACTOR will require the subcontractor to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability, at limits not less than \$100,000.00 bodily

injury by disease per employee; \$500,000.00 bodily injury by disease aggregate; and \$100,000.00 bodily injury by accident.

9.2.3 Commercial General Liability. CONTRACTOR will be required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage including loss of use which may arise from operations under the contract whether the operations are by the CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed under the contract. Insurance minimum amounts will be as follows:

- \$2,000,000.00 - per occurrence
- \$2,000,000.00 - annual aggregate

In addition, the following coverages shall be included:

- Bodily Injury and Property Damage
- Products and Completed Operations Liability
- Blanket Contractual Liability
- Name MinnState as Additional Insured

9.2.4 Commercial Automobile Liability. CONTRACTOR will be required to maintain insurance protecting CONTRACTOR from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services, as well as from claims for property damage including loss of use which may arise from operations under the contract whether such operations were by the CONTRACTOR or by subcontractor or by anyone directly or indirectly employed under the contract. Insurance minimum amounts will be as follows:

- \$2,000,000.00 - per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

- Owned, Hired, and Non-owned
- Name MinnState as Additional Insured

CONTRACTOR shall verify that all of their employees who shall operate a vehicle owned by CONTRACTOR shall have a driver's license that is valid for operating a motor vehicle in the State of Minnesota.

9.3 MinnState will reserve the right to immediately terminate this contract if CONTRACTOR is not in compliance with the insurance requirements in this Article and MinnState retains all rights to pursue any and all legal remedies against CONTRACTOR. All insurance policies of CONTRACTOR must be open to inspection by MinnState, and copies of policies must be submitted to the MinnState's authorized agent upon written request.

9.4 CONTRACTOR shall not commence work under the contract until CONTRACTOR has obtained all the insurance described in this Article and MinnState has approved such insurance. All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the contract and any extensions or renewals thereof.

- 9.5 Minnesota Statute § 181.59. CONTRACTOR certifies it is in compliance with, and will continue to comply with, the provisions of Minnesota Statute § 181.59 during the term of this Agreement and any renewals/extensions thereof.

## ARTICLE X PERSONNEL MATTERS

- 10.1 CONTRACTOR shall maintain on duty, as necessary, a manager, plus adequate personnel to meet the needs of food services and comply with CONTRACTOR's duties and obligations under this contract.
- 10.2 All persons provided under this contract by CONTRACTOR to provide food service at MinnState shall be employees of CONTRACTOR and not of MinnState. The CONTRACTOR shall be responsible for all personnel actions regarding employees on its payroll. CONTRACTOR shall withhold all applicable federal, state, and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and workers' compensation costs and shall timely file all required documents and forms with the appropriate government agencies. Personnel relations of employees on the CONTRACTOR'S payroll are the CONTRACTOR'S responsibility. CONTRACTOR shall comply with all applicable governmental laws and regulations related to employment, compensation, and payment of its employees. All of CONTRACTOR's employees shall be bondable and shall be uniformed in a manner mutually agreed upon.
- 10.3 Work-Study Students. MinnState will attempt to offer CONTRACTOR financial aid approved work-study students. Work-study students are employees of MinnState. MinnState shall be responsible for all work-study student actions. Work-study student payroll shall be processed according to MinnState's policies and procedures. CONTRACTOR will be responsible for interviewing, hiring, training, scheduling, approving timesheets and supervising work-study students.
- 10.4 Employee Training. CONTRACTOR shall continually provide satisfactory training and development programs for employees at all levels of the Food Service operation including work-study students.

## ARTICLE XI ENVIRONMENTAL ISSUES

- 11.1 CONTRACTOR will provide information as to how it will comply with "environmentally friendly" operational expectations of the contract.
- 11.2 CONTRACTOR shall provide information substantiating its energy conservation practices.
- 11.3 CONTRACTOR is expressly forbidden to use any products that may result in the release of Chlorofluorocarbons (CFC's) into the atmosphere. Styrofoam cups, plates, etc. are strictly forbidden under any circumstances.



- 11.4 CONTRACTOR will recycle office paper, cardboard, glass, plastic, and metal products. CONTRACTOR will transport these items to MinnState's collection areas on the campus. Vendor compliance with recycling is mandatory.
- 11.5 CONTRACTOR shall participate in energy conservation. CONTRACTOR shall assume responsibility for maximum utility/energy conservation by turning off or down lights, fans, water, ovens, steam equipment and other energy consuming items, when the Food Service facilities are not in use or when business volume dictates a reduction in the use of utilities.

## ARTICLE XII FINANCIAL ARRANGEMENTS

- 12.1 CONTRACTOR agrees to collect the proceeds of all sales and services, provide monthly sales and cash count reports, and render, when requested, daily sales register tapes and daily cash counts report to MinnState. The monthly report should include a daily summary including sales and customer count. The monthly report shall be due to MinnState within thirty (30) days of a request by MinnState's authorized representative.
- 12.2 Billing. CONTRACTOR shall submit invoices for catering services to MinnState for all amounts due under this Agreement at the end of each week. Payments by MinnState shall be due to CONTRACTOR no more than thirty (30) calendar days after the receipt of the invoice provided that CONTRACTOR'S invoice is complete and accompanied by full documentation. All services provided by CONTRACTOR pursuant to this Agreement shall be performed to the satisfaction of MinnState, as determined at the sole discretion of MinnState's Contract Administrator, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations.
- 12.3 Billing Non-University Patrons. CONTRACTOR shall be responsible for invoicing and collection for all amounts due from Off-Campus groups, except when MinnState, CONTRACTOR and other parties agree otherwise in writing.
- 12.4 Statements and Records. The books, records, documents, and accounting procedures and practices of CONTRACTOR relevant to this Agreement shall be retained by CONTRACTOR and be accessible by MinnState for a minimum of six (6) years from the end of this Agreement. This Section shall survive termination of this Agreement.
- 12.5 MinnState, its internal auditors and the State or Legislative Auditor, as appropriate, reserve the right to inspect CONTRACTOR'S books, records, documents and accounting procedures and practices relevant to this contract and conduct an audit of the records dealing with CONTRACTOR'S food service at MinnState. CONTRACTOR agrees to cooperate with MinnState and/or it's or State auditors and produce the relevant books and records desired to be inspected at reasonable times and locations.
- 12.6 Contractor Independent Audits. MinnState shall be informed annually by CONTRACTOR of the schedule of audits of CONTRACTOR records and operations. MinnState shall receive a report of any findings that materially affect MinnState.

## ARTICLE XIII

### GENERAL TERMS AND CONDITIONS

#### Taxes.

- 13.1 CONTRACTOR shall bill, collect, and timely remit any applicable sales, use, or meal taxes on all meals and services for which CONTRACTOR collects revenue from Customers. CONTRACTOR shall bill and collect sales and use tax, if applicable, on purchases billed to MinnState. Unless otherwise provided for by law, sales to MinnState shall be deemed exempt from sales and use taxes. Notwithstanding the foregoing, MinnState shall be responsible for taxes, if any, assessed upon its real or personal property.
- 13.2 MinnState/MinnState shall not be responsible for any assessment of taxes, penalties or interest attributable to CONTRACTOR's failure to timely submit, remit or collect any known tax, tax filing or report. CONTRACTOR shall be responsible for its city, state or federal income taxes including any tax burdens or benefits arising from or attributable to its operations hereunder. This Section shall survive termination of this Agreement.
- 13.3 Laws to be Observed. CONTRACTOR shall observe, perform and comply with or require compliance with all governmental laws, ordinances, rules and regulations of the United States, the State of Minnesota, MinnState, or any department thereof, which in any manner apply to the operation and maintenance of the food service facilities. CONTRACTOR shall also comply with all state and local building, fire, health, zoning codes and/or regulations that apply to the operation of the Premises. Any reference to such laws, ordinances, rules, regulations, and codes shall include any amendments thereto.
- 13.4 Jurisdiction and Venue. This Agreement, and amendments and supplements thereto, and any extensions or renewals thereof, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. This Section shall survive termination of this Agreement.
- 13.5 Patents and Copyrights. CONTRACTOR shall assume all costs arising from the use of copyrights, patented materials, licenses, equipment devices or processes provided, requested or obtained by CONTRACTOR and used in the operation of, or incorporated, in the Food Service facilities, and shall indemnify and hold harmless MinnState from all suits of law or actions of every nature for or on account of the use of any patented or copyrighted materials, equipment, devices or processes provided, requested or obtained by CONTRACTOR.
- 13.6 Liability. Each party shall be responsible for its own acts and omissions and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes section 3.736 and other applicable laws govern MinnState's liability under this Agreement.
- 13.7 Trade Secrets and Trade Marks.
- 13.7.1 Trade Secrets and Proprietary Information. During the term of the Agreement, and any extensions or renewals thereof, CONTRACTOR may grant to MinnState a non-exclusive right to access certain proprietary materials of CONTRACTOR, including menus, recipes, signage, Food Service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to CONTRACTOR), computerized databases and similar compilations regularly used in MinnState's business operations ("Trade Secrets"). Except as required by law, MinnState shall not disclose any of CONTRACTOR's Trade Secrets or other

confidential information, directly or indirectly, during or after the term of the Agreement. MinnState shall not photocopy or otherwise duplicate any such material without the prior written consent of CONTRACTOR. All Trade Secrets (including signage proprietary to CONTRACTOR), and other confidential information shall remain the exclusive property of CONTRACTOR and shall be returned to CONTRACTOR immediately upon termination of the Agreement. Without limiting the foregoing, MinnState specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to CONTRACTOR and not MinnState. Furthermore, CONTRACTOR's access or use of such software shall not create any right, title interest, or copyright in such software, and MinnState shall not retain such software beyond the termination of the Agreement. This Section shall survive termination of this Agreement.

#### 13.7.2 Trademarks and Logo.

MinnState's Trademarks and Logo. In no instance shall MinnState's or Minnesota State Community and Technical College names or logos be used by CONTRACTOR in connection with any advertising or promotions which are not directly related to the food service it is providing to MinnState pursuant to this Agreement without MinnState's prior and specific written consent. None of the provisions of this contract grant to CONTRACTOR the right to use or to sublicense the use of MinnState's or Minnesota State Community and Technical College names, logos, and trademarks without the prior written consent of MinnState. CONTRACTOR acknowledges and agrees that MinnState owns the names, the logos and their trademarks, modifications of them, as well as any other names, trademarks, logos, and symbols adopted and used or approved for use by MinnState (collectively the "Indicia"). CONTRACTOR shall not have any right to use MinnState's Indicia without its prior written consent. CONTRACTOR acknowledges that any original designs, artwork or other compilations or derivatives ("Works") created by it pursuant to this Agreement that contain the Indicia are compilations or derivatives as those terms are used in Section 103 of the Copyright Act. Therefore, any rights, including copyrights, that CONTRACTOR might have in those original Works do not extend to any portion or aspect of the Indicia or any derivatives thereof, and do not in any way dilute or affect MinnState's interests in the Indicia or any derivatives thereof. CONTRACTOR shall not copy, use, assign or otherwise transfer any rights in any Works with any portion or aspect of the Indicia or any derivatives thereof included, except as expressly permitted under this Agreement, without MinnState's express prior written authorization. CONTRACTOR shall not attempt to obtain or assert copyright rights in any of MinnState's Indicia or any artwork or design that contains MinnState's Indicia, without MinnState's express prior written authorization.

#### 13.7.3 Trade Fixtures, Machinery and Equipment (National Branded Concepts). MinnState agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature, kept or installed by CONTRACTOR that contain the logo, trademark or service mark of a Branded Concept (to the extent that such branding cannot be reasonably removed from such property), shall not become the property of MinnState or a part of the realty no matter how affixed and may be removed, at any time and from time to time during the entire term of this Agreement and any renewals. Upon request of CONTRACTOR, MinnState shall execute and deliver any real estate consent or waiver forms submitted by any contractors, lessors, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description setting forth the fact that MinnState waives, in favor of such contractors, lessors, chattel mortgagees, or any

holders or owners any lien, claim, interest or other right superior to that of such vendors, lessors, chattel mortgagees, owners or holder. MinnState shall further acknowledge that property covered by such consent to waiver forms is personal property and is not to become a part of the realty no matter how affixed to it, and that such property may be removed by the vendors, lessors, chattel mortgagees, owners or holder at any time upon default by CONTRACTOR in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of MinnState.

13.8 Assignment. This Agreement and any part thereof shall not be subcontracted or assigned without prior written permission of MinnState. Authorized subcontractors shall be deemed independent contractors and must meet licensing and insurance requirements listed within this contract.

13.8.1 CONTRACTOR shall be deemed to be an independent contractor and, except as provided in Section 13.8, shall not, during the term of this Agreement, or any renewal or extensions thereof, sell, assign, transfer, subcontract, sublet, or sublease all or any part thereof without the prior written consent of MinnState; and should CONTRACTOR become insolvent, or if proceedings in bankruptcy shall be instituted by or against CONTRACTOR, the remaining or unexpired portion of this Agreement shall, at the election of MinnState, be terminated.

13.9 For any person hired as an independent contractor, except for those persons whose contract is for less than two (2) months with gross earnings of less than Two Hundred Fifty and 00/100 Dollars (\$250.00) per month and for corporations, Minnesota Statute §256.998 requires that his or her social security number and date of birth be submitted to the Department of Human Services. This information may be used in the enforcement of state and federal child support laws.

13.10 Government Data Practices Act. CONTRACTOR and MinnState must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MinnState in accordance with this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by CONTRACTOR in accordance with this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either CONTRACTOR or MinnState. In the event CONTRACTOR receives a request to release the data referred to in this clause, CONTRACTOR must immediately notify MinnState. MinnState shall give CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released. This Section shall survive termination of this Agreement.

13.11 Liens. CONTRACTOR shall not commit or suffer any act of neglect whereby MinnState Premises shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless MinnState and Board from and against all attachments, liens, charges and encumbrances and all expenses relating there from.

13.12 Surrender of Premises.

13.12.1 Inventory and Supplies. CONTRACTOR shall remove all inventory and supplies at the expiration or sooner upon termination of the Agreement.

13.12.2 Personal Property. CONTRACTOR shall remove its personal property at the expiration or sooner upon termination of the Agreement. On removal of the property, the Premises shall be returned to MinnState in its original state, wear and tear excepted. CONTRACTOR's failure to remove its personal property within thirty (30) calendar

days after the termination or expiration of this Agreement shall be deemed to be an abandonment of its personal property. MinnState shall make all necessary repairs to the Premises that may be required as a result of the removal of trade fixtures and other personal property and reasonably charge CONTRACTOR for such repairs.

13.13 **Withholding of Final Payment.** According to Minnesota Statutes § 270C.66, no final settlement of a State contract requiring the employment of employees for wages shall be made until CONTRACTOR has received a certificate from the Department of Revenue showing that CONTRACTOR has complied with Minnesota Statutes § 290.92.

13.14 **Notice.** Any notice or communication required or permitted to be given hereunder shall be delivered upon receipt if sent by overnight courier or sent by registered or certified mail, postage pre-paid return receipt requested addressed to the other party as follows:

To MinnState: Minnesota State Community and Technical College  
Attention: Nancy South  
1414 College Way  
Fergus Falls, MN 56537  
Phone: 218-736-1530  
Wayne.Wolden@minnesota.edu

To CONTRACTOR:

The Contract Administrator for MinnState is Wayne Wolden, Director of Business Services, or his successor.

The Contract Administrator for CONTRACTOR is \_\_\_\_\_, or successor.

13.15 **Amendments.** Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement, or their successors in office.

13.16 **Disclosure.** By accepting payments agreed to in this Agreement, CONTRACTOR certifies that to its actual knowledge no MinnState employee or official, and no family members of a MinnState employee or official, shall receive a benefit from these payments, except as has been previously disclosed, in writing, to MinnState on the Disclosure Statement of Relationship Between Contractors/MinnState and Employees/Officials of Minnesota State Community and Technical College.

13.17 **Non-Discrimination and Equal Opportunity.** Neither party shall discriminate because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, age, or status as a veteran, or any other reason as defined and prohibited by applicable federal, state and local laws. In addition, each party affirms that it is an equal opportunity employer who practices affirmative action and shall comply with all applicable federal, state and local employment laws and regulations. This provision shall include, but not be limited to, the following: recruitment, selection, employment, promotion, demotion or transfer, lay-off or termination, utilization, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the State of Minnesota Department of Human Rights setting forth the provisions of the non-discrimination clause. CONTRACTOR agrees to abide by all provisions of Minnesota Statutes Chapter 363A. Although CONTRACTOR is an independent contractor, it covenants that its employees shall comply with MinnState's workplace policies, including, without limitation, MinnState's policy with regards to sexual and other forms of harassment.

- 13.17.1 Certification. CONTRACTOR hereby certifies it is in compliance with the requirements of Minnesota Statute § 363A.36 and Minnesota R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
- 13.18 Smoking Policy. Smoking policy shall be set by MinnState.
- 13.19 Parking. CONTRACTOR parking spaces shall be obtainable on campus, on a first come, first served basis.
- 13.20 Survival of Terms. The following clauses and sections survive the expiration, cancellation or termination of this Agreement: 6.1 Premises and Equipment; 12.6 Statements and Records; 13.2 Taxes; 13.4 Jurisdiction and Venue; 13.6 Liability; 13.7.1 Trade Secrets and Proprietary Information; and 13.10 Government Data Practices Act.
- 13.21 Catastrophe. Neither CONTRACTOR or MinnState shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closing, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.
- 13.22 Captions. The paragraph headings of this Agreement are for convenience only and are not intended, and shall not be construed to alter, limit, or enlarge in any way the scope or meaning of the language contained in this Agreement.
- 13.23 Binding Effect. This Agreement shall not extend to, be binding upon, or inure to the benefit of, the successors, assigns, heirs and legal representatives of a party hereto, unless both parties consent in writing pursuant to section 13.8 of this Agreement, or as otherwise provided in section 13.8 of this Agreement.
- 13.24 No Waiver. No failure by either party to insist, in any one or more instances, upon strict performance or compliance with any of the terms, provisions, covenants, conditions, or obligations of this Agreement or to exercise any option herein contained shall be construed as a waiver or relinquishment for the future of such term, provision, covenant, condition, or obligation or option, but the same shall continue and remain in full force and effect. Either party's receipt or right to receive any sum or sums then or at any time thereafter due either party and no waiver by either party of any term, provision, covenant, condition, or obligation hereof or herein shall be deemed to have been made unless expressed in writing and signed by a party's officer or designated representative.
- 13.25 State and Federal I.D. Number. CONTRACTOR is required by Minnesota Statutes section 270C.65, subd. 3 to provide its Minnesota Tax Identification Number or Federal Employer ID No. if CONTRACTOR does business with the State of Minnesota. This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require CONTRACTOR to file state tax returns and pay delinquent state tax liabilities. This Agreement shall not be approved unless these numbers are provided. These numbers shall be available to federal and state tax authorities and state personnel involved in the payment of state obligations.
- |                               |            |
|-------------------------------|------------|
| Federal Employer I.D. Number: | 41-1401004 |
| Minnesota Tax I.D. Number:    | 004125459  |
- 13.26 Alcoholic Beverages. CONTRACTOR is not permitted to sell alcoholic beverages on MinnState premises.

## ARTICLE XIV SECURITY

- 14.1 MinnState shall provide general security to the Food Service area occupied by CONTRACTOR. It is agreed that Food Service area is assigned exclusively to CONTRACTOR unless other arrangements for its use are made by the parties in writing, and shall be secured at all times. In the event CONTRACTOR is required to share the Premises, MinnState shall be responsible for maintaining security on the Premises.
- 14.2 CONTRACTOR shall immediately notify MinnState of any theft, break-ins, or loss of MinnState property. MinnState shall be responsible for such loss unless theft or loss of MinnState property is a result of CONTRACTOR'S negligence or the intentional acts of CONTRACTOR or CONTRACTOR'S employees or representatives.
- 14.3 CONTRACTOR shall be responsible for promptly reporting to MinnState any accidents involving staff and customers or adverse behavioral incidents involving staff or patrons, which occur in or around the Premises.
- 14.4 Technology Security. MinnState shall be solely responsible for all MinnState Systems, and CONTRACTOR shall be responsible for all non-MinnState Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. Reasonable security and privacy protections shall include, but not be limited to, network firewall protection, anti-virus software and the ability to maintain regular patching levels of software. Each party shall use commercially reasonable procedures to check for commonly known viruses and to check the integrity of data before sending information electronically to the other party, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. Each party agrees that the receiving party shall be responsible for carrying out virus checks on any attachments before opening any electronic files whether received on disk or otherwise.
- 14.5 PCI DSS Compliance. The CONTRACTOR agrees to establish security procedures to protect cardholder data and comply with Payment Card Industry Data Security Standard. Additional details on PCI DSS are available to the CONTRACTOR.

CONTRACTOR agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a breach of any of CONTRACTOR'S security obligations or other event requiring notification under applicable law, CONTRACTOR agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the MinnState and COLLEGE, and its trustees, officers, and employees from and against any claims, damages, or other harm related to such a breach.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

\_\_\_\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

THE STATE OF MINNESOTA ACTING  
THROUGH ITS BOARD OF TRUSTEES OF  
THE MINNESOTA STATE COLLEGES  
AND UNIVERSITIES ON BEHALF OF  
MINNESOTA STATE COMMUNITY AND  
TECHNICAL COLLEGE (MinnState)

By: \_\_\_\_\_  
Name: Dr. Carrie Brimhall  
Title: President  
Date: \_\_\_\_\_

AS TO FORM AND EXECUTION

By: \_\_\_\_\_  
Name: Wayne Wolden  
Title: Director of Business Services  
Date: \_\_\_\_\_

DRAFT



## **Exhibit A. Food Service Equipment Inventory**

### **1991 Building Project Equipment:**

1. Hobart slicer – model# 162E
2. Garland convection oven
3. Cleveland convection steamer – model# 24CGM200
4. Groen steam jacketed kettle – model# TDB/7-40
5. Kolpak walk-in cooler – model# 27431-8
6. Kolpak walk-in freezer
7. Hobart stand mixer
8. 2 – Precision serving cabinets – model# DGUT-3254-OW
9. Precision steam table
10. Precision serving table (small)
11. Precision sandwich station
12. Traulsen reach-in refrigerator - model# 1AHT1-32WUT
13. Defield pizza station with reach-in model# LR46377
14. Defield sink (small)
15. Hobart 36" electric grill
16. 2- Hobart electric deep fryers
17. Exhaust hood – Air Tech by Defield
18. Traulsen reach in combi (fridge/freezer) model# ADT1-26 WUT
19. 3 department sink with built-in disposal
20. Prep table with sink

### **Purchased in the last 10 years or so:**

21. 6 foot salad bar
22. Hobart dishwasher (pots & pans) unit size of home type unit
23. CresCor proof box (hot food storage)
24. Ice-O-Matic ice machine
25. Vollrath soup warmer model# TSM-27 (counter top)

### **Dishes and Utensils**

26. China – including plates, cups and bowl for catering events
27. Various utensils for food preparation, serving and catering
28. Silverware including knives, forks and spoons for catering events